

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.139/RJT/2021
निर्धारणवर्ष /Assessment Year: 2019-2020

Asstt.Commissioner of Income-tax Cent.Cir.2, Rajkot.	बनाम Vs.	Expert Particle Board Survey No.111, 8-A National Highway B/h. Bharatinagar ITI, Ravapar Nadi Morbi 363 642. PAN : AAHFE 0299 G
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आयकर अपील सं./ITA No.142/RJT/2021

WITH
CROSS OBJECTION No.05/RJT/2022
निर्धारणवर्ष /Assessment Year: 2019-2020

Asstt.Commissioner of Income-tax Cent.Cir.2, Rajkot.	बनाम Vs.	Bhagvaji Prabhubhai Amrutiya, Meera Park-2 House No.1, Vavdi Road Morbi. PAN : AIWPA 0121 A
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(अपीलार्थी/Assessee)	:	(प्रत्यर्थी/Respondent)
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निर्धारिती की ओर से/Assessee by : Shri Mehul Ranpura, ld.AR
राजस्व की ओर से/Revenue by : Shri Sanjay Punglia, ld.CIT-DR

सुनवाई की तारीख/Date of Hearing : 05/06/2025
घोषणा की तारीख/Date of Pronouncement : 29/08/2025

ORDER

Per, Dr. Arjun Lal Saini, Accountant Member:

The captioned two appeals filed by the Revenue pertaining to Assessment Year 2019-20 and the Cross Objection filed by the assessee, are directed against the separate orders passed by the Learned Commissioner of Income-tax



(Appeals)-11, which in turn arise out of the separate assessment orders passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (“the Act” for short).

2. Since the issue involved in all these appeals of Revenue and the Cross Objection of the assessee, are identical and common, therefore, all these appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. We shall first take Revenue’s appeal in ITA No.139/Ahd/2021 for the AY 2019-20 in the case of Expert Particle Board. The Revenue has raised the following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in considering the facts of the case and in ignoring that the substantive addition were made on account of investment in land as recorded in the Diary impounded during the course of survey at the business premises of the assessee.

2. Ld. CIT(A) has deleted the addition of Rs.6,77,34,130/- made u/s 69A of the I.T. Act erred in ignoring the facts that the amount reflects in the impounded diary are credit side of diary impounded during the course of search/survey proceedings and it reflects unexplained receipt in cash u/s 69A of the I.T. Act.

3. Ld. CIT(A) erred in deleting the addition made u/s 37 of the Act amounting to Rs.54,04,130/- considered as the assessee has not claimed any deduction of alleged figure of purchases in the books, however, the findings of the Ld. CIT(A) is contrary to the facts of the case.

4. On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in deleting the addition of Rs. 1,48,89,125/- made on account of unexplained investment u/s 69B of the I.T. Act.

5. On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in ignoring the facts that one of the partner of the assessee- firm himself has agreed that the nothings are related to the purchase of land of the factory.

6. On the facts and in the circumstances of the case and in law, AO has duly investigated and applied his mind on the report of the DDIT, Investigation wing and after satisfying himself in framing the assessment on the basis of cogent material and relevant evidence on record.



7. On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in ignoring the facts that the unaccounted investment in land was duly recorded in Note book/diary found during the course of survey and Ld. CIT(A) has deleted the protective addition made in the hands of the partner.

8. The assessee prays that the order of the learned Commissioner (Appeals) on the above ground be set aside and the addition made in the Assessment order may kindly be restored.”

4. Since the issue raised by the revenue are interconnected and mix therefore, we shall adjudicate them together. The relevant material facts, as culled out from the material on record, are as follows. The assessee has e-filed his return of Income on 30/08/2019, declaring total income at Rs. Nil. The assessee has shown loss of Rs. 2,72,94,013/-. The assessee has earned income from manufacturing and trading in particle board and other interior decorative products. A search was conducted on the group cases of “Coral Group of Morbi” which was commenced on 03.01.2019 and was finally concluded on 02.03.2019, in all the group cases. Along with the search action, a survey u/s 133A of the Act was also carried out on the office premises of the Bhagwanjibhai P Amrutiya, alias Bhupat Amrutiya at Shop No- F-4, First Floor, Darshan Plaza, Near Vardhaman residency, Morbi, and certain incriminating documents related to the assessee- firm were found and impounded. The assessee`s case was selected for compulsory scrutiny and the notice u/s 143(2) of I.T Act, 1961 was issued and served on 28.09.2020, through ITBA. A notice u/s 142[1] of the Act, was issued along with a questionnaire dated 25.01.2021, requesting to furnish the compliances in the matter as required, on-line electronically in e-proceeding facility. The Assessee has complied with the notice/questioner issued time to time electronically. The submission made by the assessee were examined by the assessing officer.



5. During the course of survey proceedings u/s. 133A at office of Bhagwanjibhai P, amrutiya alias BhupatAmrutiya at Shop No- F-4, First Floor, Darshan Plaza, Near Vardhaman residency, Morbi, a satakhat (agreement) (in original) containing heading of “avejrakamniphonch” was found. On verification it was noticed by the assessing officer that a land bearing survey number -111, situated at Vill- Ravapar Nadi and on which the premises of expert particle board is located, was purchased in the name of Expert Particle Board with a total purchase consideration of Rs. 1,55,89,125/-. However, the sales registration deed was executed for Rs. 7,00,000/- only. Further, during the course of survey proceedings, Statement of Bhupendra B Patel, partner of Expert Particle Board was recorded on oath and the above transaction was confronted with him. In his statement, he admitted that he along with his partners purchased a land at Ravapar Nadi village for establishing the factory premises of Expert Particle Board and the total consideration for the said transaction was decided for Rs.1,55,89,125/- and sale deed (document) was executed of only Rs. 7,00,000/-, for which payment has been made through demand draft no. 013955 on 21/04/2018 and the same has been duly accounted for in the books of accounts. Further, he had admitted that the remaining payment for Rs.1,48,89,125/-, was to be paid by cash and out of which cash payment of Rs. 50,00,000/- was paid on 06/04/2018 and Rs. 67,89,125/- was paid on 06/11/2018 and the balance payment of Rs. 31,00,000/- was shown payable at that time. He further stated that the as per condition of agreement (satakhat)the seller will charge interest @ of 1 % per month for balance amount. He also admitted in his statement that the above cash transactions are not reflected in the books of accounts of the firm and accordingly, the source of the differential amount paid in cash of Rs. 1,48,89,125/- remains unexplained. In this regard, assessee has not furnished any cogent reply to explain the source of investment made in cash of Rs. 1,48,89,125/- in purchase of said land.



6. The assessing officer further noticed that during the course of survey proceedings u/s.133A at office of Bhagwanjibhai P Amrutiya alias Bhupat Amrutiya at Shop No- F-4, First Floor, Darshan Plaza, Near Vardhaman residency, Morbi, a diary was found and impounded as annexure A-1. Further, a statement on oath u/s 131(1) r.w.s 131(1A) of Bhupendra B Patel, partner of Expert Particle Board was recorded and the contents of the diary (Annexure A-1) was confronted to him. When the contents of the above cash book were confronted to Shri Bhupendra Balubhai Patel, who is one of the managing partners, as mentioned in the partnership deed of Expert Particle Board, he has, in his statement recorded on oath, stated that this diary contains the details of accounted as well as unaccounted transactions related to Expert Particle Board. Further, during post search inquiry, Statement of Bhagwanjibhai P. Amrutiya alias Bhupat Amrutiya, one of the managing partners, who manages day to day affairs of the firm, was recorded on oath. In his statement, he was asked to explain the details of transactions mentioned in above diary, which is impounded as annexure A-1, during the course of survey action at his office premise. In his reply, he has categorically stated that wherever, the name BANK is mentioned in the narration of transaction, they are all bank transactions and accounted in the books of accounts of the firm and the remaining transactions are cash transactions. He had further stated in his statement that the cash transactions mentioned in the diary are unaccounted transactions and no tax has been paid on this amount. On perusing of the above mentioned seized data, it was noticed that firm has total cash receipt of Rs. 6,77,34,130/-, and assessee has made unaccounted bogus purchase of Rs. 2,00,000/- from Alpha Entech (Guj) and 52,04,130/- from Anuradha Oil, Mumbai, totaling to Rs. 54,04,130/-.

7. In this regard, the reply was submitted by assessee that the above transaction is not related to M/s. Expert Particle Board.



8. However, the assessing officer did not accept the reply of the assessee and noticed that assessee has also submitted the copies of affidavits of the partners to the effect that partners have not paid any cash payment for purchase of land or for any other purpose to expert particle board, however, in this regard, the assessing officer noted that the actual facts were admitted by one of the partner Shri Bhagwanjibhai Amrutiya in his statement recorded u/s under oath u/s 131(1A) of the Act and categorically has stated that the cash transactions mentioned in the diary are unaccounted transactions and no tax has been paid on this amount. The entries made on credit side is the amount so received from the partners and entries on the debit side is relevant to the expenses made on various heads including the expense which is in nature of the capital expenditure and it is worthwhile to note here the entries made on debit side also reflects the payment made for purchase of land as discussed in the “Satakhat” which clearly indicates that the transactions recorded in the dairy belongs to the assessee only.

9. The assessing officer observed that the affidavit filed by the partners are having no evidential value as the same is a cooked story and afterthought. The statement recorded on oath u/s 131(1A) of the Act, is strong piece of evidence and has substantial value cannot be denied, this view is also supported by the many decisions. The statement recorded during the course of search is a strong piece of evidence. Courts have given great significance to the statements recorded observing that the disclosure / admission made in the course of search by way of statement has got evidentiary value and it cannot be used to side track the attention of the department from making deeper investigation in the matter. The AO has relied on many judgements of various Hon’ble High Courts stating that the disclosure/admission made in the course of search by way of statement has evidentiary value, therefore, the AO has cited various judgments



of High Courts and Tribunal, which are mentioned in page no.4 to 10 of the assessment order.

10. During the assessment proceedings, in response to the notices issued by the assessing officer, the assessee submitted its reply before the AO. The reply of the assessee made during the assessment proceedings is reproduced below:

“... We have been served with the above-stated notice requiring us to show cause as to why additions / disallowances aggregating to Rs. 8,80,27,385/- should not be made u/s. 69A, 69B & 37 of the Act. In this connection, we in addition to our earlier replies in the same issue further submit as under:

As regard the allegation of unexplained investment in land of Rs. 1,48,89,125/- on the basis of alleged Satakhath (agreement) impounded during the survey action carried out at the office of Shri Bhagwanjibhai Amrutiya, it is to submit that we have not paid any amount for purchase of land situated at Survey No. 111, Village RavaparNadi, Morbi over and above the consideration of Rs. 7,00,000/- reflected in the registered sale deed. Therefore, allegation of cash payment made on the basis of so-called Satakhath impounded from the premises of Shri Bhagwanjibhai Amrutiya is strongly objected.

Without prejudice to the above, on verification of copy of impounded agreement provided to us, it is seen that said agreement was signed by Shri Bhagwanjibhai Prabhubhai Amrutiya alone and not by any other partner(s) of the firm. Here, it needs mention that the assessee firm has not given any authority or power of attorney to Shri Bhagwanjibhai Amrutiya to enter into any such agreement and hence, in absence of signature of other partners in the said agreement, the same cannot be made binding on the assessee firm.

In view of the above, impugned agreement executed and signed by only one partner without having any authority or power given by the other partners / firm is invalid. It needs mention that registered sale deed executed contains signature of all partners.

Further, on para-2 of the said agreement, it is mentioned that the deal for purchase of land for consideration of Rs. 1,55,89,125/- was finalized on 18-03-2018. However, the partnership firm between the partners of Expert Particle Board was came into existence on 02.04.2018 only. Therefore, there is no sanctity or credibility of alleged deal agreed by Shri Bhagwanjibhai Amrutiya

(without having consent of other partners) before 02.04.2018 and any such transaction / deal cannot be binding on the assessee firm.

It is also seen on last para of the agreement, where it is mentioned that the balance sum of Rs. 98,89,125/- is payable on or before 06.11.2018. However, as submitted in the notice, Shri Bhupendra B Patel in his statement recorded during the survey stated that sum of Rs. 31,00,000/- is yet to be paid on the date of survey, i.e., on 03.01.2019.



In this connection, it is to submit that the registered conveyance deed of the land was executed on 26.04.2018 and entire consideration (which is at par with the valuation prescribed by State Government for levying stamp duty) has been paid by account payee cheque / DD. Your good self may appreciate that no prudent person can take risk of transferring title and handing over possession of property without receiving substantial portion of consideration. Therefore, in this case, a small farmer having meagre income is not expected to have transferred the title deeds and possession of property against receipt of only 37% of agreed amount of consideration. Hence, terms & conditions of impugned agreement to sale signed by Shri Bhagwanjibhai Amrutiya is against the normal human probabilities, which raise doubt on the credibility of such document. Also, last date of payment of full consideration in the said agreement, i.e., 06.11.2018 is not matched with the statement of Shri Bhupendra B Patel. This further raise eyebrows on the content of said agreement to sale.

In view of the above, agreement impounded during the survey carried out at the premises of Shri Bhagwanjibhai Prabhubhai Amrutiya is in itself contradictory and lacks legal support and hence, addition proposed merely on the basis of such agreement without having any other circumstantial evidence related to exchange of cash between parties is strongly objected.

As regard the reliance placed on the statement recorded from Shri Bhupendra Patel, it is to submit that Shri Bhupendra Patel in the post-survey proceeding in his reply dated 08.05.2019 in response to summons dated 01.05.2019 categorically clarified that he is not aware regarding any noting made in the material impounded from the office premises of Shri Bhagwanjibhai Amrutiya. Further, he had in his affidavit dated 17.05.2019 (on record) categorically clarified the facts and circumstances in which his statement was recorded and also stated that he is not aware regarding any documents impounded from the office premises of Shri Bhagwanjibhai Amrutiya. Therefore, reliance made by your good self on the retracted statement is totally misplaced.

It is also submitted that on being discussed with Shri Bhagwanjibhai Amrutiya regarding such document, he had stated that such agreement was drafted and managed to signed for the purpose of showing inflated value of property to the banker so as to avail bank loan by mortgaging the property. Therefore, it is clear that no actual transaction took place as per the impugned agreement impounded during the survey. Hence, allegation of cash payment made by the assessee firm of Rs. 1,48,89,125/- is strongly objected.

Without prejudice to the above, it is also submitted that noting / transaction in the documents impounded from the premises of Shri Bhagwanjibhai P. Amrutiya are prepared and maintained by him in his own way, which is not binding on the firm or other partners of the firm.

As regard the allegation of cash receipt of Rs. 6,77,34,130/- by the assessee firm as per the diary impounded at Annexure A-1 from the office premises of Shri Bhagwanjibhai Amrutiya, it is to submit that during the post-search investigation, we had in reply dated 08.05.2019 filed before the ADIT(Inv)-1, Rajkot categorically stated that we are not aware regarding alleged cash receipts by the firm and we have



not received any cash from any of the person / concern. Therefore, alleged cash receipts / unaccounted transaction in the so-called impounded diary are not related to us and therefore, addition proposed u/s. 69A of the Act is strongly objected.

Without prejudice to the above, following are the undisputed facts –

Survey action u/s. 133A of the Act was carried out in the personal case of Shri Bhagwanjibhai Amrutiya in conjunction with the searches / surveys carried out in the Coral Group of Morbi.

There was no any survey / search action carried out in the case of other partners or in the case of firm. During the post-survey, the assessee firm as well as partners of the firm categorically denied to have carried out any transaction as per noting made in the said impounded diary.

Shri Bhagwanjibhai Amrutiya in his reply furnished before the investigation wing as well as in his affidavit dated 16.05.2019 stated the reasons behind maintaining such diary, i.e., window-dressing book results of the firm in order to avail higher finance from bank or finance institute.

Certain noting in the impounded diary falls prior to the formation of assessee firm and there is continuous flow of transactions. This reveals that the noting in the impounded diary has not actually been carried out by the assessee firm as the firm was not existence at the time of inception of diary.

Actual cash received by the assessee firm from partners as per regular books of account are not mentioned in the impounded note-book. Therefore, the person who has prepared the diary at the instance of Shri Bhagwanji Amrutiya has not even considered the real transactions as per the books of account and jotted the figures as per this understanding, which proves that there is no legal sanctity of impounded diary.

The above undisputed facts clearly reveals that the noting in the impounded diary is not complete and represent the actual transaction took place, but the same are notional / projected / estimated figures in order to inflate the valuation of assets in the books of account and to get higher finance from bank.

It is also submitted that during the course of survey or post-survey investigation, no other corroborative or circumstantial evidences are found suggesting such huge cash receipt & payment by the assessee firm as mentioned in the impounded diary. Importantly, all the partners including Shri Bhagwanjibhai Amrutiya have furnished affidavits denying the noting made in the impounded diary with actual state of affairs of the assessee firm.

Once the author of the diary himself has stated that the transactions mentioned in the diary are not real, it loses the sanctity, and no addition could be made merely on suspicion, conjectures and surmises. The unsubstantiated diary jottings cannot be considered as a conclusive evidence to make any evidence towards undisclosed income. Hon'ble Supreme Court has in the case of CBI Vs. V.C. Shukla 3 SCC 410



has held that “file containing loose sheets or papers are not books” and hence entry therein are not admissible u/s. 34 of the Evidence Act, 1872. Similarly, in the present case, the impounded material having certain entries in the name of the partners, which was presumed as unaccounted investment, is not corroborated with any independent materials and entries therein are totally unsubstantiated. Therefore, on that basis one cannot reach to the conclusion that figures mentioned therein are the undisclosed receipts in the year under consideration in the case of the assessee firm.

Without prejudice to the above, it may not be out of place to reiterate that the impugned diary was found and impounded from the possession of Shri Bhagwanjibhai Amrutiya and he had in his affidavit clarified that the noting in the said diary was made at his direction (not written by him) so as to avail higher bank finance for the assessee firm. Therefore, how the noting was made and purpose behind such noting is best known to Shri Bhagwanjibhai Amrutiya and on this count, no addition can be made in the hands of the assessee firm. It is also submitted that provision of Section 292C of the Act requires to frame presumption on the person in whose case survey was carried out, i.e., Shri Bhagwanjibhai Amrutiya. Therefore, since the assessee firm was not subjected to survey / search, it cannot be made responsible for the documents impounded from the premises of its partner in absence of any other corroborative evidences related to exchange of cash between partner and the firm.

Your good self on page 5 & 6 quoted various case laws related to evidentiary value of statements recorded. However, it is submitted that all such case laws are related to statements recorded u/s. 132(4) of the Act during the search or the statements for which no retraction affidavit has been filed by the assessee. Therefore, the case laws relied upon by your good self are altogether on different facts, which cannot be made applicable in the case under consideration.

The assessee submits that the statement recorded u/s. 133A of the Act has no evidentiary value as the statement recorded without any oath. Therefore, in absence of any circumstantial evidences, no addition can be made on the basis of statement recorded during the survey in the case of third party. In this regard, reliance is placed on the decision of Hon’ble Madras High Court in the case of CIT Vs. S. Khader Khan Son (2008) 300 ITR 157 (Mad.), which has also been upheld by Hon’ble Supreme Court in 254 CTR 228(SC) by dismissing the SLP of the revenue.

Reliance also placed on the decision of Hon’ble Kerala High Court in the case of Paul Mathews & Sons vs. CIT (2003) 263 ITR 101 (Ker.), wherein, it is held that section 133A empowers the authority to record the statement of any person, which may be useful for, or relevant to any proceeding under the Act. This section only enables the authority to record any statement of any person, which may be useful, but does not authorise for taking any sworn statement. On the other hand, such power to examine a person on oath is specifically conferred on the authorized officer u/s. 132(4) of the I.T Act, 1961. The statement recorded by an officer on oath will be used as evidence in any proceeding, whereas statement recorded u/s. 133A has not given any evidentiary value because it was recorded by the authority, which has not been empowered to administer the oath to the assessee and take sworn statement.



In view of the above, addition proposed in the hands of assessee firm is devoid of any merits and hence, the same is strongly objected.

Without prejudice to the above, your good self on page no. 5 of the notice observed that debit side of the impounded diary reflects the payment made for purchase of land, which is as per the Satakhat (agreement) impounded (discussed above). In this context, without admitting anything in any manner, it is requested to not to make any addition to the extent of Rs. 1,48,89,125/- on the basis of impounded diary as the same shall result into double addition.

As regard the allegation of cash receipt of Rs. 2,00,000/- from Alpha Entech (Guj) and Rs. 52,04,130/- from Anuradha Oil, Mumbai and on the basis of which proposal to disallow the purchase u/s. 37 of the Act, it is to submit that we have not received any cash against the purchases booked in the books of account and hence, proposal to disallow the purchase is strongly objected.

As submitted hereinabove, the noting in the impounded diary is made by someone as per the instruction of Shri Bhagwanjibhai Amrutiya and in this regard, Shri Bhagwanjibhai Amrutiya in his reply before the investigation wing and in his affidavit categorically clarified the purpose / object behind preparing such diary. Therefore, it is clear that the noting in the impounded diary is not actual transaction took place.

In view of the above, it is requested to not to make any disallowance on this count and oblige.”

11. However, the assessing officer rejected the above reply of the assessee, and held that reply submitted by the assessee was not supported with cogent evidences, therefore, following additions were made by the assessing officer, in the hands of the assessee, on substantive basis. Since, these additions are being made u/s. 69A & 69B, by virtue of section 115BBE, no deduction is allowed.

(i) Addition of Rs. 1,48,89,125/-, u/s. 69B of the Act, as amount of investment not disclosed in the books of account.

(ii) Addition of Rs. 6,77,34,130/-, on account of unexplained receipt of cash u/s. 69A of the Act.

(iii) Addition of Rs. 54,04,130/- on account of bogus purchase u/s 37 of the Act.



12. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Id.CIT(A), who has deleted the addition made by the assessing officer. About the addition of Rs. 6,77,34,130/-, the Id.CIT(A) observed that the AO had already made the addition of the entire notebook in the hands of Shri Bhagwanjibhai Amrutiya and thus, he had discharged the presumption laid in section 292C of the Act, by presuming that the said notebook belongs to the person from whom it was found and impounded. The assessee firm had not even started commercial production and hence, it was not possible for the assessee firm to have such large cash transactions.

13. The Id.CIT(A) observed about the disallowance of Rs. 54,04,130/- made u/s. 37 of the Act on the basis of certain entries in the impounded note-book, that since the assessee has not claimed any deduction of alleged figure of purchases in the books of account / ITR and hence, there is no question of disallowance of purchases.

14. The Id.CIT(A) observed about the disallowance of Rs. 1,48,89,125/- that since there was need for higher financial assistance, therefore, assessee had no alternative but to show higher valuation for the land. It is for this purpose that the agreement to sale of the land was made with higher valuation. The fact that no cash has been paid on purchase of land can be proved from last para of the agreement, wherein, it is mentioned that the balance sum of Rs. 98,89,125/- is payable on or before 06.11.2018. However, the registered conveyance deed of the land was executed on 26.04.2018. No prudent person will take risk of transferring title and handing over possession of property without receiving substantial portion of consideration. Therefore, in this case, a small farmer having meagre income is not expected to have transferred the title deeds and



possession of property against receipt of only 37% of agreed amount of consideration.

15. Aggrieved by the order of the learned CIT (A), the Revenue is in appeal before us and assessee (Shri Bhagwanjibhai) also filed the cross objection, before us.

16. Learned DR for the Revenue vehemently argued that the cash book maintained by the assessee, contained accounted income and unaccounted income and various expenditure on capital assets/ unexplained investments. Therefore, the cash book maintained by the assessee, in the diary is not dumb document, but containing certain unaccounted transactions also. Therefore, the addition should be made based on the transactions recorded in the cash book/ diary maintained by the assessee. The addition of Rs. 6,77,34,130/-, should be at least be made in the hands of Shri Bhagwanjibhai Amrutiya. The Id.CIT(A) deleted the said addition in the hands of Expert Particle Board and in the hands of Shri Bhagwanjibhai Amrutiya, which is not acceptable. The Id. CIT(A) observed that the AO had already made the addition of the entire notebook in the hands of Shri Bhagwanjibhai Amrutiya and thus, Expert Particle Board, had discharged the presumption laid in section 292C of the Act, is not acceptable, and the addition should be sustained at least in the hands of one party. About the disallowance of Rs. 1,48,89,125/-, the assessee stated that since there was need for higher financial assistance, therefore, assessee had no alternative but to show higher valuation for the land, is afterthought and cooked story, therefore should not be believed. About the disallowance of Rs. 54,04,130/- made u/s. 37 of the Act on the basis of certain entries in the impounded note-book, is correct, hence, such addition should be confirmed in the hands of the assessee.



17. The ld.DR also stated that before the AO it was argued by the assessee that peak credit should be allowed to the assessee, however, the cash book of the assessee, which contained accounted and unaccounted transactions, therefore, peak credit should not be allowed. Besides, the affidavit filed by the partners should also to be rejected, as it is, after thought to mislead the revenue. The ld.DR further submitted that on-money paid by the assessee to purchase certain items and the cash receipts shown in the cash book also pertains to on-money and the assessee failed to explain the same. However, the assessee is entitled for telescopic benefit, and the same may be given to the assessee.

18. The ld.DR also pointed out that there was no need to provide opportunity of cross-examination because it is the matter between the partners that is, between old partners and the new partners and rough cash book maintained for that purpose is an incriminating document. Therefore, all the additions, as mentioned above, made by the AO may be confirmed. The ld.DR in support of its contentions relied on the following judgments:

- i) Namdev Arora Vs. CIT, (2016) 72 taxmann.com 124 (P&H);
- ii) CIT Vs. Devi Prasad Vishwanath, (1969) 72 ITR 194 (SC);
- iii) CIT Vs. Nipun Builders & Developers P.Ltd., (2013) 30 taxmann.com 292(Del)
- iv) A. Govindarajulu Mudalia Vs. CIT, (1958) 34 ITR 807(SC);
- v) Rajmeet Singh Vs. ITO, (2024) 160 taxmann.com 83 (Jhark)
- vi) CIT Vs. Independent Media P.Ltd., (2012) 25 taxmann.com 276 (Del);
- vii) Shri Arif Vs. ACIT, ITA No.976/Bang/2022 (ITAT-Bang) order dated 126.1.2023;
- viii) Manoj Aggarwal Vs. DCIT, (2008) 113 ITD 0377 (Del)

19. On the other hand, the ld.Counsel for the assessee submitted that the retired partners nowhere associated with the assessee-firm and since there was a



search in the premises of the retired partner, and, simultaneous survey proceedings were also carried on the assessee-firm. Therefore, the existing partners did not rely on the documents found in the premises of the retired partners, as the retired partner is nowhere connected with the assessee-firm. Therefore, the documents found at the premises of the retired partners should be treated, as if documents found at the third-party premises, and therefore, these documents found from the retired partner do not belong to the assessee-firm. Therefore, learned Counsel relied on the findings of the learned CIT(A) and prayed the Bench that order passed by the learned CIT(A) may be upheld.

20. Apart from this, the Id.Counsel for the assessee submitted that decisions relied upon by the Id.DR for the Revenue related to share capital, and since the share capital issue is a separate issue and here in the case of the assessee, under consideration, the matter pertains to search and seizure, therefore, the case law relied on by the Id.DR for the Revenue, is not applicable to the assessee under consideration.

21. In rejoinder, the Id.DR submitted that Bhupendra Patel was the partner and has given his house as collateral security to the bank, therefore, either the addition should be confirmed in the hands of the partner or in the hands of the firm. If the additions are not confirmed in the hands of the assessee, then direction may be given by the Tribunal to reopen the case of partner to assess the income pertaining to the seized material, in the hands of the partner.

22. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. Though facts have been



discussed in detail in the foregoing paragraphs, however in the succinct manner, the relevant facts and background are reiterated in order to appreciate the controversy and the issue for adjudication. We note that during the course of survey at the office premises of Shri Bhagwanjibhai Amrutiya, one notebook was impounded and inventoried as Annexure A-1. This notebook contained total credit at Rs.7,31,38,260 (Rs. 6,77,34,130 + Rs.54,04,130). According to the assessing officer, the transactions contained in this notebook pertained to the assessee. For this he stated that, Shri Bhupendra Balubhai Patel (one of the partners of the assessee- firm) in his statement recorded during the survey stated that this diary contains the details of accounted as well as unaccounted transactions related to the assessee, in the statement recorded from Shri Bhagwanjibhai P. Amrutiya u/s. 131(1A) of the Act, the assessing officer has stated that wherever, the name bank is mentioned in the narration of transaction, they are all bank transactions and accounted in the books of accounts of the firm and the remaining transactions are cash transactions; entries made on debit side of the impounded note-book also reflects the payment made for purchase of land and other capital expenditure. As discussed in the agreement to sale found separately, which clearly indicates that the transactions recorded in the diary belongs to the assessee; affidavits filed by the partners of the assessee- firm are having no evidentiary value as the same are afterthought; statements recorded u/s. 131(1A) of the Act are on oath and is a strong piece of evidence, which cannot be denied; as per provision of Section 292C of the Act, presumption is drawn against the assessee- firm. Thus, the AO made addition of Rs. 6,77,34,130/- u/s. 69A of the Act which is the total of the credit side of the notebook by treating the same as cash receipts from unaccounted sources. It is further seen that, he made disallowance of Rs. 54,04,130/- u/s 37 of the Act on the alleged ground of bogus purchases, that is, cash received from the suppliers against purchase claimed in the books of account.



23. Before the learned CIT (A), the assessee submitted that the statement of Shri Bhupendra Balubhai Patel recorded u/s 133A of the Act, on 03.01.2019, was from non-connected party in such a way that he is neither subjected to survey nor he is the owner of the premises surveyed from which the material was found. In fact, survey was conducted at the office premises of Shri Bhagwanjibhai Amrutia, accountant of the Coral Group for verification of their data / materials if any lying at accountant's office premises. As the said premises was closed therefore, his friend Shri Bhupendra Balubhai Patel who is engaged in the business of videography was asked to open the said office premises. Mr. Bhupendra Patel was not aware about the data lying at surveyed premises and was not competent to reply any of the queries or questions raised by the Survey party. Be that as it may be, in the said statement, Shri Bhupendra Patel had stated about the impugned Annexure A-1 that he is not aware about the transaction and that he needs to consult other partners, though he explained the contents as per his understanding. Thus, according to the assessee, the statement of Shri Bhupendra Patel is not binding to the firm and cannot be considered as authentic, having any evidentiary value.

24. The assessee also submitted before the learned CIT(A) that, during the post-search investigation, Shri Bhupendra Patel had, vide letter dated 08.05.2019 filed before Investigation Wing, clarified that the noting in the impounded notebook are not fully correct and not binding to anybody and that the replies given by him during the survey was one sided and without verification and was under pressure and tired state of mind. He also contended that the impugned noting were not made by him. This was further strengthened by similar affidavit filed during assessment proceeding, which was neither verified nor investigated by the assessing officer. All the above documents are forming part of the paper



book and has been perused. The fact that the AO has not dealt with these affidavits, are also apparent from the assessment order. On the other hand, when above statement of Bhupendra Balubhai Patel was confronted to Shri Bhagwanjibhai Amrutia, at his residence during the ongoing search, he had submitted that Annexure A-1 is a rough cash book. This reply was given in his statement recorded u/s 132(4) of the Act. Here it needs to be highlighted that, Shri Bhagwanji Amrutia is basically an accountant and in his office premises which was covered under survey, he was carrying out accounting activities of the Coral group and various other clients. He was also a partner of the assessee firm and was looking after the accounts of the assessee. From the dates of the impounded diary, it can be seen that this was for the period prior to its existence and it did not even start commercial production. This was the period when Shri Bhagwanj Amrutia was looking for bank finances. He himself had admitted that the transactions recorded in the impounded notebook are rough and not authentic, and in assessment proceedings it was stated that the same were prepared for limited purpose of obtaining bank loans. Further, the assessee vide letter dated 08.05.2019 filed before the ADIT(Inv)- 1, Rajkot had stated that it (firm) is not aware about the contents of the said note book found from third party premises and maintained by Bhagwanjibhai Amrutia. The Investigation Wing did not treat this statement as shallow and pressed for further investigation. It issued summons to the partners of the assessee- firm and others (whose names were recorded in the impugned notebook) and asked about the authenticity of the contents. In response to same, all denied having carried out any such transactions as recorded in the notebook. Copies of replies by the assessee, partners and others are forming part of the paper book. During the course of assessment proceeding, the assessee / partners even sought cross examination of Shri Bhupendra Patel and Shri Bhagwanjibhai Amrutia. In nutshell it was contended that statement made by partner of the firm cannot bind



the firm in absence of it being confronted to all the partners else it goes against the basic principle of partnership law. However, nowhere from the assessment order it can be seen that such opportunity was granted to the assessee.

25. We note that assessing officer also relied upon various judicial pronouncements. However, the assessee submits that none of the decisions are relevant to the facts of the present case. The assessee has submitted rebuttal on each decision relied upon by the AO. The AO also strengthened his case by taking recourse to Section 292C of the Act which presumes that, documents found during the course of survey is presumed as belonging to such person. However, this finding is shallow because, there was no survey at the premises of the assessee- firm and the documents were not impounded from the possession of the assessee. A plain reading of the provisions of section 292C of the Act reveals that where any books of accounts, other documents etc. are found in possession or control of any person in the course of search action under section 132 or survey action under 133A; it may be presumed that such books of account, other documents etc, belong to such person and that the contents of such books of account and other documents are true. This power has already been exercised by the AO when he made the entire addition in the hands of Shri Bhagwanjibhai Amrutiya, while finalizing his assessment. On the other hand, in the case of the assessee, from the very beginning, all the partners have denied link or relation with the impounded document or with any of the transaction made therein, which may be prima facie authentic because, the documents were not found from the premises of the assessee and neither was there any search or survey in the premises of the assessee. These documents were found from the office of Shri Bhagwanjibhai Amrutiya, a professional accountant and who also handled the accounts of the assessee for bank loan purpose. The same were already added in the hands of Shri Bhagwanjibhai Amrutiya by the AO. Hence



the nature of document impounded does not point any strong/reliable or standalone presumption under section 292C of the Act against the assessee-firm as such. Besides, the scouting of loans from financial institutions by inflating the net worth is the reason for such notings. Nowhere in the assessment order had the AO made any attempts to investigate the contention of the assessee. Even the Investigation Wing did not contemplate any further proceedings or action in the case of the assessee by carrying out independent survey to corroborate the contents of the notebook found from the office of Shri Bhagwanjibhai Amrutiya.

26. Therefore, Learned CIT(A), observed that no search or survey was carried out at the premises of the assessee. During the course of survey at the office of Shri Bhagwanjibhai Amrutiya, a notebook was found and impounded, which contained some cash transactions. The first date of the diary / starting point precedes the date on which the firm came into existence and hence, it is clear that the notings are also started for the period prior to the establishment of the firm. Shri Bhagwanjibhai Amrutiya had stated in his statement u/s 132(4) that the notings are rough. From the submission of the assessee, it is found that Shri Bhagwanjibhai Amrutiya is an accountant by profession, who managed accounts of various firms and companies, including the Coral group. The AO had already made the addition of the entire notebook in the hands of Shri Bhagwanjibhai Amrutiya and thus, he had discharged the presumption laid in section 292C, by presuming that the said notebook belongs to the person from whom it was found and impounded. The assessee firm had not even started commercial production and hence, it was not possible for the assessee- firm to have such large cash transactions. Neither the AO nor the Investigation Wing had established that the unaccounted cash receipts noted in the said diary was of the firm, when it had not even started commercial production. Thus, there was



no source of income of the assessee, as it was the first year of its inception and the factory was being established. Therefore, when the noting in the impounded diary contains specific reference of amount received from partners and other persons, the said receipts cannot be treated as unexplained income in the hands of the assessee- firm. Based on these facts, the learned CIT (A) deleted the addition of Rs. 6,77,34,130.

27. Next ground of the Revenue pertains to the addition of Rs.54,04,130/-. The common facts of the case have been narrated above therefore, we do not repeat the same. Learned DR for the revenue, relied on the findings of the assessing officer, whereas, learned Counsel for the assessee, relied on the findings of the learned CIT(A). About the disallowance of Rs. 54,04,130/-, made u/s 37 of the Act, on the basis of certain entries in the impounded note-book, it was observed by Id.CIT(A) that since the assessee has not claimed any deduction of alleged figure of purchases in the books of account / ITR and hence, there is no question of disallowance of purchases. Hence, this disallowance was deleted by Id.CIT(A). We confirm the findings of the learned CIT (A).

28. About the addition of Rs.1,48,89,125/-, we note that finding of the AO is contained in para 4 of the assessment order, wherein he has held that, on the basis of one agreement to sale ("Satakhat") found and impounded during the course of survey at the office premises of one Shri Bhagwanjibhai Amrutiya, it was noted that the assessee had purchased land at Survey No 111 situated at Village Ravapar Nadi. The total purchase consideration as per the impugned agreement to sale is at Rs. 1,55,89,125/-, out of which Rs. 7,00,000/-, is paid by DD, dated 21.04.2018; cash of Rs 50,00,000 was paid on 06.04.2018; cash of Rs 67,89,125/- was paid on 06.11.2018 and balance sum of Rs. 31,00,000/-, was payable. The AO further relied upon the statement recorded from Shri



Bhupendra Patel during the survey who admitted the transaction as per the impounded agreement to sale.

29. Before the learned CIT (A), the assessee submitted that, the impugned documents were not found from the assessee and therefore, the assessee was not aware regarding such document. Further, no corroborative evidences were found evidencing actual payment of cash as per the impounded agreement to sale. According to the assessee, it wanted to purchase land for the purpose of establishing an industrial unit. However, the land was an agricultural land and hence, the same was purchased after taking prior approval of the competent authority, that is, Collector for the consideration of Rs. 7,00,000/-, which is more than the Fair Market Value of an agricultural land, as per the stamp valuation authority. Shri Bhagwanjibhai Amrutiya was looking after accounts and he was entrusted to obtain bank finance for the assessee- firm, as a consultant. His sole purpose was to obtain maximum finance / loan from the bank, so as to put less capital by the partners. Therefore, in order to avail higher finance from the bank, he had got prepared the impugned agreement to sale showing higher value of land and its partial payments for purchase of property, in order to convince the bank / consultant to bargain for higher loan. Also, the seller of the impugned land namely Shri Rasikbhai Panchotiya in his duly sworn affidavit, clarified that the he has not received any cash against sale of the land. The land in question was purchased on 21.04.2018 and thereafter, an application was made to convert the same to non-agricultural land. The said conversion was made on 19.06.2018. Thereafter, on 06.07.2018, the assessee obtained permission to start construction of factory shed. On 27.11.2018, the construction of factory shed was completed. In the meantime, Shri Bhagwanjibhai P Amrutiya pursued the bank loan matter with Syndicate Bank. Since there was need for higher financial assistance, he had no alternative but to show higher



valuation for the land. It is for this purpose that the agreement to sale of the land was made with higher valuation. The fact that no cash has been paid on purchase of land, can be proved from last para of the agreement, wherein, it is mentioned that the balance sum of Rs. 98,89,125/- is payable on or before 06.11.2018. However, the registered conveyance deed of the land was executed on 26.04.2018. No prudent person will take risk of transferring title and handing over possession of property without receiving substantial portion of consideration. Therefore, in this case, a small farmer having meagre income is not expected to have transferred the title deeds and possession of property against receipt of only 37% of agreed amount of consideration. Hence, terms & conditions of impugned agreement to sale signed by Shri Bhagwanjibhai Amrutiya, is against the normal human probabilities, which raise doubt on the events as mentioned in such document, has really occurred.

30. The assessee also submitted before the learned CIT(A) that the sanction letter of Term loan and OD facility issued by the Syndicate bank clearly shows that the said loan has been sanctioned on 10.09.2018 in which the bank has taken land as collateral security. The loan sanctioned was for a total sum of Rs. 8.80 crore and hence, it was imperative to show higher valuation of both the land and the factory shed. Even this exaggerated valuation was not sufficient to meet the norms of the bank to obtain such loan. Therefore, Shri Bhagwanjibhai Amrutiya gave his own residential building as collateral security along with various other properties, including cash collateral of Rs. 50 lacs. Thus, the entire exercise behind making higher agreement to sale was, to obtain higher bank loan. So far as the statement of Shri Bhupendra Patel is concerned, the appellant submits that, Shri Bhupendra Patel in the post-survey proceeding in his reply dated 08.05.2019, in response to summons dated 01.05.2019 had submitted that he is not aware regarding any noting made in the material impounded from the



office premises of Shri Bhagwanjibhai Amrutiya. Further, he had in his affidavit dated 17.05.2019, clarified the facts and circumstances in which his statement was recorded. According to the appellant, all the partners were clearly instructed by Shri Bhagwanjibhai Amrutiya that, since documents showing higher valuations were already submitted to the bank, therefore, in the event of cross check by the bank or whenever there is any inquiry from the bank or the registered valuer, each partner has to stick to the valuation so contained in the proposal sent to the bank. Based on these facts, the Id.CIT(A) noted that perusal of the assessment order reveals that, the AO has not rebutted any of the claims of the appellant. It is further seen that, similar addition has also been made in the hands of the person who had signed the agreement to sale, viz., Shri Bhagwanjibhai Amrutiya.

31. Considering these facts, the learned CIT (A) was of the view that the impugned agreement to sale has not been found from the premises of the appellant. Neither there was any search or survey proceedings at the premises of the appellant. The impounded Satakhat (agreement to sale) shows transfer of cash on subsequent dates. Thus, at the time of transfer of property, more than 60% of the cash was yet to be paid. It is obvious that no farmer would allow his land to be sold without getting full consideration. If the consideration is in cash, then the proceeds would be collected first. Besides, the signatory to the deal is only Bhagwanjibhai Amrutiya, from whose office, the said document was impounded and the same has been added in his hands as well. Importantly, the diary impounded from the office premises of Shri Bhagwanjibhai Amrutiya reflects the cash payment of Rs. 50,00,000/-, made on 06.04.2018, as per the agreement to sale, which is funded from the fund brought in by the partners of the appellant firm including Shri Bhagwanjibhai Amrutiya. Therefore, it is clear that, even if cash has exchanged hands, it is between the partners of the appellant- firm including Shri Bhagwanjibhai Amrutiya and the seller, and



necessary recourse has already been taken by the AO, by making the addition in the hands of Shri Bhagwanjibhai Amrutiya. The appellant has no role in the said transaction. Therefore, the addition made of Rs. 1,48,89, 125/- was deleted by Id.CIT(A). Considering these facts and circumstances, we find that there is no infirmity in the above conclusion reached by the learned CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and all the grounds of appeal of the Revenue are dismissed.

32. In the result, appeal filed by the revenue (in ITA No.139/RJT/21) is dismissed.

33. Now, we shall take the Revenue's appeal in ITA No.142/RJT/2021, in the case of Shri Bhagvanji Prabhubhai Amrutiya, wherein the Revenue has raised the following grounds:

1. On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in deleting the addition of Rs. 1,48,89,125/- made on account of unexplained investment u/s 69B of the Act.

1.1. On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in considering the facts of the case and in ignoring that the protective addition made on account of investment in land as recorded in the Diary impounded during the course of survey at the business premises of the assessee.

2. On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in deleting the addition of Rs.5,79,94,130/- out of total addition of Rs.6,77,34,130/-, made on account of unexplained receipt of money in cash u/s 69A of the I.T. Act.

3. On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in deleting the addition of Rs.54,04,130/-, made on account of bogus purchase u/s 37 of the I.T. Act.

4. On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in ignoring the facts that the assessee himself has agreed to notings of the diary and agreed to obtain the peak balance to be taxed in his hands on the basis of entries of fund inflow & outflow recorded in the impounded diary.



5. On the facts and circumstances of the case and in law, the AO has duly investigated and applied his mind on the report of the DDIT, Investigation wing and after satisfying himself in framing the assessment on the basis of cogent material and relevant evidence on record.

6. On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in deleting the addition of Rs.3,42,000/- made on account of undisclosed investment u/s 69A of the I.T. Act.

7. On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) fails to appreciate the fact that the AO has made addition on account of investment made in Gold was not explained by the assessee during the course of assessment.

8. The assessee prays that the order of the learned Commissioner (Appeals) on the above ground be set aside and the addition made in the Assessment order may kindly be restored.”

34. The relevant facts have already been narrated by us, above, as we have noted that the issue involved in these two appeals of the Revenue are interconnected and mix, as in the hands of one assessee, the substantive addition was made by the Department, and in the hands of other assessee, the protective addition was made by the Department, therefore, we do not repeat the facts again for the sake of brevity. However, brief facts of the assessee's case are that on verification of said seized note books, it was noticed by the assessing officer that the debit side entries are mostly related to the expenditure in nature of capital nature such as expenditure for land development, JCB, and for construction material etc. Therefore, the same cannot be debited from the total amount so credited in the said books. Hence total credit in the said note book is unaccounted and from undisclosed sources. In post-search investigation, all other partners and other related persons were summoned in order to verify the genuineness of the transactions in impounded diary, wherein, all the persons have denied having carried out such transactions as per the noting made in the impounded diary. During the assessment proceeding also, other partners of the



firm by filing an affidavit denied having undertaken any transaction with Expert Particle Board as per the impounded diary & agreement to sale. However, in the post-search investigation, it revealed that assessee has made unaccounted investment in Expert Particle Board in the name of other persons out of his undisclosed business income. Further, it is worthwhile to mention that assessee himself has stated having earned unaccounted income and investment / advances, therefore, considering the facts discussed above and provision of section 292C of the Act, assessee is liable to explain and owned all the liabilities arises against the transactions reflected on the impounded papers which were found from his office premises, however, the transactions were recorded in the name firm, M/s Expert Particle Board and accordingly, the addition on the basis of unaccounted transactions have also been made in the case of M/s Expert Particle board on substantive basis therefore, to protect the interest of revenue an addition of the same issue was made in case of assessee on protective basis as follows:

(i) Addition of Rs.1,48,89,125/-, u/s 69B of the Act, as amount of investment not disclosed in the books of account.

(ii) Addition of Rs. 6,77,34,130/-, on account of unexplained receipt of cash u/s.69A of the Act.

(iii) Addition of Rs. 54,04,130/- on account of bogus purchase u/s 37 of the Act.

35. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Id.CIT(A) who has deleted the addition made by the assessing officer. Therefore, the revenue and assessee both are in appeal before us.



36. About the addition of Rs.1,48,89,125/-, the learned DR for the revenue and learned Counsel for the assessee made the same arguments, as we have noted above. The finding of the AO is contained in para 4 of the assessment order wherein he has held that, on the basis of one agreement to sale (“Satakhat”) found and impounded during the course of survey at the office premises of the assessee, it was noted that the Firm M/s. Expert Particle Board had purchased land at Survey No 111 situated at Village RavaparNadi. The total purchase consideration as per the impugned agreement to sale is at Rs. 1,55,89,125/- out of which Rs. 7,00,000/- is paid by DD dated 21.4.2018; cash of Rs 50,00,000 was paid on 6.4.2018; cash of Rs 67,89,125/- was paid on 6.11.2018 and balance sum of Rs. 31,00,000/- was payable. The AO further relied upon the statement recorded from Shri Bhupendra Patel during the survey who admitted the transaction as per the impounded agreement to sale.

37. Before the learned CIT(A), the assessee submitted that no corroborative evidences were found evidencing actual payment of cash as per the impounded agreement to sale. According to the assessee, the Firm Expert Particle Board wanted to purchase land for the purpose of establishing an industrial unit. However, the land was an agricultural land and hence, the same was purchased after taking pre-approval from the competent authority, that is, Collector for the consideration of Rs. 7,00,000/-, which is more than the Fair Market Value of an agricultural land as per the stamp valuation authority. The assessee was looking after firm’s accounts and he was entrusted to obtain bank finance for the assessee firm as a consultant. His sole purpose was to obtain optimum finance / loan from the bank as their capacity to invest or capital contribution is limited. Therefore, in order to avail higher finance / reimbursement from the bank, he had managed to prepare the impugned agreement to sale showing higher consideration paid for the property. Also, the seller of the impugned land



namely Shri Rasikbhai Panchotiya in his duly sworn affidavit clarified that he has not received any cash against sale of the land. The land in question was purchased on 21.04.2018 and thereafter, an application was made to convert the same to non-agricultural land. The said conversion was made on 19.6.2018. Thereafter on 06.07.2018, the Firm obtained permission to start construction of factory shed, on 27.11.2018, the construction of factory shed was completed. In the meantime, the assessee, on behalf of the firm M/s. Expert Particle Board, pursued the bank loan matter with Syndicate Bank. Since there was need for higher financial assistance, he had no alternative but to show higher valuation for the land. It is for this purpose that the agreement to sale of the land was made with higher valuation. The fact that no cash has been paid on purchase of land can be proved from last para of the agreement, wherein, it is mentioned that the balance sum of Rs. 98,89,125/- is payable on or before 06.11.2018. However, the registered conveyance deed of the land was executed on 26.04.2018. The assessee contended that no prudent person will take risk of transferring title and handing over possession of property without receiving substantial portion of consideration. Therefore, in this case, a small farmer having meagre income is not expected to have transferred the title deeds and possession of property against receipt of only 37% of agreed amount of consideration. Hence, terms & conditions of impugned agreement to sale signed by the assessee is against the normal human probabilities, which raise doubt on the events as mentioned in such document, has really occurred.

38. The Id.CIT(A) also relied on the decision of the Hon. Gujarat High Court in the case of PCIT Surat Vs Nageshwar Enterprise (2020) 122 Taxmann.com 41 Gujarat dated 3.2.2020 having similar fact. In the case so relied, during the course of search at the premises of the assessee- firm by the DRI, the partner of the assessee firm had confessed of under valuation of imported goods from



China and Japan, which was paid in cash. The Id. CIT(A) had deleted the addition on human probability by holding that, it was unbelievable that seller who was sitting in Japan / China had delivered goods to a purchaser in India without receiving full payment. On further appeal, the ITAT had also observed that no evidence or finding in this respect was brought on record either by the DRI or the assessing officer, to suggest that under invoicing was done while importing goods. Similar analogy was cited for assessee's case. According to the assessee, it is unbelievable that a marginal farmer would allow registration of document of his land, when more than sixty percent of the consideration in cash, is pending exchange of hands. It was further contended that, the sanction letter of term loan and OD facility issued by the Syndicate bank clearly shows that the said loan has been sanctioned on 10.09.2018 in which the bank has taken land as collateral security. The loan sanctioned was for a total sum of Rs. 8.80 crore and hence, it was imperative to show higher valuation of both the land and the factory shed. Even this exaggerated valuation was not sufficient to meet the norms of the bank to obtain such loan. Therefore, the assessee gave his own residential building as collateral security along with various other properties, including cash collateral of Rs 50 lacs. Thus, the entire exercise behind making higher agreement to sale was, to obtain higher bank loan. So far as the statement of Shri Bhupendra Patel is concerned, the assessee submits that, Shri Bhupendra Patel in the post-survey proceeding in his reply dated 08.05.2019, in response to summons dated 01.05.2019 had submitted that he is not aware regarding any noting made in the material impounded from the office premises of the assessee. Further, he had in his affidavit dated 17.05.2019 clarified the facts and circumstances in which his statement was recorded. The assessee also contended that agreement impounded is neither signed by all partners of the firm nor it is registered or notarized, which proves that the said



agreement was kept only for reference purpose for showing to the banker or finance consultant only.

39. Based on the above facts and circumstances, the Id.CIT(A) noted that it is a fact that the impugned agreement to sale has been found from the premises of the assessee, who is one of the partners in M/s. Expert Particle Board – registered purchaser of land. Though, the agreement does not contain signature of other partners of the firm and the said agreement have not been endorsed by other partners as also seller of the land, the fact that no on-money had been paid for purchase of land cannot be brushed out as cash payment made of Rs. 50,00,000/-, on 06.04.2018, as per the said agreement is matched with the noting of fund outflow in the diary impounded at Annexure A-1. While deciding the appeal of the firm Expert Particle Board, it has been held that the firm came into existence from 02.04.2018 and the deal for purchase of land as per the impounded agreement is stated to have entered into on 18.03.2018. Further, it is the first year of the incorporation of firm, which has not even started any commercial activities. Therefore, the firm could not have any source of income for purchase of land except the funds contributed by partners and in that case, even if cash has exchanged hands for purchase of land, it is between the partners and the seller. On this ground, the addition made in the case of Expert Particle Board on substantive basis has been deleted.

40. The Id.CIT(A) further notice that the assessee himself in his affidavit admitted that he has earned unaccounted commission income on sales of vitrified tiles of Coral Group, which is supported by the documents seized during the course of search at his residential premises. During the assessment proceeding also, the assessee admitted that the unaccounted commission income earned by him has not been offered to tax. Further, the assessee in his letter filed



before Investigation Wing also confessed that he had made some initial investment in Expert Particle Board out of his unaccounted commission income as well as realization of funds from partnership firm, wherein he is a partner. Not only that, the AO also in the last para of page 8 of the assessment order categorically observed that in the post-search investigation, it revealed that the assessee has earned undisclosed income, out of which some investment is made in the firm Expert Particle Board. Further, it is also seen that the assessee is one of the partners, in M/s. Kishan Minerals, Morbi and during the course of search at the assessee's residential premises digital data containing unaccounted sales of said firm was recovered. In this regard, the assessee in his statement recorded u/s. 132(4) of the Act, admitted that he is maintaining the data of unaccounted activities of M/s. Kishan Minerals and no other partners of said firm are having knowledge about it. Therefore, the assessee is backed with the source of unaccounted funds for investment in the Expert Particle Board and this fact is also strengthened from the diary impounded at Annexure A-1, wherein, name of the assessee is also reflecting as contributor of fund in M/s. Expert Particle Board. Therefore, learned CIT(A) noted that the assessee was in possession of unaccounted cash to make his part of investment in the firm as per the specific noting found in the diary impounded at Annexure A-1. On verification of said diary, it is seen that the assessee's name is reflected on credit side as contributor of fund with corresponding outflow on debit side including for purchase of land. Therefore, to the extent of fund contributed by the assessee as per the impounded diary, required amount of addition in the hands of the assessee has been confirmed as discussed in subsequent ground. Thus, no separate addition on account of utilization of funds that would have been brought by the partners including the assessee required to be made otherwise it would be duplication. Hence, Id.CIT(A) deleted the addition of Rs.1,48,89,125/- from the assessee's



hands subject to the addition of Rs.6,77,34,130/- and disallowance of purchase of Rs.54,04,130/-, which are narrated in the subsequent para of this order.

41. About the addition to the tune of Rs.6,77,34,130/-, the Id.CIT(A) noted that assessee relied upon the statement of Shri Bhupendra Balubhai Patel (partner of the firm M/s. Expert Particle Board) where, during survey it is stated that this diary contains the details of accounted as well as unaccounted transactions related to the firm; in the statement recorded from the assessee u/s. 131(1A), he has stated that wherever, the name of bank is mentioned in the narration of transaction, they are all bank transactions and accounted in the books of accounts of the firm and the remaining transactions are cash transactions; In post-search investigation, Expert Particle Board and other partners of said firm have denied having carried out transactions as per the noting in the impounded diary and the same averments made in the individual assessment proceeding of partners by filing an affidavit. In post-search investigation, it is revealed that the assessee earned unaccounted business income and as per provision of Section 292C, he is liable to explain the noting in the impounded diary.

42. The assessee submitted before the learned CIT(A) that the statement of Shri Bhupendra Balubhai Patel recorded u/s 133A of the Act dated 03.01.2019, was a non-connected party, as he is neither subjected to survey action nor he is owner of the premises surveyed from which the material was found. In fact, survey was conducted at the office premises of the assessee, accountant of the Coral Group for verification of their data / materials if any lying at accountant's office premises. As the said premises was closed therefore, his friend Shri Bhupendra Balubhai Patel who was engaged in the business of videography was called upon to open the said office premises. The Bhupendra Patel was unaware about the data lying at surveyed premises and was not competent to reply



questions or queries raised by the Survey party. Be that as it may be, in the said statement, Shri Bhupendra Patel had stated about the impugned Annexure A-1 that he is not aware about the transactions and that he needs to consult other partners, permission for further information needs to be taken. Thus, according to the assessee, the statement of Shri Bhupendra Patel cannot be said to be corroborative material evidence. The assessee further submitted before the CIT(A) that during the post-search investigation, Shri Bhupendra Patel, vide letter dated 08.05.2019, filed before Investigation Wing, had clarified that the noting in the impounded note-book are not fully correct and not binding to anybody and that the replies given by him during the survey was one sided and without verification. This was further reinforced by similar affidavit filed during assessment proceeding, which was neither verified nor investigated by the assessing officer. It was also contended that when the statement of Shri Bhupendra Patel was confronted to the assessee in the search, the assessee in his statement recorded u/s 132(4) categorically stated that the impounded diary is the rough cash book of Expert Particle Board, meaning thereby the noting in the said diary are not correct. The assessee stated that statement recorded during post-search investigation dated 15.03.2019 was retracted by filing an affidavit dated 16.05.2019 and also by clarifying the fact in the letter filed before investigation wing on 01.05.2019.

43.The assessee also submitted before the learned CIT(A) that the diary reflecting credit and debit transactions was fabricated with arbitrary figures so as to get required bank finance on the basis of projected financials and sound financial capacity of partners. The assessee highlighted certain defects and contradictions in the impounded diary and he also relied upon the decision of Hon. ITAT, Ahmedabad in the case of ACIT vs. Shree Krishna Developers ITA No. 1177 and 1231/Ahd/2011, wherein, the addition made in the similar facts



and circumstances was deleted by CIT(A) and ITAT. The assessee, alternatively argued before the learned CIT(A) that he has earned unaccounted commission income from Coral Group and also had access of unaccounted income / fund of the partnership- firm M/s. Kishan Minerals. This fact was deposed by the assessee in his statement recorded u/s 132(4) of the Act and in the affidavits made in post-search investigation. In this context, the assessee submitted that the noting in the impounded diary containing his name as contributor of fund to the extent of Rs. 97,40,000/-, may be considered as his unaccounted investment and the same may be telescoped against the unaccounted income of M/s Kishan Minerals and the assessee's unaccounted commission income, which is estimated at Rs. 10,00,000/-. The assessee also submitted that peak balance working of the impounded diary as per which peak credit comes to Rs. 64,15,000/-, which is lower than the unaccounted investment in his name of Rs. 97,40,000/-. The assessee further argued that name of other persons and partners in the impounded diary is nothing but rotation of same funds and thus, the same cannot be subject matter of addition in the hands of the assessee. At last, the assessee contended that if the entire receipt in the impounded diary would be treated as unaccounted business receipts, then also considering the estimated profit of 2% in the trading activities, net unaccounted income comes to Rs. 14,62,765/- only.

43. Based on the above facts, the Id.CIT(A) noticed that the credit entries are in the name of various persons including partners of M/s Expert Particle Board who might have contributed funds in the firm for making initial investment in land and other expenditure. Therefore, it is clear that unaccounted fund, if any has been flown from the persons named in the impounded diary and thus, such inflow of funds cannot be treated as an income of the firm viz., Expert Particle Board. Accordingly, substantive addition made by the AO in the hands of



Expert Particle Board has been deleted in the appeal filed in the case of said firm. The Id.CIT(A) also noted that the credit side of the impounded diary reflects name of the assessee, who have contributed funds in the firm M/s. Expert Particle Board and the same were utilized for making payments against various expenditures. The assessee's contention that the noting in the diary is unreal for showing sound financials of partners to banker and that the funds were rotated by way of temporary payment given to suppliers and cash received back from such suppliers upon payment through cheque (loan account) cannot be accepted, as there is no any corroborative evidences to such events. On the contrary, it is a fact on record that the assessee was having unaccounted source of funds, that is the access of unaccounted cash / income of M/s. Kishan Minerals and his own commission income, which is not offered to tax and such funds have admittedly been infused by the assessee in M/s. Expert Particle Board for funding its outflows. Therefore, unaccounted investment made by the assessee and other persons in whose names credits noted in the diary were introduction of their funds in M/s. Expert Particle Board which cannot be denied. On going through the seized diary, it was noted by Id.PCIT that there was total cash introduction/credits were to the tune of Rs.6,77,34,130/- and such cash introduction was from the various person as per the details noted below:

Sr. No.	Name of Person	Amount (Rs.)
1	Bhupatbhai Amrutiya (Appellant)	97,40,000
2	Bhupendrabhai Patel	1,15,14,000
3	Sureshbhai Soriya	73,00,000
4	Jitubhai Jetpariya	1,08,00,000
5	Harshadbhai Gami	59,00,000
6	Jayantibhai Amrutiya	5,00,000
7	Daksh Amrutiya	10,00,000
8	Laljibhai Sherashiya	20,00,000
9	Ranchhodbhai Bela	20,00,000
10	Randeepbhai Ughreja	1,43,00,000
11	Umeshbhai Merja	25,00,000
12	Others (Unreconciled)	1,80,130
Total		6,77,34,130



44. The Id.CIT(A) noted that it is apparent from the above table that the cash introduction has been made on different dates by various persons including the assessee. It has been noticed that the cash deposits in respect of the assessee was at Rs.97,40,000/- on various dates as per the notings in the seized diary. In respect to the source of such cash deposits, it has been submitted by the assessee that he was one of the partners in M/s Kishan Minerals having share of 15% therein. During the course of search at the place of M/s Kishan Minerals, various incriminating documents showing unaccounted sales were found and seized. Such incriminating documents of M/s Kishan Minerals claimed to have been maintained by the assessee. The Id.CIT(A) found merit in the contention of the assessee to allow telescoping of the unaccounted income of M/s Kishan Minerals against unaccounted investment as in the statement recorded during the search, the assessee categorically stated that entire affairs of unaccounted activities of M/s Kishan Minerals was kept by him only. Thus, the claim of the assessee was that the entire unaccounted income of the Kishan Minerals was with the assessee only and the set off of such unaccounted income ought to have been given against the cash introduction made by the assessee as per the seized diary. The contention of the assessee has been examined but the same was found partially acceptable by Id.CIT(A). It is a fact that there was unaccounted turnover in the case of M/s Kishan Minerals but the unaccounted income derived on such unaccounted business would have been shared by each of the partners including the assessee as per their partnership share. As discussed above, the assessee had 15% share in the aforesaid firm, therefore, whatever unaccounted income is determined in the case of M/s Kishan Minerals, could be given set off to the extent of 15% in the hands of the assessee once the matter of Kishan mineral reached to the finality and such source of cash generation could be considered and reduced from the unaccounted cash deposits made by the assessee as per the seized diary at Rs.97,40,000/-. The AO was directed by



ld.CIT(A), to tax the unaccounted cash deposits of Rs.97,40,000/- in the hand of assessee, but grant the set off of the share in unaccounted income of M/s. Kishan Minerals as discussed above. Meaning thereby the balance unaccounted cash deposits is directed to be treated as income of the assessee for which it has been submitted through the affidavit before the AO that he was having the unaccounted commission income from Coral group of cases on the sales affected through the assessee. Thus, the source of the cash deposits as per the seized diary is the unaccounted commission income of the assessee. Considering the totality of facts as above, amount credited in the impounded note-book in the name of the assessee of Rs.97,40,000/- was treated as the assessee's unaccounted investment in M/s. Expert Particle Board and accordingly such unaccounted cash deposits as discussed above is to be treated as the unaccounted fund infused by the assessee in the firm. So far as credits in the impounded diary in the name of other partners and persons as noted above, the same cannot be treated as the assessee's unaccounted investment or income and same may be considered in the respective hands by the AO.

45. As regard the disallowance of Rs. 54,04,130/- made u/s 37 of the Act on the basis of certain entries in the impounded note-book, it was noted that the assessee has not claimed any deduction of alleged figure of purchases in his books of account / ITR and hence, there is no question of disallowance of purchases. Hence, this disallowance was deleted by CIT(A).

46. We have gone through the above findings of the learned CIT (A) and noticed that conclusion reached by the learned CIT(A) is correct. In the wake of above delineation, we see no error in the conclusion drawn by the CIT(A) in this regard. We thus decline to interfere with the conclusion so drawn by the CIT(A)



whose order is under challenge by the revenue. Similarly, the ground No.1 raised by the assessee, in Cross Objection No. 05/RJT/2022, is also dismissed.

47. In the result, appeal filed by the revenue, (in ITA No.142/RJT/2021), is, dismissed and ground No.1 raised by the assessee, in Cross Objection No. 05/RJT/2022, is also dismissed.

48. Now we shall take remaining grounds raised by the assessee in CO No.5/RJT/2022, wherein the remaining grounds of the appeal are as follows:

“2. The Id. CIT(A)erred on facts as also in law in confirming addition of Rs.85,500/- out of total addition of Rs.3,42,000/- made u/s.69A of the Act on the alleged ground of unexplained investment in gold jewelleryes. The addition retained is totally unjustified on facts as also in law and may kindly be deleted.

3.The Id. CIT(A)erred on facts as also in law in confirming addition of Rs.85,000/- made u/s.69A of the Act on the alleged ground of unexplained receipt in cash. The addition retained is totally unjustified on facts as also in law and may kindly be deleted.

Your Honour's assessee craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.

49. The above cross objection filed by the assessee, for Assessment Year 2019-20, is barred by limitation by 18 days. The assessee has moved a petition requesting the Bench to condone the delay. We have heard both the parties on this minor delay. Having regard to the reasons given in the petition, we condone the delay and admit the cross objection for hearing.

50. About the grounds raised by the assessee in respect of CO, the Id.Counsel for the assessee submitted the addition sustained by the Id.CIT(A) to the tune of Rs.85,500/-, on account of unexplained investment in gold, jewellery should also be deleted as weight of this gold and jewellery is in accordance with CBDT Circular. On the other hand, learned DR for the revenue submitted that required



benefit was given to the assessee, and this gold is over and above the CBDT circular. We find merit in the submissions of learned DR for the revenue and therefore, dismissed the ground raised by the assessee.

51.The Id. Counsel for the assessee submitted about ground No.3 that addition made and sustained by the Id.CIT(A) to the tune of Rs.85,500/-, on account of unexplained receipt in cash should also be deleted, as it is a small amount and the assessee has explained the same during the course of assessment proceedings. On the other hand, learned DR for the revenue submitted that there is no concept in the Income tax act to delete the amount based on the concept of smallness of the amount. We find merit in the submissions of learned DR for the revenue and therefore, dismissed the ground raised by the assessee.

52. In the result, cross objection filed by the assessee, (in CO No. 05/RJT/2022), is dismissed.

53. In the combined result, both appeals of the Revenue are dismissed and cross objection filed by the assessee are also dismissed.

Order is pronounced in the open court on 29/08/2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(DR.ARJUNLAL SAINI)
ACCOUNTANT MEMBER

राजकोट /Rajkot

(True Copy)

दिनांक/ Date: 29/08/2025

*vk

आदेश की प्रतिलिपि अत्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Assessee
- प्रत्यर्थी/ The Respondent



- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेशसे,

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot