

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**  
**BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &**  
**SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**  
**आयकर अपील सं./ITA No.No.136 and 163/SRT/2023**

**Assessment Year: 2013-14**  
**(Physical court hearing)**

Nareshkumar Bisweshwarlal Agarwal 701, Shree Shuyam Awas Bhatar Road, Surat-395 007	<b>बनाम/ Vs.</b>	Assistant Commissioner of Income-tax, Central Circle-4, Surat, Aaykar Bhawan, Majura Gate, Surat-395 001
Deputy Commissioner of Income-tax, Central Circle-4, Surat Room No.508, 5 <sup>th</sup> Floor, Aayakar Bhawan, Majura Gate, Surat-395 001		Shri Nareshkumar Bisweshwarlal Agarwal 201-202, Savera Complex, Opp. Krishna Petrol Pump, Khatodra, Surat-394 210
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ABKPA 5538 N</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>

**आ.(खो और ज).सं/IT(SS)A No.25 & 41/SRT/2023**

**Assessment Year:2017-18**

Nareshkumar Bisweshwarlal Agarwal 701, Shree Shuyam Awas Bhatar Road, Surat-395 007	<b>बनाम/ Vs.</b>	Assistant Commissioner of Income-tax, Central Circle-4, Surat, Aaykar Bhawan, Majura Gate, Surat-395 001
Deputy Commissioner of Income-tax, Central Circle-4, Surat Room No.508, 5 <sup>th</sup> Floor, Aayakar Bhawan, Majura Gate, Surat-395 001		Shri Nareshkuamr Bisweshwarlal Agarwal 201-202, Savera Complex, Opp. Krishna Petrol Pump, Khatodra, Surat-394 210
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ABKPA 5538 N</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>

**आ.(खो और ज).सं/IT(SS)A No.42/SRT/2023**

**Assessment Year:2018-19**

Deputy Commissioner of Income-tax, Central Circle-4, Surat Room No.508, 5 <sup>th</sup> Floor, Aayakar Bhawan, Majura Gate, Surat-395 001	<b>बनाम/ Vs.</b>	Shri Nareshkumar Bisweshwarlal Agarwal 201-202, Savera Complex, Opp. Krishna Petrol Pump, Khatodra, Surat-394 210
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ABKPA 5538 N</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>

**प्रत्याक्षेप सं /CO No.4/SRT/2025**

**(A/o IT(SS)A No.42/SRT/2023**

**(AY 2018-19)**

Nareshkumar Bisweshwarlal Agarwal 701, Shree Shuyam Awas Bhatar Road, Surat-395 007	<b>बनाम/ Vs.</b>	Deputy Commissioner of Income-tax, Central Circle-4, Surat Room No.508, 5 <sup>th</sup> Floor, Aayakar Bhawan, Majura Gate, Surat-395 001
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ABKPA 5538 N</b>		
<b>(co-objector)</b>		<b>(प्रत्यर्थी/Respondent)</b>

**आ.(खो और ज).सं/IT(SS)A No.26 & 43/SRT/2023**

**Assessment Year:2019-20**

Nareshkumar Bisweshwarlal Agarwal 701, Shree Shuyam Awas Bhatar Road, Surat-395 007	<b>बनाम/ Vs.</b>	Assistant Commissioner of Income-tax, Central Circle-4, Surat, Aaykar Bhawan, Majura Gate, Surat-395 001
Deputy Commissioner of Income-tax, Central Circle-4, Surat Room No.508, 5 <sup>th</sup> Floor, Aayakar Bhawan, Majura Gate, Surat-395 001		Shri Nareshkumar Bisweshwarlal Agarwal 201-202, Savera Complex, Opp. Krishna Petrol Pump, Khatodra, Surat-394 210
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ABKPA 5538 N</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>

**आ.(खो और ज).सं/IT(SS)A No.27/SRT/2023**

**Assessment Year:2020-21**

Nareshkumar Bisweshwarlal Agarwal	<b>बनाम/ Vs.</b>	Assistant Commissioner of Income-tax, Central Circle-4,
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701, Shree Shyam Awas, Bhatar Road, Surat-395 010	<b>Vs.</b>	Surat, Aaykar Bhawan, Majura Gate, Surat-395 001
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ABKPA 5538 N</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>

**आयकर अपील सं./ITA.No.164/SRT/2023**

**Assessment Year: 2020-21**

Deputy Commissioner of Income-tax, Central Circle-4, Surat Room No.508, 5 <sup>th</sup> Floor, Aayakar Bhawan, Majura Gate, Surat-395 001	<b>बनाम/ Vs.</b>	Shri Nareshkumar Bisweshwarlal Agarwal 201-202, Savera Complex, Opp. Krishna Petrol Pump, Khatodra, Surat-394 210
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ABKPA 5538 N</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>

निर्धारिती की ओर से /Assessee by	Shri Kiran K. Shah, CA
राजस्व की ओर से /Revenue by	Shri Mukesh Jain CIT-DR & Shri Kevin Langaliya, CA
सुनवाई की तारीख/Date of Hearing	15/09/2025
उद्घोषणा की तारीख/Date of Pronouncement	31/10/2025

**आदेश / ORDER**

**PER BIJAYANANDA PRUSETH, AM:**

These are eight cross-appeals by the assessee and revenue. There is another appeal by revenue in IT(SS)A No.42/SRT/2023 and Cross Objection (CO) thereto by the assessee. These cross-appeals and CO emanate from the separate orders passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') by the Commissioner of Income-tax (Appeals)-4, Surat [in short, 'CIT(A)'] for the Assessment Years (AY) 2013-14, 2017-18, 2018-19, 2019-20 and 2020-21, which in turn arose out of separate assessment orders passed by Assessing Officer (in short, 'AO') u/s 147 r.w.s. 153A r.w.s 143(3) of the Act on

26.03.2022 and 30.03.2022. With the consent of both parties, all the appeals and CO of assessee were clubbed, heard together and a common order is passed for the sake of convenience and brevity.

2. Grounds of appeal raised by the assessee in ITA No.136/Srt/2023 for AY 2013-14 are as under:

*"1. The learned CIT(A) grossly erred in confirming undisclosed payment of interest of Rs.5,17,000/- as discussed in para 6.2 & 6.3 of the CIT(A) order.*

*2, The appellant reserve right to add, alter and withdraw any grounds of appeal."*

2.1 Vide application dated 10.06.2025 the assessee raised the additional ground, which are as follows:

*1) The block assessment orders passed u/s 153A of the Act on 30.03.2022 are time barred as per the provisions of Section 153B of the Act.*

*2) The appellant reserves to right add, alter and delete any grounds of appeal."*

3. Grounds of appeal raised by the revenue in ITA No.163/Srt/2023 for AY 2013-14 are as under:

*"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.50,00,000/- made u/s 69A of the I.T Act despite the facts that addition has been made on the basis of incriminating details/document recovered during the search proceedings.*

*2. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the protective addition of Rs.4,87,56,700/- made u/s 69B of the I.T. Act without deciding the case where in substantive addition has been made and despite the facts that addition is based on incriminating details/document recovered during the search proceedings.*

*3. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.3,37,75,000/- made u/s 69B of the I.T. Act despite the facts that addition has been made on the basis of incriminating details/document recovered during the search proceedings.*

4. In addition to ground no. 3 on the facts and in the circumstances of the case and in law, the CIT(A) has erred in observing that the list of assets with estimated values for bank loan purposes cannot be conclusive proof of money transaction of the assessee despite the facts that valuation of the properties cannot be so significantly different as to defy market rate and it could only be at market rates that the assessee would have purchased the land in question.

5. In addition to ground No.4 & 5, on the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.3,37,75,000/- i.e. 25% of unexplained investment of Rs.13.511 Cr. Without appreciating the facts that the assessee has failed to prove that the valuation was made for loan purpose and the assessee has valued the land to Rs.15,12,00,00/- as against Rs.1,61,00,00/- as registered value.

6. Without prejudice to and in addition to the grounds No. 1 to 5 on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by the Assessing Officer ignoring the principles of "**Human Probability Test**" i.e., preponderance of probabilities which is applicable for Income Tax proceedings.

7. On the facts and in the circumstances of the case and in law the Ld. CIT(A)-4 ought to have upheld the order of the Assessing Officer.

8. It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that the AO may be restored to the above extent."

4. Grounds of appeal raised by the assessee in IT(SS)A No.25/Srt/2023 for AY 2017-18 are as under:

"1) The learned CIT(A) grossly erred in confirming addition of Rs.4,26,19,740/- being profits on "on-money" at 13% thereof on Gopnath/Capital Palace project u/s 69A of the Act as discussed in para 6.13 of the appellate order.

2) The learned CIT(A) grossly erred in confirming the addition u/s 69B of the Act though such income needs to be taxed as undisclosed profit i.e., business income and consequently the provisions of 115BBE ought not to have applied.

3) The appellant reserves right to ad, alter and withdraw any grounds of appeal."

4.1 Vide application dated 13.01.2025 the assessee raised the additional ground, which are as follows:

1) The learned CIT(A) grossly erred in not giving set off (**telescopic effect**) of undisclosed income of the earlier year or of the current year against undisclosed income/investment and, therefore, the same amounts of double taxation.

2) The learned CIT(A) grossly erred in not giving set off/telescopic effect of undisclosed income of the earlier year or of the current year in the case of firm wherein he is one of the partner, to the extent of his share of profit, against undisclosed income/investment in his case and, therefore, to that extent, the same amounts of double taxation.

3) The appellant reserves to right add, alter and delete any grounds of appeal.”

5. Grounds of appeal raised by the revenue in IT(SS)A No.41/Srt/2023 for AY 2017-18 are as under:

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.28,80,49,899/- made u/s 69B of the I.T Act despite the facts that addition has been made on the basis of incriminating details/document recovered during the search proceedings.

2. Without prejudice and in addition to ground No.1 on the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.28,80,49,899/- made u/s 69B of the I.T. Act on account of unexplained investment in purchase of the land, despite the fact that the valuation of the property and price of land including payment of ‘On-Money’ was never disputed and ignoring the fact that the land in question was purchased by the assessee in his individual capacity and only thereafter such land was brought under the project “Capital Palace” in lieu of 45% share of profit in the project.

3. Without prejudice and in addition to ground No.1 & 2, on the facts and in the circumstances of the case and in law, the CIT(A) has erred in estimating the profit of the project on the land in question as against addition of Rs.28,80,49,899/- made u/s 69B of the I.T. Act.

4. Without prejudice to ground No.1 to 3 on the facts and in the circumstances of the case and in law, the CIT(A) has erred in estimating the profit of the entire project in the AY 2017-18 despite the facts that the income, in the form of ‘On-Money’ was received in various years i.e. from 2016 to 31.07.2019 and hence consequent income would taxable in the years 2016-17 to AY 2020-21. Therefore entire exercise of Ld. CIT(A) to compute of the profit of project spanning into various years, in one year is de horse the concept and provisions of I. T. Act.

5. Without prejudice to and in addition to the grounds No. 1,2, 3 & 4 on the facts and in the circumstances of the case and in law, the CIT(A) has erred in adopting net profit at the rate of 13% of self-computed. Receipts of 'On-Money' Rs.1,36,49,00,000/- despite there being no facts emerging in relation to any expenses et., incurred for earning such On-Money and when major part of expenses have already been debited in P & L account for the year.

6. Without prejudice to and in addition to the grounds No. 1 to 5 on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in giving set off of Rs.8,27,26,466/- on account of disclosure in IDS for A.Y 2016-17 while calculation of the profit on the project, despite of the facts that no factual details were ever submitted as to how the amount of Rs.8,27,26,466/- disclosed for Ay 2016-17 could cover unaccounted profit earned in future assessment years.

7. On the facts and in the circumstances of the case and in law the Ld. CIT(A)-4 ought to have upheld the order of the Assessing Officer.

8. It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that the AO may be restored to the above extent.”

6. Grounds of appeal raised by the revenue in IT(SS)A No.42/Srt/2023 for AY 2018-19 are as under:

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition to Rs.14,40,75,244/- made u/s 69B of the I.T Act despite the facts that addition has been made on the basis of incriminating details/document recovered during the search proceedings.

2. In addition to ground No1., on the facts and in the circumstances of the case and in law, the CIT(A) has erred in observing that the list of assets with estimated values for bank loan purposes cannot be conclusive proof of money transaction of the assessee despite the facts that valuation of the properties cannot be so significantly different as to defy market rate and it could only be at market rates that the assessee would have purchased the land in question.

3. Without prejudice to ground No.1 & 2, on the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.14,40,75,244/- without appreciating the facts that the assessee has failed to prove that the valuation was made for loan purpose and the assessee has value the land to Rs.16,03,75,244/- as against Rs.1,63,00,000/- as registered value.

4. Without prejudice to and in addition to the grounds No.1 2 & 3 on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the

addition made by the Assessing Office ignoring the principles of “**Human Probability Test**” i.e., preponderance of probabilities which is applicable for Income Tax proceedings.

5. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition to Rs.23,38,04,101/- made u/s 69B of the I.T. Act despite the facts that addition has been made on the basis of incriminating details/documents recovered during.

6. In addition to ground No.5 on the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.23,38,04,101/- made by the AO u/s 69B of the I.T. Act observing that the income from the project on block No.224 and 288, Kumbharia has already been taxed in the AY 2017-18 despite the fact that the assessee has not submitted date-wise cash flow statement to justify the cash payment of Rs.23,38,04,101/- made outside books of accounts during the year.

7. In addition to and without prejudice to ground No.6, on the facts and in the circumstances of the case and in law, the CIT(A) has erred in estimating the profit of the entire project in the AY 2017-18 and granting relief of addition of Rs.23,38,04,101/- made u/s 69B of the Act despite the facts that the income in the form of ‘On-Money’ was received in various years i.e., from 2016 to 31.07.2019 and consequent income would taxable in the years 2016-17 to AY 2020-21 leading to the conclusion that the entire exercise of Ld. CIT(A) to compute of the profit of project spanning into various years, in one year and granting relief against the unexplained investments is de horse the concept and provisions of I. T Act.

8. In addition and without prejudice to the groundNo.1 to 7, on the facts and n the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.14,40,75,244/- and Rs.23,88,04,101/- without appreciating the facts that in real estate market like in Surat, to evade the taxation, the transactions are made on Plain papers/satakhat without registration of sale deed.

It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that the AO may be restored to the above extent.”

7. On service of notice of revenue’s appeal, the assessee filed CO raising following grounds:

“1) The block assessment orders passed u/s 153A of the Act on 30.03.2022 are time barred as per the provisions of section 153B of the Act.

2) *The appellant reserves to right add, alter and withdraw any cross objection.”*

8. Grounds of appeal raised by the assessee in IT(SS)A No.26/Srt/2023 for AY 2019-20 are as under:

*“1) The learned CIT(A) grossly erred in confirming addition of Rs.77,23,950/- being profits on “on-money” at 13% thereof u/s 69A of the Act as discussed in para 7.5 of the appellate order.*

*2) The learned CIT(A) grossly erred in confirming the addition u/s 69B of the Act though such income needs to be taxed as undisclosed profit i.e., business income and consequently the provisions of 115BBE ought not to have applied.*

*3) The appellant reserves right to add, alter and withdraw any grounds of appeal.”*

8.1 Vide application dated 30.05.2025 the assessee raised the additional ground, which are as follows:

*1) The block assessment orders passed u/s 153A of the Act on 30.03.2022 are time barred as per the provisions of section 153B of the Act.*

*2) The appellant reserves to right add, alter and delete any grounds of appeal.”*

9. Grounds of appeal raised by the revenue in IT(SS)A No.43/Srt/2023 for AY 2019-20 are as under:

*“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition to Rs.13,30,12,996/- made u/s 69B of the I.T Act despite the facts that addition has been made on the basis of incriminating details/document recovered during the search proceedings.*

*2. In addition to ground No1., on the facts and in the circumstances of the case and in law, the CIT(A) has erred in observing that the list of assets with estimated values for bank loan purposes cannot be conclusive proof of money transaction of the assessee despite the facts that valuation of the properties cannot be so significantly different as to defy market rate and it could only be at market rates that the assessee would have purchased the land in question.*

3. In addition to round No.1 & 2, on the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.13,30,12,996/- without appreciating the fact that the assessee has failed to prove that the valuation was made for loan purpose and the assessee has valued the land to Rs.14,85,12,996/- as against Rs.1,55,00,000/- a registered value.

4. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in restricting the addition to Rs.77,23,950/- made u/s 69A of the I.T. Act and granting relief of Rs.5,16,91,050/- to the assessee despite the facts that addition has been made on the basis of incriminating details/document recovered during the search proceedings.

5. In addition and without prejudice to ground No.4 the facts and in the circumstances of the case and in law, the CIT(A) has erred in adopting net profit at the rate of 13% of On-Money receipts despite there being no facts emerging in relation to any expenses etc., incurred for earning such On-Money and when major the expenses relating to the project have already been debited in P&L account for the year.

6. On the facts and in the circumstances of the case and in law, the IT(A) has erred in deleting the addition of Rs.55,00,000/- made by the AO u/s 69B of the I.T. Act observing that the income from the project on block No.224 and 288, Kumbharia has already been taxed in the AY 2017-18 despite the fact that payment for investment has been made during the year under consideration and that the assessee has not submitted date-wise cash flow statement to justify the cash payment of Rs.55,00,000/- made outside books of account during the year.

7. Without prejudice to ground No.6, on the facts and in the circumstances of the case and in law, the CIT(A) has erred in estimating the profit of the entire project in the AY 2017-18 and granting relief of addition of Rs.55,00,000/- made u/s 69B of the Ct despite the facts that the income in the form of 'On-Money' was received in various years i.e., from 2016 to 31.07.2019 and consequent income would taxable in the years 2016-17 to AY 2020-21 leading to the conclusion that the entire exercise of Ld. CIT(A) to compute of the profit of project spanning into various years, in one year and granting relief against the unexplained investments is de horse the concept and provisions of the I.T Act.

8. Without prejudice to and in addition to the grounds No.1 to 7 on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by the Assessing Officer ignoring the principles of '**Human Probability test**' i.e., preponderance of probabilities which is applicable for Income tax proceedings.

9. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-4 ought to have upheld the order of the Assessing Officer.

10. It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that the AO may be restored to the above extent.”

10. Grounds of appeal raised by the assessee in IT(SS)A No.27/Srt/2023 for AY 2020-21 are as under:

*“1. The learned CIT(A) grossly erred in confirming and enhancing addition of Rs.45/- lacs on account of alleged unexplained cash credit on dumb papers and interest thereon for Rs.6,16,250/- invoking section 69A & 69C of the Act as discussed in para 6.3 of the appellate order.*

*2. The learned CIT(A) grossly erred in confirming addition of Rs.14,05,430/- being profits on “on-money” at 13% thereof u/s 69A of the Act as discussed in para 7.5 of the appellate order.*

*3. The learned CIT(A) grossly erred in confirming the addition u/s 69B of the Act though such income needs to be taxed as undisclosed profit i.e., business income and consequently the provisions of 115BBE ought not to have applied.*

*4. The learned CIT(A) grossly erred in confirming addition of Rs.4,61,07,560/- on account of alleged unaccounted loans invoking section 69A of the Act on the base of dumb papers and in by decoding the amount without any reference as discussed in para 11.2 to 11.05 of the appellate order.*

*5. The appellant reserves right to add, alter and withdraw any grounds of appeal.”*

10.1 Vide application dated 13.01.2025 the assessee raised the additional ground, which are as follows:

*1) The learned CIT(A) grossly erred in not giving set off (telescopic effect) of undisclosed income of the earlier year or of the current year against at undisclosed income/investment and, therefore, the same amounts of double taxation.*

*2) The learned CIT(A) grossly erred in not giving set off/telescopic effect of undisclosed income of the earlier year or of the current year in the case of firm wherein he is one of the partner, to the extent of his share of profit, against undisclosed income/investment in his case and, therefore, to that extent the same amounts of double taxation.*

*3) The appellant reserves to right add, alter and delete any grounds of appeal.”*

11. Grounds of appeal raised by the revenue in ITA No.164/Srt/2023 for AY 2020-21 are as under:

*“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition to Rs.14,05,430/- made u/s 69A of the I.T Act and granting relief of Rs.94,05,570/- to the assessee despite the facts that addition has been made on the basis of incriminating details/document recovered during the search proceedings.*

*2. In addition and without prejudice to ground No.1. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in adopting net profit at the rate of 13% of On-Money receipts despite there being no facts emerging in relation to any expenses etc., incurred for earning such On-Money and when major the expenses relating to the project have already been debited in P&L account for the year.*

*3. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.7,00,000/- made by the AO u/s 69B of the I.T. Act observing that the income from the project on block NO.224 and 288, Kumbharia has already been taxed in the AY 2017-18 despite the fact that payment for investment has been made during the year under consideration and that the assessee has not submitted date-wise cash flow statement to justify the cash payment of Rs.7,00,000/-made outside books of account during the year.*

*4. In addition and without prejudice to ground No.3, on the facts and in the circumstances of the case and in law, the CIT(A) has erred in estimating the profit of the entire project in the AY 2017-18 and granting relief of addition of Rs.7,00,000/- made u/s 69B of the Act despite the facts that the income in the form of 'On-money' was received in various years i.e., from 2016 to 31.07.2019 and consequent income would taxable in the years 2016-17 to AY 2020-21 leading to the conclusion that the entire exercise of Ld. CIT(A) to compute of the profit of project spanning into various years, in one year and granting relief against the unexplained investments is de horse the concept and provisions of I.T Act.*

*5. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition to Rs.5,20,00,000/-made u/s 69A of the I.T. Act de horse provisions of Section 292C of the Act and by observing that the paper was not in the handwriting of assessee and not signed by the assessee and despite the facts that addition has been made on the basis of incriminating details/document recovered during the search proceedings as a whatsapp images found from the mobile of the assessee and the assessee has failed to explain the contents.*

6. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition to Rs.1,30,00,000/- made u/s 69C of the I.T. Act de hors provisions of section 292C of the Act and by observing that the paper was not in the handwriting of assessee and not signed by the assessee and despite the fact that addition has been made on the basis of incriminating details/document recovered during the search proceedings as a whatsapp imaged found from the mobile of the assessee and the assessee has failed to explain the contents.

7. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition to Rs.1,39,400/-made u/s 69C of the I.T Act despite the facts that addition has been made on the basis of incriminating details/documents recovered during the search proceedings.

8. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in restricting the addition to Rs.4,61,07,560/- made u/s 69A of the I.T. Act and granting relief of Rs.1,73,37,203/- to the assessee despite the fact that addition has been made on the basis of incriminating details/documents recovered during the search proceedings.

9. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition to Rs.4,70,808/- made u/s 69C of the I.T. Act despite the facts that addition has been made on the basis of incriminating details/documents recovered during the search proceedings.

10. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in directing to give telescopic benefit in respect of the unexplained expenditure of Rs.15,73,1810/- against the net profit of Rs.7,23,950/- of AY 2019-20 without there being any underlying reasons or fact emerging from any material recovered during search or any fact that has been discovered by the Ld. CIT(A) and without appreciating the facts that the assessee has not submitted date-wise cash flow/fund flow statements.

11. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-4 ought to have upheld the order of the Assessing Officer.

12. It is, therefore, prayed that the order of the Ld. CIT(A) maybe set aside and that the AO maybe restored to the above extent.”

12. Now, we take up revenue's appeal in **IT(SS)A No.41/SRT/2023** (AY 2017-18) as the “*lead*” case.

13. The facts of the case in brief are that assessee filed his return of income u/s 139(1) of the Act on 15.11.2017 declaring total income of Rs. 12,76,290/-. Subsequently, a search action was conducted u/s 132 of the Act in case of Kuberji Group on 06.02.2020. The residential premises of Shri Naresh Bisheshwarlal Agrawal (assessee herein) was also covered during the search and seizure operation. Various incriminating documents were found and seized which indicated that the assessee had not disclosed his true and correct income in the return of income. After completion of the search proceedings, notice u/s 153A of the Act dated 17.03.2021 was issued to assessee. The assessee filed his return of income declaring the total income of Rs. 15,47,852/- in response to notice u/s 153A of the Act. The assessee derives income from share of profit and business income in the name of Kuberji Builders as a proprietary concern.

14. During the block assessment proceedings, the AO had relied on pages 73 and 75 of A-23 seized in the case of Sunny Jayantibhai Patel and assumed that these pages are related to purchase of plot No. 224 Kumbharia only. The AO observed that page 73 of A-23, on top of which 'BK' is written, has details of some transactions in full figure and with narration indicating total payment of Rs.66,52,25,000/-. The page 75 of A-23, on top of which 'B.K. Hisab' is written, has coded figures which requires to be decoded by adding "000". Since two/three transactions match with cheque payment of plot No. 224, the entire amount was assumed as undisclosed investment u/s 69B of the Act. The English

translation of both pages are pasted in para 6 of the assessment order. The AO observed that the aggregate amount of page 75 of A-23, decoded at Rs.66,52,25,000/-, pertains to purchase of plot No. 224 Kumbharia by the assessee. The assessee submitted before the AO that he had purchased plot No. 224 at Kumbharia for Rs. 7.51 Cr. in the name of his proprietary concern, M/s Shri Kuberji Builders. He submitted that, on page 73 of A-23, there are various transactions with narration, from which it is abundantly clear that they are not pertaining to plot No. 224. He also submitted that plot No. 224 was purchased by him and plot No. 288 was purchased by Shri Sunny J. Patel. He further submitted that the booking for the project called “Gopnath Palace” (renamed ‘Capital Palace’) on plot No. 224 & 288 was accepted by them before the search operation. He also submitted that, during the stringent action of search and seizure proceedings u/s 132 of the Act, no evidence was found from his residential or business premises, regarding payment in cash against purchase of plot No. 224. He also submitted that some of the transactions are with narration Bharatbhai, JB (Jayantibhai), Sunny, Sunny Chitthi, which apparently do not pertain to plot No. 224. The assessee further submitted that on page 73 of A-23, there are narrations of two big amounts, stated as under:

14.04.2017	4,94,47,000	Capital 224 + 288
05.12.2018	6,65,61,601	Capital Bharatbhai 224 + 288

14.1 Similarly, on page 73 of A-23, there are other transactions having different narrations which apparently prove that these transactions are not

pertaining to plot No. 224, Kumbharia, because there was no reference of plot No. 224 at all. The assessee also submitted that on page 75 of A-23, there is reference of IT Rs. 50/- (50,000) and Rs. 70/- (70,000) and on 17.12.2016, Rs. 1,600 (16,00,000) for shop. There is no narration for rest of entries on page 75 of A-23. He also submitted that during search proceedings at his residence and business premises, no evidence was found that he made any payment in cash for purchase of plot No. 224 at Kumbharia.

14.2 Alternatively, he submitted that he had done booking of project called Gopnath Palace (Capital Palace) and had disclosed income of Rs. 8.27 Cr. against the said project under IDS-2016 and hence, no separate addition is required for the alleged “on-money” payment for purchase of plot No. 224.

15. The AO was not satisfied with the submission and held the entire transactions of Rs. 66,52,25,000/- was unaccounted payment against purchase of plot No. 224 at Kumbharia. The year-wise bifurcation in respect of on money payments are as under.

Sr. No.	AY	Amount involved in respective AY (in Rs.)
01.	2016-17	6,20,71,000/-
02.	2017-18	28,80,49,899/-
03.	2018-19	23,38,04,101/-
04.	2019-20	8,06,00,000/-
05.	2020-21	7,00,000/-
	TOTAL	66,52,25,000/-

16. Aggrieved by the assessment order, the assessee filed an appeal before the CIT(A). The Ld. AR of the assessee had filed his written submission which is

at para 6.4 (page 8 to 11) of the appellate order. He submitted that no presumption could be raised u/s 132 (4A) / 292B of the Act against assessee in respect of pages 73 and 75 of A-23 as they were not seized from his premises during the search proceedings. No paper was found or seized from his premises with regard to unaccounted payment for plot No. 224. Further, he contended that the document relied on by AO is a dumb document as there are no details like name of the buyer, area of the land and rate per sq. yard. The two major entries have narration "Capital-224 + 288", but there are many entries which could not be assumed to be pertaining to plot No. 224, Kumbharia. The Ld. AR also submitted that no statement of Shri Jayantibhai Patel or Shri Sunny Patel was confronted to the assessee and no opportunity of cross-examination was given to him. He also submitted that there is no reference of TDS for Rs. 7.51 lacs in page 75 of A-23. The Ld. AR, in the alternative, submitted that the assessee had taken booking for project called Gopnath (renamed as Capital Palace) on plot No. 224 and 288 of Kumbharia and he had disclosed Rs. 8.27 Cr. under IDS-2016 and hence, no separate addition is justified towards the purchase of plot No. 224, Kumbharia.

17. The CIT(A), after considering various others loose papers found and seized in the case of Sunny J. Patel / Jayantibhai Patel, held that the on-money received for the booking of project 'Capital Palace' was Rs. 136.49 Cr., on which he applied net profit at the rate of 13%. Thus, the CIT(A) determined profit of

Rs.17,47,37,000/- and after giving credit of income disclosed under IDS- 2016 for Rs.8,27,26,466/-, the balance amount of Rs.9,47,10,534/- was bifurcated as undisclosed profit in the ratio of 45:45:10 amongst the assessee, Shri Sunny J. Patel and Shri Bharat Kalidas Patel. Accordingly, Rs.4,26,19,740/- (45 % of Rs.9,47,10,534/-) was confirmed as undisclosed profit of the appellant for AY 2017-18.

18. Being aggrieved by the order of CIT(A), the Revenue has filed an appeal before this Tribunal. Though the revenue has raised multiple grounds, they are inter-connected and pertain to single addition made by the AO towards unexplained investment in land, being plot No. 224 Kumbharia, u/s 69B of the Act. The Ld. CIT-DR has strongly relied on the order of AO. He submitted that page No. 73 and 75 are same and decoded amount of page 73 lie on page 75 also and hence, all transactions of page 75 should be read by adding '000'. On page 73, in the bottom, the aggregate amount is of Rs.66,52,25,000/-. Since there is reference of "B.K. Hisab" and since plot No. 224 was purchased by the assessee from Bharat Kalidas Patel, the entire amount should be considered as payment towards plot No.224 Kumbharia. He finally submitted that the amount of Rs.66,52,25,000/- must be considered as undisclosed investment towards purchase of plot No.224 Kumbharia out of which Rs.28,80,49,899/- pertains to AY 2017-18 and the remaining amount pertains to AYs 2016-17, 2018-19, 2019-

20 and 2020-21. He submitted that the CIT(A) was not correct in restricting the addition to Rs.4,26,19,740/-.

19. On the other hand, Ld. AR of the assessee has supported the order of the CIT(A) and has filed two written submissions. He submitted that the addition made by the AO is based on assumption and presumption and is totally untenable as per the facts on record and the decisions of various Tribunals and Hon'ble Courts. This is a recurring issue in AYs 2017-18 to 2020-21. Hence, the submission regarding the issue of undisclosed investment in Plot No.224, Kumbharia, though lengthy and repetitive, may be reproduced below for ready reference and clarity:

*"1.1 The learned AO assumed undisclosed investment of Rs. 66,52,25,000/- on account of purchase of plot No 224 at Kumbharia and **part of the amount** being Rs. 28,80,49,199/- had been taxed in the year under consideration invoking section 69B of the Act. The learned AO relied upon **page 73 of A-23**, as seized in the case of third party i.e. Jayantibhai Patel and the same is referred in **para 6 of the order** wherein the total amount is assumed Rs. 66,52,25,000/-. The learned AO further relied upon **page 75 of A-23**, as seized in the case of third party i.e. Jayantibhai Dhulabhai Patel and top of the loose paper, there is reference of B. K. Hisab. The learned AO further relied upon the revenue records wherein the property No. 224 at Kubharia was registered in the name of the assessee and the seller was Bharat Kalidas Patel. The learned AO bifurcated the payment in the following assessment year on the base of date-wise amount (coded figure) lying in page 75 of A-23.*

A. Y. 2016-17	6,20,71,000
A. Y. 2017-18	28,80,49,899
A. Y. 2018-19	23,38,04,101
A. Y. 2019-20	8,06,00,000
A. Y. 2020-21	7,00,000
	<u>66,52,25,000</u>

*1.2 The Respondent urges that the said Jayantibhai Patel is **involved in various land transactions**. The Respondent also urges that **no statement of Jayantibhai was recorded on the said seized records**. The Respondent urges that no statement was confronted in the assessment proceedings. The Respondent therefore, urges that, **in***

**absence of corroborative evidence**, it should not be assumed that the amounts written in both the pages pertain to plot No. 224 & 288 as purchased by Naresh Agrawal.

1.3 The Respondent urges that the said papers were seized in the case of Jayantibhai Patel and, therefore, no presumption ought to be made invoking section 132 (4A) / 292C of the Act.

1.4 **Dumb papers** – The Respondent strongly urges that, the said paper is a dumb paper on following issues.

- a) The paper is not in the handwriting of Respondent.
- b) It is not signed by any person.
- c) On top of paper, there is reference of B. K. No clarification was sought during the search proceedings about the B. K. at the time when paper was seized.
- d) B. K. could be Bhikhabhai Kanjibhai Patel or Bhadresh Kasturchand Patel or so on and so forth.
- e) In two entries, there is reference of 224 and 288. It may be noted that plot No. 288 was purchased by Sunny Jayantilal Patel. The rest of the entries has no reference of plot No. 224 or the Respondent.

The Respondent therefore, urges that it is apparently a dumb paper and no addition is justified on the base of such dumb paper.

1.5 The Respondent urges that **page no 73 of A-23** and **page No. 75 of A-23** were seized on the premises of Jayantibhai Patel **who is involved in various land transactions**. The Respondent strongly urges that, on page No. 73 of A-23, there is reference of **plot No. 224 and 288** against **two entries** as under.

<b>Date</b>	<b>Amount</b>
14-04-2017	4,94,47,000/-
05-12-2018	6,65,61,601/-
	-----
	11,60,08,601/-
	=====

The Respondent strongly urges that **there is no reference of plot No. 224 against various other transactions**. The Respondent therefore urges that, so far as plot no 224 and 288 are concerned, there is total amount of 11,60,08,601/- only. **The appellant urges that, even if it is assumed as payment for plot No. 224 & 288, the same gets set off against “on money” of the project called Gopnath / Capital Palace for which booking amount was received and profit was estimated.**

1.6 The Respondent further urges that there is some reference against certain entries lying on **page 73 of A-23** (which are again mentioned in coded amount on **page 75 of A-23**) and the reference apparently shows that the amount is **not related** to plot No. 224 at Kumbharia. The details of such entries are as under.

<b>Date</b>	<b>Amount as per seized records</b>	<b>Particulars</b>
29.12.2016	71,000	Document
16.08.2016	9,00,000	Advocate some land matter
18.02.2017	5,00,000	Cash Bharatbhai
05.10.2017	50,00,000	Cash bharatbhai

14.04.2017	20,00,000	Cash JB (Jayantibhai)
16.04.2017	4,94,47,000	<b>Capital 224 + 288</b>
14.04.2017	6,30,06,899	Havalo Sunny
26.09.2017	1,00,00,000	Sunny
05.10.2017	50,00,000	Cash bharatbhai
12.02.2017	50,00,000	Cash
17.10.2017	1,00,00,000	Cash Sunny chitthi
05.12.2018	6,56,61,601	<b>Capital Bharatbhai 224 + 288</b>
20.04.2018	6,36,000	TDS
<b>Total</b>	<b>21,22,22,500</b>	

The Respondent urges that there is reference of capital 224 & 288 against **two entries** and rest of the entries are not related plot No. 224 at Kumbharia. The Respondent urges that on page No. 73 of A-23, there is reference of Rs. 66,52,25,000/- as total payment, however, the aggregate amount of **page 73 of A-23** is for **Rs.21,22,22,500/-**.

1.7 **Regarding page 75 of A-23** – The learned AO has given copy of page 75 of A-23 on page 4 of the notice u/s. 142 (1) of the Act. The learned AO has further given table of the said page, both in coded as well as decoded figures in para 6 of the assessment order. The learned AO has linked both the pages merely because, a few entries tallies.

The Respondent strongly urges that page 75 of A-23 may be considered as dumb paper and not fully related to plot No. 224 purchased by him for following reasons.

- a) The page is not in the handwriting of Respondent. It is not signed by any person.
- b) There is no reference of plot No. 224 on top of the page.
- c) There is reference of B. K. Hisab and no statement was recorded on this page. Rather no clarification was sought on this page.
- d) As said earlier, B. K. means Bhikhabhai Kanjibhai Patel or Bhadresh Kasturchand Patel or so on and so forth.
- e) In most of the entries, there is no reference of plot No. 224.
- f) There is reference of certain amount which is not related to plot No. 224 which are as under.
 

17.02.2018	1,600/-	against shop (decoded amount 16,00,000)
20.04.2018	636/-	TDS (decoded amount 6,36,000)
28.03.2019	5,000/-	IT (decoded amount 50,00,000)
21.12.2019	700/-	IT (decoded amount 7,00,000)
- g) In the assessment order, the last entry is inserted as TDS Rs. 1,15,000/- just to match the TDS of plot No. 224 purchased by the Respondent. It is strongly submitted that there is absolutely no such entry like TDS Rs. 1,15,000/- in both the pages i.e. page No. 73 of A-23 & page No. 75 of A-23.

The Respondent therefore urges that page 75 of A-23 ought to be assumed a dumb paper and it should not be assumed as fully related to plot No. 224.

1.8 **The Respondent further urges that, on page 75, there is reference of IT on 28.03.2019 & 21.12.2019 for Rs. 5,000/- (50,00,000/-) and Rs. 700/- (7,00,000), how these amounts would be assumed as payment towards plot No. 224.**

1.9 The Respondent further urges that there is reference of shop which is 1600/- (decoded amount of Rs.16,00,000/-) and it proves that this payment is for purchase of shops whereas no shops was purchased by Bharat Kalidas Patel from the assessee.

1.10 The Respondent strongly urges that, **neither statement of Jayantibhai Patel nor Sunny Patel were confronted**, and therefore, **no cross examination was allowed**. The Respondent strongly urges that, except two entries, there is no reference of plot No. 224. The Respondent was also urges that, again in both the entries, it was in the words as Capital 224 + 288, rather, it was not fully plot No. 224.

1.11 The Respondent further urges that on page 75 of A-23, there is **no reference of TDS for Rs.7,51,000/-** as mentioned in the show cause notice. The learned AO had put his own amount on the base of value as per document for plot No. 224 at Kumbharia at Rs.7.51/- crores. The Respondent therefore, urges that the entire details lying in page 75 of A-23, which also contains details of page 73 of A-23 ought not to be assumed as pertaining to plot No. 224 at Kumbharia.

1.12 The Respondent finally submits that, in absence of corroborative evidence, the **entire details** should not be assumed as payment towards plot No. 224 at Kumbharia.

1.13 The Respondent strongly urges that there could be some other transactions between B. K. (assumed as Bharat Kalidas) and Sunny J. Patel or his father Jayantibhai Patel. The Respondent urges that, wherever there is reference of plot No. 224 & 288, only those amounts may be considered as related to the said two plots.

1.14 The Respondent urges that the print out of the digital data did not bear the signature of the party and there was no signature of either Revenue Officer or witness in order to prove the integrity of the data retrieved. The Respondent therefore, urges that no certificate was obtained u/s. 65B (4) of the Evidence Act for retrieving data from a digital device. The appellant therefore, urges that such digital data ought not to be considered as evidence. The Respondent relies on the judicial decision in the case of **M/s. Aasma Estate & Investment (P) Ltd V. DCIT**.

1.15 **Regarding project of Gopnath / Capital Palace** - The Respondent strongly urges that he had carried out project called Gopnath / Capital Palace **alongwith Sunny J. Patel and Bharat Kalidas Patel** on plot of lands purchased by the Respondent as well as Sunny J. Patel. In the said project, Shri Bharat Kalidas Patel was also partner with 10% of share. The Respondent urges that the ratio of profit was decided 45%, 45% and 10% amongst Naresh Agrawal, Sunny J. Patel and Bharat Kalidas Patel. The Respondent also urges that the details of booking amount of the said project as well as the expenditure of the project etc. were also found and seized in the case of Jayantibhai Patel father of Sunny Patel. The Respondent therefore, urges that all the details in the seized records pertain to booking amount and expenditure of project called Gopnath / Capital Palace.

1.16 **Without prejudice to the above and in alternative**

**Income disclosed under IDS, 2016 for Rs. 8.27 crores on account of project called Gopnath / Capital Palace** - The Respondent strongly urges that, the **project called Capital Palace renamed as Gopnath Textile Market** was to be developed on plot No. 224 and 288 at Kumbharia and accordingly, booking amounts were also received. The Respondent further urges that there is also details of expenditure on account of Gopnath / Capital Palace on page No. 69 of A-23 for Rs. 12.61/- crores seized in the case of Sunny Patel / Jayantibhai Patel.

The Respondent urges that the Capital / Gopnath project was booked on plot No. 224 & 288 of the Kumbharia and accordingly, the booking amounts were also collected. The Respondent urges that, even if any "on money" is paid either plot for 224 or 288 of

Kumbharia, the same gets set off as the **profit on such booking amount was already offered for taxation by declaring income of Rs. 8.27/- crores under IDS, 2016** and, therefore, no separate addition is called for.

**1.17 Without prejudice to the above and in alternative**

The Respondent, alongwith Sunny Patel and Bharat Kalidas Patel had decided to develop project called **Capital Palace** on land at **S. No. 224 & 288 of Kumbharia** in the profit sharing ratio of 45%, 45% and 10% respectively. The Respondent further urges that, several other papers relating to the said project were seized in the case of Sunny Patel which show the booking receipts as well as expenses of the project. The page 70 of A-23 had booking amount were collected as under.

Sunny J. Patel	63.24 crores
Naresh B. Agrawal	63.30 crores
Bharat K. Patel	<u>16.55 crores</u>
	<u>143.09 crores</u>

The Respondent further urges that on page 68 of A-23, expenses relating to Capital Palace project were also found.

**The learned AO had assumed the word “Capital” as contribution of capital instead of booking of Capital Palace.**

1.18 The Respondent urges that the project called Capital Palace / Gopnath is also situated far away from the city area and, therefore, booking amount as well as margin of profit on “on money” is too low.

1.19 Considering the entire facts and circumstances of the case, the learned CIT(A) had assumed total booking receipt of Rs.136.49 crores and had estimated 13% profit on such booking amount of Gopnath/Capital Palace which amounted to Rs.17,74,37,000/- and after giving credit of income disclosed under IDS, 2016 for Rs.8,27,26,466/-, the balance amount of Rs. 9,47,10,534/- was taxed in the ratio 45%, 45% and 10% in the case of Naresh Agrawal, Sunny Patel and Bharat K. Patel respectively. The working of the same in tabular form is as under.

Total Booking amount as per para 6.13 of the CIT(A) order	136,49,00,000
13 % profit	17,74,37,000
Less : Income disclosed under IDS, 2016	8,27,26,466
Net Profit	9,47,10,534
45 % of the Respondent	4,26,19,740

Thus, the learned CIT (A) gave relief of Rs. 24,54,30,159/- (28,80,49,899 – 4,26,19,740). Rather, the addition was restricted to Rs. 4,26,19,740/-.

**1.20 The appellant relies on the decision of Hon’ble Surat Tribunal in the case of Shree Kuberji Associates / Shree Kuberji Leisure & Infraspace LLP wherein in this particular group, margin of 13 % profit was upheld vide IT (SS) A No. 28/29/30/31/34/35 / SRT / 2023 dated 22.12.2023.**

19.1 Subsequently, the Ld. AR made another submission containing summary of argument and case laws which is as under:

“1) **On issue of ground No. 1 to 6**

- i) *The Respondent strongly urges that addition on account of alleged investment in purchase of plot No. 224, Kumbharia was made relying on page 73 & 75 of A-23. The Respondent strongly urges that the said papers were found and seized in the case of Jayantibhai Patel and, therefore, no presumption ought to be raised as per provisions of section 132 (4A) / 292C of the Act.*
- ii) **Dumb papers** – *The Respondent strongly urges that, in both the pages there is no name or signature of buyer or seller.*
- iii) *The Respondent strongly urges that the said loose paper is not in his handwriting.*
- iv) *The Respondent strongly urges that the plot No. 224, Kumbharia was registered by document in April, 2014 whereas in page 75 of A-23, there are huge payments even after the date of registration. This apparently proves that the entire transactions are not related to plot No. 224, Kumbharia.*
- v) *The Respondent strongly urges that, if the value of plot No. 224, Kumbharia is assumed at Rs. 66,52,25,000/-, then the average value per sq. meter would be Rs.1,38,704/- (66,52,25,000 / 7496 Sq. mt.) which is impossible. The Respondent further urges that Revenue had seized some unsigned agreement for plot in Kumbharia showing value of Rs. 50,000/- per sq. yard in the case of associate concern viz. Shri Kuberji Developers.*
- vi) *The Respondent strongly urges that, it is the observation of the learned AO, that page 73 & 75 of A-23 are in respect of plot No. 224, Kumbharia only. The Respondent strongly urges that page 73 of A-23 contains narration against the amount. The Respondent strongly urges that if one looks into the narration, only two entries has reference of plot No. 224 alongwith plot No. 288.*

14.04.2017	4,94,47,000 Capital 224 + 288
05.12.2018	6,65,61,601 Capital 224 + 288

*The Respondent therefore, urges that, by no stretch of imagination, it would be page for 224, Kumbharia only.*

*The Respondent further urges that the rest of entries, there is no reference of plot No. 224, Kumbharia and also no reference of Naresh Agrawal.*

*The Respondent strongly urges that, the parties Bharatbhai, Jayantibhai and Sunny are involved in purchase and sale of several lands and there could be transactions pertaining to various other land.*

- vii) *The Respondent strongly urges that, even on page 75 of A-23, there is reference of certain entries with narration as under.*

17.02.2018	1,600	against shop (decoded amount Rs. 16,00,000)
28.03.2019	5,000	IT (decoded amount Rs. 50,00,000)
21.12.2019	700	IT (decoded amount Rs. 7,00,000)

*The Respondent strongly urges that the narration apparently shown that it is not related to plot No. 224, Kumbharia.*

- viii) The Respondent urges that there is no details like rate per sq. yard / meters or area of plot.*
- ix) The Respondent also urges that, there is no reference of any seized records except page 73 & 75 of A-23, found in the case of Jayantibhai Patel or Sunny Patel or Bharatbhai. The Respondent urges that no statement was recorded on page 73 & 75 of A-23, rather no statement was confronted in the assessment proceedings and no cross examination was allowed.*
- x) The Respondent urges that he had disclosed Rs. 8,27,26,466/- as profit earned on booking of project called Gopnath / Capital Palace prior to search in IDS, 2016 and, therefore, the theory of profit on project is not an after thought.*
- xi) The Respondent urges that, neither Naresh Agrawal nor Jayantibhai Patel anything stated about the purchase of plot at particular rate, rather, they simply stated that Capital Palace project was carried out jointly in the profit sharing ratio of 45 : 45 : 10.*
- xii) The Respondent strongly urges that there is no amount like TDS for Rs. 1,15,000/- in page 73 of A-23.*
- xiii) The Respondent strongly relies on decision of PCIT V. Shri Kuberji Developers (IT (SS) A. No. 7 / SRT / 2024) (Paper book page No. 41 to 50) and DCIT V. Hiteshkumar Laljibhai Patel (IT (SS) A. No. 114 / SRT / 2023) wherein addition was made on the base of dumb paper in respect of plot No. 218, Kumbhariya adopting the rate of Rs. 69,000/- per sq. yard. The Respondent urges that, when rate of Rs. 69,000/- per sq. yard was not justified then there is no question of assuming investment in plot No. 224, Kumbhariya at average rate of Rs.1,38,704/-."*

20. It is clear from the submission reproduced above that the Ld. AR also objected to the addition on various grounds. Firstly, he submitted that the page Nos. 73 and 75 were found from premises of Jayantibhai Patel and hence, presumption u/s 132(4A) of the Act should not be raised in case of the appellant. He submitted that against 224 and 288, there is word "Capital", which is name of the project and there is no word like "plot". He also submitted that wherever there is narration against the amount, there is no reference of payment for plot No. 224 Kumbharia. Rather, there is reference like Havala Sunny, Jayantibhai, Shop, IT etc. He submitted that when there is reference of "Capital 224 + 288", it is regarding project named "Capital Palace" and when there is a reference of

224+288, the entire amount should not be assumed as pertaining to plot No. 224.

20.1 The Ld. AR of the assessee also submitted that there is neither name of buyer nor there are details of any rate or sq. yard of plot No. 224, Kumbharia and they are also not in the handwriting of the assessee; hence, they are dumb documents. He also submitted that document of purchase deed was registered on 20.04.2018 whereas page 73 and 75 of A-23 show several transactions even after that date. He further stated that, if this value is adopted, the rate of plot No. 224 Kumbharia per sq. yard would be of Rs.1,38,704/- (Rs.66,52,25,000/7496 sq. yard) which is almost impossible. Further, no statement of Jayantibhai Patel was recorded regarding pages 73 and 75 of A-23 and no statement, if ever recorded, was confronted to the appellant. There is no reference of any inquiry either in the search or post search proceedings. He also stated that Jayantibhai Patel, Sunny Patel and Bharat Patel, whose names find place in the narration, are involved in several land transactions and it is possible that these transactions in the seized paper could be related to their other land transactions. The Ld. AR finally relied upon two decisions of this Tribunal in the group cases, namely, DCIT v. Shri Kuberji Developers (IT(SS)A. No.7/SRT/2024) and DCIT v. Hitesh Laljibhai Patel (IT (SS) A. No. 114/SRT/2023), wherein the issue of unaccounted investment in some plots at Kumbharia was decided in favour of the assessees concerned.

20.2 The Ld. AR also relied upon various decisions of Hon'ble Gujarat High Court and this Tribunal in support of the claim of the appellant that the impugned addition is not warranted. They are as follows: (i) CIT vs. Maulikkumar K. Shah (2008) 307 ITR 137 (Guj.); (ii) ACIT v. Jaiprakash D. Agrawal (IT (SS) A. No. 78, 60 & 57/SRT/2022); (iii) DCIT vs. Rameshbhai Raghavbhai Bhadani (IT (SS) A. No. 25 & 31/SRT/2021); (iv) PCIT vs. Ajay Surendra Patel (Tax Appeal No. 523 to 525 of 2015) (Guj.); (v) Shri Kuberji Associates vs. ACIT (IT(SS)A.No.28/SRT/2023); (vi) PCIT vs. Aliasgar Anvarali Varteji (2018) 96 taxmann.com 231 (Guj.); (vii) CIT vs. Jagatkumar Satish Patel (Tax Appeal No. 324 of 2012) (Guj.); (viii) DCIT vs. Shree Kuberji Developers (IT(SS)A.No.7/SRT/2024) and (ix) DCIT vs. Hiteshkumar Laljibhai Patel (IT(SS)A.No.114/SRT/2023).

20.3 The Ld. AR also relied on a number of decisions pertaining to the various issues argued by him. On issue of dumb papers/loose papers/loose sheets, the Ld. AR relied on the cases of Common Cause vs. UOI (77 taxmann.com 245) (SC) and CIT vs. Maulikkumar K. Shah (307 ITR 137) (Guj.). He submitted that the Hon'ble Courts have held that mere entries in the seized materials are not sufficient to prove that assessee has indulged in such a transaction and received on money. The AO has to bring corroborative material on record to prove that such sales were made and on money had been received by assessee outside the books of account. The AO had not examined any purchaser to whom sale of

shops were affected. Thus, mere entries in seized materials are not sufficient to prove that assessee has indulged in such a transaction. The Ld. AR further submitted that the Revenue would not be justified in resting its case on loose papers found from the residence of third party even if such documents contain narration of transactions with the assessee company. He further submitted that no addition is justified merely on the basis of statement of third parties. For these propositions, he relied on the following decisions: (i) DCIT vs. Hiteshkumar Laljibhai Patel (IT(SS)A. No.114/SRT/2023); (ii) ACIT vs. Jaiprakash D. Agrawal (IT(SS)A. No.78, 60 & 57/SRT/2022); (iii) DCIT vs. Shri Kuberji Developers (IT(SS)A.No.7/SRT/2024); (iv) CBI vs. V.C. Shukla & Others (1998) 3 SCC 410; (v) DCIT V. Rameshbhai Raghavbhai Bhadani (IT(SS)A. No. 25 to 31/SRT/202; (vi) Nishant Construction (P) Ltd vs. ACIT (ITA No.502/Ahd./2015); (vii) Rajesh Babubhai Damania vs. ITO (2022) 122 Taxman 614 (Guj.); (viii) PCIT vs. Sunrise Finlease (P) Ltd (2018) 89 taxmann.com; (ix) PCIT vs. Saumaya Construction (P) Ltd (2016) 387 ITR (Guj.) and (x) PCIT vs. Jay Ace Technologies Ltd (SLP) (Civil DIARY No. (S) 22653 of 2023 (08.07.2023).

21. We have heard rival submission of both the parties and pursued the materials available on record. We have also deliberated on the decisions relied upon by the Ld. AR. The AO has made the impugned addition on the basis of page 73 and 75 of A-23 found during the search proceedings of Shri Jayantibhai Patel. There are narrations in some of the transactions which apparently show that these transactions were not related to unaccounted investment in plot No.

224 at Kumbharia. We find that, on pages 73 and 75 of A-23, there is narration like 'B.K.' or "B.K. Hisab" and nowhere there was any reference of the buyer ie, Shri Naresh Agrawal. It is further noticed that Shri Jayantibhai Patel, Shri Sunny Patel and Shri Bharat Kalidas Patel were involved in various land transactions and therefore, the impugned seized document from the premises of Shri Sunny J. Patel cannot be presumed to be pertaining to plot No. 224, Kumbharia only. It is also a fact that during the course of search proceedings, in case of the appellant, at his residential and business premises, no evidence was found regarding payment of unaccounted money for purchase of plot No.224, Kumbharia. It is also found that the seized paper do not bear any signature of buyer nor contain any other details like area of the plot or rate per sq. yard. Hence, it is not in the nature of any authentic document. Further, the document for purchase of plot was executed in April, 2018 *whereas* there are several transactions after the execution of sale deed. There are also two entries on 14.04.2017 and 05.12.2018 for Rs.4,94,47,000/- and Rs.6,65,61,601/- respectively with narration "Capital 224 + 288". When there is reference of 288, the entire transactions cannot be assumed for plot No. 224, Kumbharia. The AO has not brought on record any statement of Shri Jayantibhai Patel on these pages. Even if any statement was recorded, the same was not confronted to the appellant. It is also found that at the time of search proceedings as well as in the assessment proceedings, no further verification was made nor any evidence was

brought on record regarding exact nature of transactions of page 73 and 75 of A-23, except cheque entries on page 75 of A-23.

21.1 The appellant had stated that booking of project called “Gopnath Palace” (renamed Capital Palace) was carried out jointly with Sunny J. Patel and Bharat Kalidas Patel in the ratio of 45: 45 : 10. The abovesaid two entries with narration “Capital 224 and 288” was stated to be for the said booking amount of the project. The AO has not been able to controvert the above claim of the appellant which has also been upheld by the CIT(A). The CIT(A) also found certain others seized papers in the case of Sunny J. Patel pertaining to booking of Capital Palace project and expenditure thereon. The appellant had also disclosed Rs.8,27,26,466/- profit on the “on money” from booking amounts of project called Gopnath Palace / Capital Palace carried out on plot No. 224 & 288 in IDS, 2016 even prior to search. The CIT(A), after considering all details of the case and various other seized records in the case of Sunny J. Patel, estimated 13% net profit on the “on-money” booking amount in the A. Y. 2017-18. He has added to the total on-money booking receipts of page 70 of A-23, the booking of shop No.1 and 2 of Rs.22,00,000/- and the bookings after October, 2018 of Rs.5,92,00,000/-. From the above total, he has reduced the refund of booking advance of Rs.6,09,00,000/- and amount paid to Shri Bharatbhai Patel of Rs.6,65,00,000/-. All these additions and deletions are based on the seized papers found during the search. On the net amount of Rs.1,36,49,00,000/-, the CIT(A) has applied net profit @ 13%. We find that the co-ordinate Bench of this

Tribunal has also dealt with the value of some other plots in Kumbharia in the cases of Shri Kuberji Developers (supra) and Hiteshkumar Laljibhai Patel (supra) and did not find the rate of plot per sq. yard in Kumbharia at around Rs.1,38,704/-. The co-ordinate Bench dismissed appeals of revenue in both the cases. Considering all the abovesaid factors, we hold that the transactions on page 73 and 75 of A-23 cannot be said as payment of unaccounted money for plot No. 224, Kumbharia. We do not find any infirmity in the order of CIT(A) in restricting the addition to Rs.4,26,19,740/-.

21.2 In addition to the decisions of this co-ordinate Bench in cases of the other group concerns of the Kuberji Group, we also find that the ratio of the decisions of Hon'ble Supreme Court in case of Common Cause (supra) and Hon'ble jurisdictional High Court in case of Maulikkumar K Shah (supra) are also applicable to the facts of the present case. The Hon'ble courts have held that mere entries in seized materials are not sufficient to prove that the assessee received unaccounted money without bringing on record further supporting evidences. The revenue is not justified in making the addition based only on loose papers found from the premises of third party without correlating the said transactions with further corroborative evidence. The other decisions relied upon by Ld. AR also support the case of the appellant.

21.3 In view of the above factual and legal positions, we do not find any reason to interfere with the finding of the CIT(A). Accordingly, the grounds raised by revenue are dismissed.

22. In the result, appeal of revenue in IT(SS)A No.41/SRT/2023 is dismissed.

**IT(SS)A. No. 25/SRT/2023 (AY: 2017-18)**

23. The appellant has raised grounds contesting confirmation of addition by the CIT(A) of Rs.4,26,19,740/-, being net profit on the “on-money” receipt @ 13% on “Gopnath /Capital Palace” project u/s. 69A of the Act as discussed in para 6.13 of the appellate order.

23.1 The Ld. AR relied upon the submissions made in the proceedings before the Tribunal in IT(SS)A No.41/SRT/2023 decided above. He submitted that if the seized papers are considered as on-money booking and expenses of Capital Palace project, then this ground of appeal is not relevant. In other words, the Ld. AR accepted net profit @ 13% in respect of the “on-money” booking amounts of the Capital Palace project.

24. On the other hand, Ld. CIT-DR supported the assessment order.

25. We have heard rival submission of both the parties and pursued the material available on records. Since the decision of CIT(A), on issue of unaccounted payment of plot no. 224, has been upheld by us in IT(SS)A No.41/SRT/2023 for the same AY, this ground of appeal by the appellant is dismissed.

26. Next ground raised by the appellant is taxing the undisclosed business profit u/s 115BBE of the Act.

27. The Ld.AR has filed written submission on issue of application of 115BBE and submitted that the AO has not invoked provisions of section 115BBE of the Act in respect of profit on unaccounted sales (on money) in the assessment order. He submitted that such amount is business income and hence, is required to be taxed at normal rate applicable to business profit. He relied on following decisions wherein profit on undisclosed sales was taxed as business income at normal rate of tax: (i) DCIT vs. Ramnarayn Birla (ITA No. 482/JP/2015); (ii) ACIT vs. Sanjay Bairathi Gems Ltd (ITA No.157/JP/2017); (iii) Fashion World vs. ACIT (ITA No.1634/Ahd./2006) and (iv) Dagina Jewellers (ITA No.30/SRT/2022). The Ld. AR further relied on the decision in case of a group concern, namely, Shri Kuberji Associates in IT(SS)A No.28/SRT/2023 (supra) wherein the co-ordinate Bench of this Tribunal has held that provisions of Section 115BBE are not applicable for such business income.

28. We have heard both the parties and perused the materials available on record. We have also deliberated on the decisions relied upon by the Ld. AR. We find that similar issue had come up for consideration in case of Shree Kuberji Associates (supra) wherein the co-ordinate Bench, at para-14 of its order, held that once the source of income is explained and is apparently established, Section 115BBE is not applicable for such business receipts. It has relied on the decisions in case of Dagina Jewellers (supra) and decision of Hon'ble

jurisdictional High Court in case of Shilpa Dyeing and Printing Mills Ltd. (Tax Appeal No.290/2013 dated 04.04.2013) while deciding in favour of the assessee. Following the above decisions, the AO is directed to tax the addition sustained in this appeal at the normal rate in accordance with law. The ground is, accordingly, allowed.

29. The appellant has raised the following additional grounds:

*i) The learned CIT(A) grossly erred in not giving set off (telescopic effect) of undisclosed income of the earlier years or of the current year against undisclosed income / investments and, therefore, the same amounts of double taxation.*

*ii) The learned CIT(A) grossly erred in not giving set off / telescopic effect of undisclosed income of the earlier year or of the current year in the case of firm wherein he is one of the partner, to the extent of his share of profit, against undisclosed income / investment in his case and, therefore, to that extent, the same amounts of double taxation.*

29.1 The Ld. CIT-DR for the revenue has not raised any objection to admission of the additional ground raised by the assessee.

29.2 It is seen that no additional facts are necessary to adjudicate this additional ground of appeal. The facts are available on record. The Hon'ble Supreme Court in case of 'National Thermal Power Co. Ltd. vs. CIT', 229 ITR 283 (SC) held that the power of the Tribunal in dealing with appeals is expressed in the widest possible terms. The Hon'ble Court did not find any reason as to why the assessee should be prevented from raising a question before the Tribunal for the first time so long as the relevant facts are on record in respect of that item. It further observed that the power of the Appellate Assistant Commissioner in permitting assessee to raise an additional ground in

accordance with law, as held in case of 'Jute Corporation of India Ltd. vs. CIT', 187 ITR 688 (SC), is also available to ITAT in respect of appeals pending before it. In light of the above facts and settled legal position, the additional ground raised by the assessee is admitted for adjudication.

30. The Ld. AR submitted that undisclosed income estimated till this year ought to be set off against undisclosed investment which may be finally determined in this case. He submitted that the appellant had earned undisclosed income by way of profit from project in the firms as well as in the individual capacity, which adds upto Rs.5,51,38,566/- upto AY 2017-18. The Ld. AR relied on following decisions: (i) Anantharam Veerasinghaiah & Co. V/s. CIT (1980) 123 ITR 457 (SC); (ii) PCIT V/s. Aliasgar Anwarali Varteji (2018) 96 taxmann.com 231 (Guj.); (iii) CIT V/s. Jagatkumar Satish Patel (2014) 45 taxmann.com 441 (Guj.) and (iv) Dagina Jewellers India (P) Ltd (ITA No. 30 / SRT / 2022).

31. On the other hand, Ld. CIT-DR supported the order of the AO and submitted that the Bench may decide as it thinks fit.

32. We have heard rival submission of both the parties and pursued the material available on records. We have also deliberated on the decisions relied upon by Ld. AR. In principle, the contention of Ld. AR is acceptable and the appellant is eligible for set off of undisclosed income of the year against the undisclosed income of earlier years and current year. However, we find that there is no addition on account of unaccounted investment or expenditure,

which could be set off against the undisclosed income. On the other hand, undisclosed income has been determined which in no way can be set off against undisclosed income of earlier AYs. Hence, no adjudication is required on this issue. Therefore, the ground is dismissed for statistical purposes.

33. In the result, assessee's appeal is partly allowed.

**IT(SS)A No.42/SRT/2023 and CO No.4/SRT/2025 (A.Y 2018-19)**

34. The grounds of appeal for the impugned appeal are already stated at para-6. The facts of the case in brief are that assessee had filed his return of income on 06.07.2018 declaring total income of Rs. 24,04,350/-. Subsequently, a search and seizure action was conducted u/s. 132 of the Act in case of Kuberji Group on 06-02-2020. The residential premises of the appellant was also covered during the search and seizure operation. Various incriminating documents were found and seized which indicated that the assessee had not disclosed his true and correct income in the return of income. The assessee was issued notice u/s. 153A of the Act. In response thereto, the assessee filed his return of income declaring the same total income of Rs.24,04,350/-. In course of the block assessment proceedings, the AO confronted digital image found from the premises of the assessee wherein he estimated value of TP. 35B No. 287, 182, 4 & 7 at Kumbhariya (4 plots) at Rs.35 Cr. and proposed to make proportionate addition in respect of plot no. 182 in this year. The AO had worked out total area of four plots for 58724 squared yard and accordingly the value of plot no. 182 was estimated at Rs.16,03,75,244/- (Rs.58724 \* 2731). Since the

documents value was for Rs.1,63,00,000/-, the difference of Rs.14,40,75,244/- (16,03,75,244 – 1,63,00,000) was proposed for addition u/s 69B of the Act.

35. The assessee submitted before the AO that estimated value was prepared for various properties of Kuberji Group and properties belonging to family members of the assessee for bank loan purpose. He also submitted that the assessee was highly indebted and hence the list was prepared to show the lenders for loan purposes. He also submitted that no evidence was found for actual unaccounted payment in the search proceedings for the said plot. However, the AO was not satisfied with the explanation and made addition of Rs.14,40,75,244/- in respect of plot No. 182 Kumbhariya. The AO did not accept the request of assessee to refer the property for valuation to the DVO to determine fair market value.

36. Aggrieved by the order of AO, assessee preferred appeal before CIT(A). Before the CIT(A), the assessee repeated the same submission which was filed in the case of the group concern, namely, Shree Kuberji Associates for AY 2018-19. The CIT(A) followed the decision in case of Shree Kuberji Associates(supra) wherein addition made in respect of another plot No. 4B, Kumbhariya based on the same image was deleted. Accordingly, the CIT(A) also deleted the addition relying on his own order in the case of Shree Kuberji Associates (supra). The relevant part of the appellate order is at para-6.1 of his order.

37. Aggrieved by the order of CIT(A), the Revenue has filed an appeal before this Tribunal. Ground No. 1 to 4 are relating to addition made by the AO of Rs. 14,40,75,244 on account investment in purchase plot no. 182 Kumbhariya u/s 69B of the Act. The Ld. CIT-DR has relied on the order of AO. He argued that the addition was made on the basis of seized records showing list of properties of Kuberji Group and family members of Naresh Agrawal. As per the seized records, the value of the impugned four plots was Rs.35 Cr. and the proportionate unaccounted value of plot No. 182 Kumbharia was Rs.14,40,75,244/-.

38. On other hand, Ld.AR of the assessee argued that Naresh Agrawal had estimated value of several properties belonging to the partnership firm, other associate concerns and family members. The value was estimated for bank loan purpose. He also submitted that some of the properties were also tendered as security to the bankers. He argued that neither in his case nor in the case of firm, any evidence was found for actual unaccounted money payment for the said property. He finally submitted that addition of similar nature was made in the case of Shree Kuberji Associates (supra), but this Bench had deleted the addition on some other property at Kumbharia vide its appeal no. IT(SS)A. No.33/SRT/2023 dated 14.02.2024. The Ld. AR has filed copy of the order at page 29 of the paper book.

39. We have heard rival submission of both the parties and pursued the materials available on record. We have also deliberated on the decisions relied

upon by the Ld. AR. We find that similar addition was made in case of Shree Kuberji Associates (supra) on the basis of the same seized documents where the estimates of property was made for bank loan purpose. Thus, the issue is covered by the decision of this Bench in the case of Shree Kuberji Associates (supra). The relevant part of the order is reproduced below for ready reference:

*“7. We have considered the submissions of both the parties and perused the orders of lower authorities carefully. We have also deliberated on various case laws relied by the Ld.AR of the assessee. The Assessing Officer made addition of unaccounted investment of Rs. 3.41 Crores by taking a view that in the search action at the premises of Shri Naresh B. Agarwal (Key person of assessee), various incriminating evidence was found and seized. The search team also found certain digital data in the mobile phone of Naresh B. Agrawal. On the basis of various details, mentioned on such digital images, the Assessing Officer held that the assessee has made total investment of Rs. 35.00 Crores on purchased of four properties at village Kumbhariya out of block No. 287, 182, 4 and 7. The Assessing Officer also made enquiry on the State Government Website Any ROR and found that Naresh B. Agrawal, proprietor of Kuberji Builder has purchased land in Block No. 4B admeasuring 700 square meter on 05/07/2017 at a consideration of Rs. 70.00 lacs. The Assessing Officer on the basis of area of all four properties of 5960 square meter shown in the seized material and the value at Rs. 35 crore, worked out the average price of land at Rs. 58,724/- per square yard. The assessee has purchased 700 square meter of land, thus on the basis of average rate estimated by Assessing Officer at the rate of 58,724/-, the Assessing Officer worked out the estimated value of land at Rs. 4,11,06,800/-. The assessee has shown consideration of Rs. 70.00 lacs thereby the Assessing Officer worked out a figure of Rs. 3,41,06,800/-. (Rs. 4,11,06,800-70,00,000/-). The Assessing Officer thereby made addition of Rs. 3.41 crores on account of unaccounted investment and made addition under section 68B of the Act. The Ld. CIT (A) deleted the addition by holding that the assessee in its submission submitted that there is no incriminating material relating to payment of on-money was found in the search action. No addition can be made unless there is specific incriminating material of actual transaction relating to unexplained income or unexplained investment. In case of assessee, the land in question referred by Assessing Officer including the area are reflected in the books of assessee and other group concerned. The value shown in the digital images for obtaining bank loan cannot be basis for making addition of unexplained investment under section 69B of the Act. The Ld. CIT (A) on the basis of such observation, held that the circumstances of the assessee’s case relating to the digital images found during the course of search, it is clear that list of asset shown estimated value of bank loan purpose, cannot be conclusive proof of money transaction of the assessee. None of the value of those assets found in the digital image had been corroborated by Assessing Officer with any other finding relating to payment of on-money on purchase of Block No. 4B, Kumbhariya during the assessment proceedings. No supporting evidence regarding transactions of on-money paid relating to the property were found in the search action. The value found in the digital image with respect to assets had not been conclusively proved that the assessee had paid any on-money amount on transaction of purchase of land in Block No. 4B, Kumbhariya. On the basis of such finding, the Ld. CIT (A) deleted the entire addition.*

*8. Being a search case, we have independently examined the facts of the present case. We find that the Assessing Officer in entire assessment order has nowhere mentioned that there was any incriminating material found during the course of search action on Kuberji group that the assessee made any undisclosed investment on purchase of various lands. The Assessing Officer has not examined the seller of land. There is no finding of Assessing Officer whether the consideration paid by assessee was not in accordance with Jantry rate or less than the value determined by the Stamp Valuation Authority. It is settled law that no addition on estimation basis can be made in the search action in absence of incriminating material. The Assessing Officer while making addition, made addition on estimation value on the basis that in the seized material found in the form of digital evidence, the assessee has shown value of four properties admeasuring 5960 square meter. The Assessing Officer clubbed all four properties and estimated the value at the rate of Rs. 58724/- per square meter without appreciating any corroborative evidence. Thus, in view of the aforesaid factual discussion, we do not find any reason to interfere with the order of Ld. CIT (A) which we affirm. In the result, grounds of appeal raised by revenue are dismissed.”*

39.1 The facts of the instant appeal are similar to the facts of the case cited supra. Hence, following the reasons given therein, we do not find any infirmity in the order of CIT(A), which we confirm. Accordingly, ground Nos. 1 to 4 are dismissed.

40. Ground Nos. 5 to 8 of the Revenue are in respect of unaccounted payment for purchase of property plot no. 224 at Kumbharia for Rs.23,38,04,101/-. These grounds are similar to the grounds raised by the revenue in IT(SS)A No.41/SRT/2023 (AY 2017-18) decided above by us in this order. In view of the findings given supra, the order of CIT(A) on these grounds is confirmed and the appeal of revenue is dismissed.

41. In the result, revenue's appeal IT(SS)A No.42/SRT/2023 is dismissed.

42. At the time of hearing, Ld. AR did not press **CO No.4/SRT/2025**. Hence, same is dismissed as “not pressed”.

43. In the result, assessee's CO is dismissed as not pressed.

**IT(SS)A No.26/SRT/2023 and IT(SS)A No.43/SRT/2023 (AY 2019-20)**

44. The grounds of appeal raised by the revenue and assessee are at para-8 this order and hence are not repeated. The facts of the case in brief are that assessee filed his return of income on 30.09.2019 declaring total income of Rs.1,27,27,850/-. Subsequently, a search and seizure action was conducted u/s. 132 of the Act in case of Kuberji Group on 06.02.2020. The residential premises of the assessee, Shri Naresh Bisheshwarlal Agrawal, was also covered during the search and seizure operation. Various incriminating documents were found and seized which indicated that the assessee had not disclosed his true and correct income in the return of income. The assessee was issued notice u/s. 153 A of the Act. The assessee filed his return of income declaring the same total income of Rs. 1,27,27,850/- on 27.04.2021. The assessee derives income from share of profit and business income. The assessee had developed a project called “Kuberji Crown” in his personal capacity. After confronting the assessee on various seized materials found during course of search at the premises of the assessee and group concerns, the AO made three additions i.e., (i) Rs.13,30,12,996/- u/s 69B towards purchase of land at block No.7 and 287 Kumbharia, (ii) Rs.5,94,15,000/- u/s 69A on account of on-money receipt of Kuberji Crown and (iii) Rs.55,00,000/- u/s 69B for unaccounted payment for land at plot No. 224 at Kumbharia.

44.1 Aggrieved by the order of AO, the assessee filed appeal before CIT(A), who vide appellate order dated 28.12.2022 has deleted addition of

Rs.13,13,12,996/- made u/s 69B of the Act. Regarding the other addition of Rs.5,94,15,000/- in respect of on-money received for the project “Kuberji Crown”, he has restricted the addition to net profit @ 13% on the amount of on-money received by the assessee. Accordingly, addition of Rs.77,23,950/- was confirmed out of the total addition of Rs.5,94,15,000/-. Regarding the 3<sup>rd</sup> addition of Rs.55,00,000/-, the CIT(A) has deleted the addition following his order for AY 2017-18.

44.2 Aggrieved by the order of CIT(A), both revenue and assessee have filed appeals before this Tribunal. Let us first take up the appeal of revenue.

45. Ground No. 1 to 4 pertain to the addition on account of alleged investment of Rs.11,30,12,996/- u/s 69B of the Act on purchase of plot Nos. 7 and 287 at Kumbharia. The Ld. CIT-DR has relied on the order of AO. On other hand, the Ld. AR of the assessee supported the order of CIT(A). He also submitted that, similar addition made in the case of Shree Kuberji Associates was deleted by this Tribunal in IT(SS)A. No.33/SRT/2023 (supra).

46. We have heard rival submission of both the parties and pursued the material available on records. Similar issue was decided by us for AY 2018-19 in IT(SS)A No.42/SRT/2023 (supra). Following the reasons given therein, the ground Nos. 1 to 4 of revenue are dismissed.

47. Ground no. 5 of the revenue pertains to adoption of net profit @ 13% of the on money received of the project Kuberji Crown. During the assessment proceedings, the AO had confronted the image regarding some bookings of shops in Kuberji Crown as found and seized from the mobile of Vikas Vimal Agrawal. The image is extracted at para-7 of the assessment order. The AO has worked out on money on the basis of such image, which was decoded by adding "000" to the figures mentioned in the image. The AO had calculated total on-money at Rs.7,02,26,000/-, out of which Rs.5,94,15,000/- pertains to this year. He proposed to add the same u/s 69A of the Act. The assessee submitted that there is no basis for decoding the amount by adding "000". He further submitted that the associate concern of the group, namely Kuberji Associates had disclosed Rs.3 Cr. on account of Kuberji Crown project under IDS, 2016. However, the AO was not satisfied with the explanation. He observed that the disclosure made in the case of Kuberji Associates is not relevant as it did not carry out the project. The AO finally made addition of entire "on money" of Rs. 5,94,15,000/- as unexplained money u/s. 69A of the Act.

48. Aggrieved by the order of AO, assessee filed appeal before CIT(A). The written submission filed by the assessee has been reproduced in para 7.1 of the appellate order. The assessee had objected decoding of the figures. He, however, submitted that, in view of the various decisions of Hon'ble Gujarat High Court and Tribunal, only the profit element ought to be taxed and requested that the profit may be estimated @ 8% as the project is situated at

the outskirts of Surat City. The assessee relied on following decisions: (i) ACIT vs. M/s. Vision Builders (Ahmedabad) ITA No.2180/Ahd./1995; (ii) ACIT vs. Ashirwad Corporation (ITA No.1915/Ahd./ 2010); (iii) Mrs. Mehroo Irani ITAT Bombay Bench "A" Taxman Magazine Vol. 75 Page No. 123 (5% profit was estimated in this case); (iv) Kishor Mohanlal Telwala vs. ACIT (1999) 64 TTJ 543 (Ahd.); (v) R. K. Corporation ITA No.4940/Ahd./1996; (vi) Naresh Agrawal (HUF) & Mangtural Harlalka (HUF) (AOP) ITA No.65/Ahd./1997 and (vii) S. P. Enterprise IT(SS)A.No.58/Ahd./2003. The above decisions have taken into account the decision of Hon'ble Gujarat High Court in the case of Panna Corporation reported as 82 CCH 0266 (Guj) and the decision of ITAT Ahmedabad Benches in case of ACIT vs. Amar Corporation in ITA No.2036 to 2041/Ahd./2007. The CIT(A), rejected the contention of the assessee that "000" should not be added to the figures taken from the digital image. He, however, found that there were some unaccounted expenditure on account of Kuberji Crown project. He observed that appellant has incurred expenditure in cash which was not accounted for in the books of account. Hence, the entire on-money cannot be taxed and net profit from such on-money received has to be estimated. He found that the ITAT Ahmedabad and Hon'ble jurisdictional High Court have confirmed the net profit rate on-money received in the range to 8 to 17% for the projects situated in the city area. However, of the project of the assessee is on the outskirts of Surat city; hence, the CIT(A) finally estimated net profit @ 13% of the on-money booking amount.

49. Aggrieved by the order of CIT(A), the revenue has filed an appeal before this Tribunal. The Ld. CIT-DR has relied on the order of AO. On the other hand, Ld. AR of the assessee relied on the order of CIT(A).

50. We have heard rival submission of both the parties and pursued the material available on records. We have also deliberated on the decisions relied on by Ld. AR of the appellant. As submitted by the Ld. AR, the Hon'ble jurisdictional High Court and co-ordinate Bench of this Tribunal have held that entire on-money cannot be taxed as profits; rather, only the profit element needs to be taxed. This co-ordinate Bench has already upheld profit @ 13% of the on-money received by assessee in respect of project situated in the outskirts of the Surat City in the assessee's group cases, namely, M/s Shree Kuberji Leisure & Infraspace LLP vs. ACIT and Shree Kuberji Associates vs. ACIT in IT(SS)A Nos. 28-31, 34-35 & ITA No.155/Srt/2023 dated 22.12.2023. This has been followed by the Tribunal in subsequent decisions. We, therefore, uphold the decision of CIT(A) in restricting the addition to Rs.77,23,950/-, being 13 % of the on-money receipt in Kuberji Crown project. Accordingly, ground raised by revenue is dismissed.

51. Ground Nos. 6 and 7 of the Revenue are in respect of unaccounted payment for purchase of property plot Nos. 224 and 228 at Kumbharia for Rs.55,00,000/-. These grounds are similar to the grounds raised by the revenue in IT(SS)A No.41/SRT/2023 (AY 2017-18) decided above in this order. In view of

the findings given supra, the order of CIT(A) on these grounds is confirmed and the appeal of revenue is dismissed.

52. The revenue has raised a ground that the CIT(A) has erred in ignoring the principles of "Human Probability Test". The Ld. CIT-DR has not argued as to how the above principles would apply to the facts of the present case. The CIT(A) has decided the issue after duly appreciating the facts of the case and by following the various decisions on the subject issue. Therefore, we do not find any merit in the above ground and same are dismissed.

53. Ground Nos. 10 and 11 are general in nature and do not require any adjudication.

54. In the result, revenue's appeal IT(SS)A No.43/SRT/2023 is dismissed.

55. The assessee in IT(SS)A.No.26/SRT/2023 (AY 2019-20) has contested addition of profit of Rs.77,23,950/- being profit @ 13% on the on-money receipt of Kuberji Crown. The AR of the assessee relied upon the written submission as filed in respect of ground no. 5 of the Revenue appeal. The AR finally submitted that the project is far away from Railway Station and therefore, 8 % profit may be estimated. We have already decided to adopt 13 % profit on the on-money booking of the project in Kuberji Crown in revenue's appeal decided above in para-50 of this order. Hence, this ground of appeal by assessee is dismissed.

56. The appellant has raised a ground that the CIT(A) has erred in confirming the levy of tax u/s 115BBE of the Act. This issue has already been decided by us

in favour of assessee in IT(SS)A No.25/SRT/2023 for A.Y 2017-18 (supra). Following the reasons given supra, the AO is directed to tax the profit of the on-money receipt as per normal provisions of the Act. Hence, ground no. 2 is allowed.

57. The appellant has raised additional ground requesting for giving set off of undisclosed income of earlier years or the current year against the undisclosed income/investment. We have decided this issue holding that, in principles, the appellant is liable to get the benefit of set off of undisclosed income of earlier years. However, there are no investment or expenditure in this year and hence, the ground is dismissed.

58. In the result, assessee's appeal IT(SS)A No.26/SRT/2023 is partly allowed.

**ITA No.164/SRT/2023 & IT(SS)A No.27/SRT/2023 (AY: 2020-21)**

59. First, we shall take up revenue's appeal in ITA No.164/SRT/2023. The facts of the case in brief are that assessee filed his return of income on 31.03.2021 declaring total income of Rs. 32,47,260/-. Subsequently, a search and seizure action was conducted u/s. 132 of the Act in case of Kuberji Group on 06.02.2020. The residential premises of Shri Naresh Bisheshwarlal Agrawal (assessee herein) was also covered during the search and seizure operation. Various incriminating documents were found and seized, which indicated that the assessee had not disclosed his true and correct income in the return of income. After hearing the assessee, the AO passed order u/s 143(3) of the Act

on 30.03.2022 determining total income at Rs.14,66,31,981/- by making various additions as under:

i) Unexplained money u/s 69A	Rs. 25,00,000/-
ii) Unexplained expenditure u/s 69C	Rs. 3,18,750/-
iii) Unexplained income u/s 69A	Rs.1,08,11,000/-
iv) Unaccounted investment u/s 69B	Rs. 7,00,000/-
v) Unexplained money u/s 69A	Rs.5,20,00,000/-
vi) Unexplained money u/s 69C	Rs.1,30,00,000/-
vii) Unaccounted expenditure u/s 69C	Rs. 1,39,400/-
viii) Unexplained income u/s 69A	Rs.6,34,44,763/-
ix) Unexplained expenditure u/s 69C	<u>Rs. 4,70,808/-</u>
	Rs.14,33,84,721/-

60. Aggrieved by the order of AO, assessee filed appeal before CIT(A) who vide order dated 30.12.2022 enhanced the first and second additions of Rs.25,00,000/- and Rs.3,18,750/- to Rs.45,00,000/- and Rs.6,16,250/- respectively. The addition of Rs.1,08,11,000/- was restricted to Rs.14,05,430/- by estimating net profit on the “on-money” receipt @ 13% of Rs.1,08,11,000/-. The addition of Rs.7,00,000/- was deleted. The additions at Sl.No. (v) and (vi) were deleted. The addition of Rs.1,39,400/- was deleted. The CIT(A) confirmed Rs.4,61,07,560/- and allowed relief of Rs.1,73,37,203/- in respect of addition at Sl.No.(viii). The CIT(A) also deleted the last addition of Rs.4,17,808/-at Sl.No.(ix). The CIT(A) allowed telescoping of unexplained payment of interest of Rs.6,16,250/-, unexplained expenditure of Rs.9,57,560/- against net profit from on-money received of Rs.77,23,950/- decided in appeal of the assessee for AY 2019-20.

61. Aggrieved by the order of CIT(A), the revenue has filed present appeal before the Tribunal. Ground nos. 1 and 2 are in respect of profit on the “on-money” decided by CIT(A) at 13% of the net profit on-money of Rs.1,08,11,000/-

amounting to Rs.14,05,430/- on project of Kuberji Crown. The facts of the instant grounds are similar to the ground No.5 of revenue's appeal in IT(SS)A No.43/SRT/2023 for AY 2019-20. Following the reasons given supra (para-50), the grounds of revenue are dismissed.

62. Ground Nos. 3 and 4 of the revenue are in respect of unaccounted payment for purchase of property plot no. 224 and 228 at Kumbharia for Rs.7,00,000/-. These grounds are similar to the grounds raised by the revenue in IT(SS)A No.41/SRT/2023 (AY 2017-18) decided above in this order. In view of the findings given supra, the order of CIT(A) on these grounds is confirmed and the ground Nos. 3 and 4 of revenue is dismissed.

63. Ground Nos.5 and 6 are inter-related and pertain to the addition on account of advances and interest thereon on the basis of digital data seized in the case of Shri Shankarlal Uttamchandani. The relevant image is at page 24 of the assessment order. The AO observed that the image contains details of advances given by SN (Shankar Nebhumal Uttamchandani) for 13.30 (decoded Rs. 13,30,00,000/-) and further advance given by Naresh Agrawal (assessee) for 5.20 (decoded Rs. 5,20,00,000/-). The AO also assumed that there is also working of interest on this image. The interest was calculated by adding "00". The AO proposed to tax principal amount of Rs. 5,20,00,000/- at 2 % per month for 12.5 months and Rs. 1,30,00,000/- as interest thereon. The AR submitted that this image could be in respect of capital of the firms of Kuberji Group. The

AO was not satisfied with the submission and made addition of Rs. 5,20,00,000/- on account of principal amount and Rs. 1,30,00,000/- on account of interest.

64. Aggrieved by the order, the assessee filed an appeal before CIT(A). The assessee has filed written submission which is on para 9.1 of the appellate order. The CIT(A) held that there is no direct evidence brought on record by the AO for lending of actual amount. He also observed that it is not verifiable whether there was advances given or loan taken. He held that, in absence of corroborative evidence, it cannot be held that the assessee had given said loan out of his unexplained sources. The CIT(A) finally held that working found on the paper cannot be treated as sacrosanct evidence for treating the same as unexplained money. Accordingly, he deleted both the additions.

65. Aggrieved by the order of CIT(A), the revenue has filed an appeal before this Tribunal. The Ld. CIT-DR has relied on the order of AO. On the other hand, Ld. AR submitted that there is no basis for decoding of the amount. He also submitted that, so far as Naresh Agrawal (assessee) is concerned, there is working of interest for Rs.1,30,000/- on loan of Rs. 5,20,000/- for the period of 12.5 months (1<sup>st</sup> October to 15.10). The AR submitted that the interest amount is in full amount and is not to be decoded. The AR also submitted that the noting is not in the handwriting of the assessee and there is no year or any signature or the name of lender or receiver. The Ld. AR, therefore, submitted that it should be considered as dumb paper. He also relied upon the decision of this Tribunal

in the case of Shankar Uttamchandani vide ITA No. 231/SRT/2022 (para 11 of the ITAT order) wherein addition made on the base of this image is deleted.

66. We have heard rival submission of both the parties and pursued the material available on records. We have also perused the order of this co-ordinate Bench in case of other purported lender, Shri Shankar N Uttamchandani, whose name is appearing in the same seized document. The co-ordinate Bench of this Tribunal in the case of Shankar Uttamchandani in ITA No.231/SRT/ 2022 (supra) has upheld the order of CIT(A) and dismissed the grounds of revenue. The relevant part of the ITAT order is reproduced for ready reference:

*“10. We have considered the submissions of both the parties and have gone through the orders of lower authorities carefully. The Assessing Officer made addition on the basis of images of loose paper/photo found in the mobile phone of Naresh Agarwal. The Assessing Officer scanned the copy of image in para 7 at page 9 of assessment order. On loose paper ward “S.N” and “N” is mentioned. Such word were considered the short form of name of assessee (Shanker Nebhumal Uttamchandani). The figure 13.30 was taken as Rs. 13.30 crores and the interest figure written in full figure of Rs. 3,72,400/- was taken at Rs. 3.72 crores and added as unexplained expenditure money in the hands of assessee. As recorded above, before the Id. CIT(A), the assessee challenged the addition on factual as well as on legal basis. It was also submitted that the images 10 were found in the mobile phone of Naresh Agarwal, who never confronted with such images either in search action or in post search proceedings. Besides date, years is not mentioned whether amount was taken or given is not clear. Further, there is no basis of taking 13.30 as Rs. 13.30 crores when interest is written in full figure and that there was not corroborative evidence to support such addition. We find that the Id. CIT(A) on considering such submission noted that the images were found from the mobile phone of Naresh Agarwal. There is no direct evidence brought on record by Assessing Officer, whether the money was lent to any specific person. Admittedly, on the incriminating material which is image, does not specify whether loan is taken or given, no name is mentioned on the said paper about receiving or giving the loan. The Id. CIT(A) further held that paper is not signed by assessee nor his handwriting, hence in absence of any corroborative evidence, it cannot be held that the assessee has given said loan out of his unexplained source. During the search action, no evidence of giving or taking loan to any third party was found at the residence of assessee. The assessee is not in the business of money lending. The working found on the paper cannot be treated as sacrosanct evidence for treating the same as*

*unexplained money. The Assessing Officer has not collected any evidence or supporting material that the assessee advanced Rs. 13.30 crores and earned interest of Rs. 3.72 crores and held that such addition cannot be sustained.*

*11. We have independently examined the facts of the case being a search case. In sum and substance, the Assessing officer on the basis of images recovered from the mobile phone of Naresh Agarwal assumed that the assessee advanced Rs. 13.30 crores and earned interest of Rs. 3.72 crores. The figure of principal amount and interest amount in no way can be correlate with each other. Unless and until such principal amount was lent for years together. Alleged interest figure of Rs. 3.72 crores is more than 30% of alleged principal amount which is beyond imagination. Moreover, the Assessing Officer added five zeros against the figure of 13.30 and added only two zero against the interest which is again without any rational. Thus, we do not find any justification for making such addition in crores without any independent or corroborative material on record. At least such figure or incriminating material should have been confronted with Naresh Agarwal to explain it in a better way. There is no material on record to suggest that such figure was confronted with Naresh Agarwal nor addition is based on his statement. Thus, with the aforesaid additional observation, we affirm the order of Id. CIT(A). In the result, ground No. 2 of appeal is dismissed.”*

66.1 Since the facts are identical, following the above decision, the grounds of revenue are dismissed.

67. Ground Nos. 7, 9 and 10 are in respect of unexplained expenditures u/s 69C of the Act of Rs.1,39,400/-, Rs.4,70,808/- and Rs.15,73,810/- respectively. Ground No.8 is regarding financial transactions related to unaccounted loans (Rs.4,61,07,560/-) as per pages 2 and 3 of A/2 found from the residence of the assessee. These grounds are dealt together on the request of Ld. AR to which the Ld. CIT-DR did not have any objection. The Ld. AR mainly submitted that these additions may be set off against the undisclosed income of earlier AYs and current AY. The main ground is ground No.8 This issue has been discussed at para-11 to 11.3 of the assessment order. The AO held that assessee had taken loan of Rs.6,34,44,763/- (4,61,07,560 and 1,73,37,203) during the year. The same was added u/s 69A of the Act. The CIT(A) has dealt with the issue at para-11 to 11.5 of the appellate order. The CIT(A) held that 11 entries in the list of 14

entries are loan received by the appellant in cash. The total amount was Rs.4,51,50,000/- and the expenditure incurred was Rs.9,57,560/-. He, therefore, confirmed addition of Rs.4,61,07,560/-. The CIT(A) however deleted the remaining addition of Rs.1,73,37,203/-, which was pertaining to Kuberji World project by observing that the same cannot be taxed in the hands of the appellant.

68.1 The Ld. CIT-DR supported the order of AO and relied on the grounds of revenue.

68.2 The Ld. AR submitted that, so far as ground No. 8 is concerned, addition was restricted by CIT(A) to Rs. 4,61,07,560/- out of the addition of Rs.6,34,44,763/-, as the remaining amount of Rs.1,73,37,203/- pertained to booking of Kuberji Group projects. He has not argued on the merit of addition sustained by the CIT(A). He has, however, alternatively submitted that huge addition was made in the earlier year as well as in the current year where undisclosed income by way of profit of “on money” booking amount was taxed in the case of firms wherein the appellant is one of the partners and also in his own case. The Ld. AR had submitted such undisclosed income earned as share of profit as well as in his personal capacity in the different years and the relevant chart is given on page 17 of his paper book. As per the chart, the undisclosed income as share of profit from the firms and personal case is available for Rs. 17,60,67,341/- from AYs 2014-15 to 2020-21. This includes Rs.5,17,49,120/- in AY 2017-18, 2019-20 and 2020-21 The Ld. AR submitted that undisclosed

income may be set off against undisclosed expenditure / investment, which together come to Rs.4,82,91,578/-. The Ld. AR relied upon the following decisions: (i) Anantharam Veerasinghaiah & Co. vs. CIT (1980) 123 ITR 457 (SC), is in effect a theory of probability or inference [CIT vs. S. Nelliappan (1967) 66 ITR 722 (SC)]; (ii) PCIT V/s. Aliasgar Anwarali Varteji (2018) 96 taxmann.com 231 (Guj.); (iii) CIT V/s. Jagatkumar Satish Patel (2014) 45 taxmann.com 441 (Guj.) and (iv) Dagina Jewellers India (P) Ltd (ITA No. 30/SRT/2022).

69. We have heard both the parties and perused the materials available on record. We have also deliberated the decisions relied upon by Ld. AR. We find that the CIT(A) has allowed telescoping of the payment of interest on loan of Rs.6,12,250/- and unexplained expenditure of Rs.9,57,560/- in para-13 of the appellate order. The same is confirmed because appellant had adequate undisclosed income to take care of the interest and other expenses.

69.1 The Ld. AR has also requested for setting off of the addition of Rs.4,61,07,560/- against the undisclosed income earned in the earlier AY as well as the current AY 2020-21. We find that the impugned sum of Rs.4,61,07,560/- includes unaccounted loan of Rs.4,51,50,000/- received by the appellant and interest of Rs.9,57,560/- paid on the said loan. The principal amount of loan of Rs.4,51,50,000/- received by the appellant cannot be said to have been received out of the undisclosed net profit @ 13% of the total on-money received by the appellant. The loan taken by the appellant is entirely from a different source and not by way of utilization or investment of the profit out of the on-money

received. These are loans received from different sources and there is no nexus with the undisclosed income of the appellant. As a result ground No.7, 9 and 10 are dismissed and ground No.8 is partly allowed i.e., addition of Rs.4,51,50,000/- is upheld and Rs.9,57,560/- is deleted. AO is directed accordingly.

70. Coming to assessee's appeal in IT(SS)A No.27/SRT/2023 (AY 2020-21), in ground No.1 he has challenged confirmation and enhancement of addition of Rs.45,00,000/- u/s 69A and interest thereon of Rs.6,16,250/- u/s 69C of the Act. This issue is at para-6 to 6.3 of the assessment order. The AO found from page 25 of A-1 seized from the residence of the assessee that the assessee had taken loan of Rs.25,00,000/- lacs from Manoj Khetan and paid interest of Rs.3,18,750/- . Similarly, assessee had taken loan of Rs.20,00,000/- from Rinku Bangalore and paid interest of Rs.2,97,500/-. In response to the show cause notice, assessee submitted that these are details of loan to be taken through Shri Manoj Khetan, however, no such amount was borrowed. The AO was not satisfied with the explanation and made addition of Rs.25,00,000/-u/s 69A of the Act and the interest expenditure of Rs. 3,18,750/- u/s 69C of the Act.

70.1 Aggrieved by the above additions, the assessee filed written submission which is on para 6.1 (page 5) of the appellate order. The assessee submitted that interest amount is written in full figure and on that basis, the loan amount should be worked out at 25,000/- instead of Rs. 25,00,000/-. The CIT (A) did not agree with the submission and he confirmed the addition of Rs. 25,00,000/- and

interest of Rs.3,18,750/-. He did not agree that the loan amount was Rs.25,000/- and Rs.20,000/- but they were actually Rs.25,00,000/- and Rs.20,00,000/- Hence, the CIT(A) further enhanced the addition by Rs.20,00,000/- and interest of Rs.2,97,500/- as per the image of page 25 of A-1.

70.2 The Ld. AR of the assessee objected to the decoding of amount in the seized document and submitted that the addition should be restricted to Rs.25,000/- plus interest of Rs. 3,187/50 and Rs. 20,000/- plus interest of Rs.2,975/-. Regarding decoding of the amount, the AR relied upon the decision of this Tribunal in the case of Jaiprakash D. Agrawal vide IT(SS)A. No. 78, 60 & 57/SRT/2022). The AR alternatively submitted that such addition may be set off against undisclosed income by giving telescopic effect of the undisclosed income earned in the earlier year as well as in this year.

70.3 On the other hand, Ld. CIT-DR supported the orders of lower authorities. He submitted that the addition was rightly made by the AO, which has been confirmed and enhanced by the CIT(A). There is no infirmity in the order of CIT(A). He also submitted that telescoping effect should not be granted for the loan received by the appellant.

71. We have heard rival submission of both the parties and pursued the material available on records. We have also considered the decision in case of Jaiprakash D. Agrawal (supra). The addition is made on the basis of seized materials found from the residence of the appellant, bearing page No.25 of A-1.

The CIT(A), at para-6.2, has clearly recorded a finding that there is no dispute regarding the loan received from Shri Manoj Khaitan. He observed that appellant is managing partner of Shri Kuberji Group and the appellant as well as the group concern has taken huge loan for their business of real estate. Therefore, contention that the loan amount was only Rs.25,000/- and Rs.20,000/- was not acceptable. He, therefore, considered the impugned amounts as Rs.25,00,000/- and Rs.20,00,000/- respectively. We do not find any perversity in the finding of the CIT(A). It is logical and stands to reason. Considering the scale of operation and status of the appellant, who are one of the biggest real estate developers, it would be presumptuous to take the amount at such lowly figure of Rs.25,000/- and Rs.20,000/-. This would also be against the principles of human probability. Therefore, the order of CIT(A) is liable to be sustained. The Ld. AR has relied on the decision in case of Jaiprakash D. Agrawal (supra). The said decision is not applicable because the CIT(A) had deleted the addition in that case, which was confirmed by the ITAT. In the present case, the CIT(A) has confirmed and enhanced the order of AO. We also find that the appellant is not disputing the loan but is contesting that the amount should be restricted to Rs.45,000/- and not Rs.45,00,000/-. There cannot be interest of Rs.6,16,250/- on a loan of Rs.45,000/- only. In view of these facts, we confirm the order of CIT(A).

71.1 The Ld. AR has requested to allow benefit of telescoping in respect of the addition of the principal amount of loan of Rs.45,00,000/- and interest of

Rs.6,16,250/-. We have already allowed telescoping benefit of the interest against the undisclosed income of the appellant. However, such benefit cannot be granted for the loan amount received by the appellant from a different source. The loan was not received from his own undisclosed income but from undisclosed income of some separate persons. There is no direct nexus between the undisclosed income of the appellant and the loan received by him. In view of the above, the addition of Rs.45,00,000/- is confirmed, whereas addition of Rs.6,16,250/- is deleted. The ground is partly allowed.

72. In ground No.2, the assessee has contested addition of Rs.14,05,430/- being profit @ 13% on the on-money receipt of Kuberji Crown. This issue for consideration was before us in AY 2019-20, *wherein* the ground of the appellant was dismissed. Following the same reason, this ground of appeal is dismissed.

73. The appellant has raised ground No. 3 by urging that the CIT(A) has erred in confirming the levy of tax u/s 115BBE of the Act. This issue has already been decided by us in favour of assessee in IT(SS)A No.25/SRT/2023 for A.Y 2017-18 (*supra*). Following the reasons given therein, the AO is directed to tax the profit of on-money as per normal provisions of the Act. Hence ground no. 3 is allowed.

74. In ground No. 4, the appellant has contested the addition of Rs.4,61,07,560/- sustained by CIT(A) out of the addition of Rs.6,34,44,763/-. We have already decided this issue in ground No.8 of revenue's appeal and have

confirmed the order of CIT(A). Hence, no further relief cannot be granted to the appellant. Accordingly, the ground is dismissed.

75. The appellant has raised additional ground requesting for giving set off of undisclosed income of earlier years or the current year against the undisclosed income/investment. We have decided this issue holding that, in principles, the appellant is liable to get the benefit of set off of undisclosed income of earlier years. We have already allowed benefit of telescopic effect wherever it was considered acceptable. Hence, there is no need to adjudicate the additional ground.

76. In the result, assessee's appeal IT(SS)A No.27/SRT/2023 is partly allowed.

**ITA No.163/SRT/2023 and ITA No.136/SRT/2023 (A.Y 2013-14)**

77. First, we shall take up revenue's appeal in ITA No.163/Srt/2023 for A.Y 2013-14. The facts of the case in brief are that assessee filed his return of income on 29.10.2013 declaring total income of Rs. 8,06,840/-. Subsequently, a search and seizure action was conducted u/s. 132 of the Act in case of Kuberji Group on 06-02-2020. The residential premises of Shri Naresh Bisheshwarlal Agrawal (assessee herein) was also covered during the search and seizure operation. Various incriminating documents were found and seized which indicated that the assessee had not disclosed his true and correct income in the return of income. The assessee's case was reopened u/s. 147 of the Act. The assessee filed his return of income declaring the same total income of Rs. 8,06,840/-. After

giving opportunity of hearing, the AO finalized the order u/s 147 of the Act on 26.03.2022 by making four additions as under:

(i) Unaccounted cash loan	Rs.50,00,000/-
(ii) Interest expenses on loan	Rs. 5,17,000/-
(iii) Unaccounted investment in land of Block 20-B Chedcha u/s 69B on protective Basis	Rs. 4,87,56,700/-
(iv) Unaccounted investment in Land at Block No.155, Bhanodara	Rs. 3,37,75,000/-

78. In the reassessment proceedings, the digital image found and seized from the premises of Shri Vikas Vimal Agrawal was confronted to the assessee. The image lies in page 3 of the assessment order. The image shows a ledger account having total debits of Rs.50,00,000/- and credits of Rs.40,00,000/-. There was also working of interest of Rs. 5,17,479/-. The assessee submitted that Shri Vikas Vimal Agrawal was learning about calculation of interest by putting product formula in his laptop and there was no real transaction. The AO was not satisfied with the explanation and made addition for Rs.50,00,000/- u/s 69A and also added interest expenses of Rs.5,17,000/- u/s 69C of the Act. Aggrieved by the assessment order, the assessee filed appeal before CIT(A).

78.1 Before the CIT(A), the assessee had filed written submission which is reproduced at para 6.1 (page 4 & 5) of the appellate order. The assessee submitted that he had filed an affidavit of the Shri Vikas Vimal Agrawal, to the effect that he was learning the calculation of interest. The assessee also submitted that there was no signature of any person and it was a dumb paper.

He alternatively submitted that assessee had received loan and the same was repaid and the amount is already taxed in the case of Shri Vikas Vimal Agrawal and hence, no addition is needed in his case. The CIT(A) had accepted alternative plea and deleted Rs.50,00,000/-being the principal amount of loan received, as per para 6.3 of the appellate order because the addition of Rs.50,00,000/- in case of Shri Vikas Vimal Agrawal was confirmed by him in AY 2013-14. The CIT(A), however, confirmed the addition of interest expenses of Rs.5,17,479/-.

78.2 Aggrieved by the order of CIT(A), the revenue has filed an appeal before this Tribunal. The Ld. CIT-DR has relied on the order of the AO. On the other hand, Ld.AR supported the order of CIT(A). He also submitted that Hon'ble Tribunal has finally sustained the addition in the case of Shri Vikas Vimal Agrawal in ITA No.40/SRT/2023 dated 28.06.2024. The copy of ITAT order is enclosed at page 1 to 5 of the paper book. Hence, the addition could at best be restricted to the payment of interest of Rs. 5,17,479/-. He also submitted that repayment of loan should be considered as out of loan amount received and not for any other undisclosed income.

78.3 We have heard rival submission of both the parties and pursued the material available on record. We have also perused the order of this co-ordinate Bench in case of Shri Vikas V Agarwal (supra), wherein additions of Rs.50,00,000/- and interest of Rs.5,17,000/- were sustained. Since the principal

amount was finally considered as undisclosed income of Shri Vikas Vimal Agrawal (supra), the source of the loan stands explained and hence the same cannot be treated as undisclosed income of the appellant. Accordingly, the order of CIT(A) regarding deletion of the loan of Rs.50,00,000/- is upheld. So far as interest paid of Rs.5,17,000/- is concerned, the same is rightly held as taxable by the CIT(A), Surat. We find no infirmity in the order of CIT(A). Accordingly, ground of revenue is dismissed.

79. Ground No. 2 is relating to addition made by the AO of Rs.4,87,56,700/- (1/2 share) on protective basis u/s 69B of the Act the unexplained investment in property @ 20/B Chhedcha. The substantive addition u/s 69B of the Act relating to the same property of Rs. 9,75,19,400/- was made in the hands of M/s Kuberji & Sons, a partnership firm, in which the assessee is one of the partners.

79.1 Before CIT(A), the assessee filed written submission which is reproduced in para 7.1 (Page 7 to 9) of the appellate order. The CIT(A) observed that the payment for the purchase of the property was made from the bank account of M/s Kuberji and Sons and the property was shown as an asset of the firm in its balance sheet. The property was purchased by the firm in the name of other partner, Shri Shankarlal Uttamchandani, who is an agriculturist. He also observed that there is no evidence found about the investment made outside the books of the firm. Accordingly, the protective addition of Rs.4,87,56,700/- (1/2 of Rs. 9,75,19,400) u/s 69B was deleted.

79.2 Before us, the Ld. CIT-DR has relied on the order of AO. He submitted that the addition was made on the basis of seized records showing list of properties of Kuberji Group and family members of Naresh Agrawal. As per the seized records, the value of this property was for Rs.11 Cr. and the accounted value was Rs.1.24 Cr. and hence difference of Rs. 9,75,19,400/- was rightly considered as unexplained investment. The assessee had  $\frac{1}{2}$  share and hence addition of Rs. 4,87,56,700/- was made on protective basis.

79.3 On other hand, the Ld. AR of the assessee argued that Naresh Agrawal had estimated value of several properties belonging to the partnership firm and other associate concerns and family members. The value was estimated for bank loan purpose. He also submitted that some of the properties were also tendered as security to the bankers. He argued that neither in his case nor in the case of firm, any evidence was found for actual unaccounted money payment for the said property. He finally submitted that similar addition made in the case of M/s Kuberji Associates was deleted by this co-ordinate Bench in case of DCIT vs. M/s Shree Kuberji Associates in IT(SS)A. No.33/SRT/2023 dated 14.02.2024. He filed copy of the ITAT order, which is on page 29 of the paper book.

79.4 We have heard rival submission of both the parties and pursued the material available on records. We have also perused the order of ITAT in case of Shree Kuberji & Associates (supra). There is no dispute that the property 20/B,

Chhedchha was purchased by M/s Kuberji & Sons and payments were made from the books of that firm. Since there is no evidence of actual payment of unaccounted money, no protective addition is required. Further, addition of similar nature was made in the case of M/s Shree Kuberji Associates on the basis of the same seized records, which was deleted by the CIT(A) and further upheld by this Tribunal. Thus, the issue is covered by the decision of this Bench in the case of Shree Kuberji Associates (supra). The relevant part of the order is reproduced as under for ready reference:

*“7. We have considered the submission of both the parties and perused the orders of lower authorities carefully. We have also deliberated on various case laws relied by the Ld. AR of the assessee. The Assessing Officer made addition of unaccounted investment of Rs. 3.41 crores by taking a view that in the search action at the premises of Shri Naresh B. Agarwal (key person of assessee), various incriminating evidence was found and seized. The search team also found certain digital data in the mobile phone of Naresh B. Agarwal. On the basis of various details, mentioned on such digital images, the Assessing Officer held that the assessee has made total investment of Rs. 35.00 crores on purchase of four properties at village Kumbhariya out of block No. 287, 182, 4 and 7. The Assessing Officer also made enquiry on the State Government Website Any ROR and found that Naresh B. Agrawal, proprietor of Kuberji Builder has purchased land in Block No. 4B admeasuring 700 square meter on 05/07/2017 at a consideration of Rs. 70 lacs. The Assessing Officer on the basis of area of all four properties of 5960 square meter shown in the seized material and the value at Rs. 35 crores, worked out the average price of land at Rs. 58,724/- per square yard. The assessee has purchased 700 square meter of land, thus on the basis of average rate estimated by Assessing Officer at the rate of Rs. 58,724/-, the Assessing Officer worked out the estimated value of land at Rs. 4,11,06,800/-. The assessee has shown consideration of Rs. 70 lacs thereby the Assessing Officer worked out a figure of Rs. 3,41,06,800/- (4,11,06,800 – Rs. 70,00,000/-). The Assessing Officer thereby made addition of Rs. 3.41 crores on account of unaccounted investment and made addition under section 68B of the Act. The Ld. CIT(A) deleted the addition by holding that the assessee in its submission submitted that there is no incriminating material relating to payment of on-money was found in the search action. No addition can be made unless there is specific incriminating material of actual transaction relating to unexplained income or unexplained investment. In case of assessee, the land in question referred by Assessing Officer including the area are reflected in the books of assessee and other group concerned. The value shown in the digital images for obtaining bank loan cannot be basis for making addition of unexplained investment under section 69B of the Act. The Ld. CIT(A) on the basis of such observation, held that the circumstances of the assessee’s case relating to the digital image found during the course of search, it is clear that list of asset shown estimated value of bank loan purpose, cannot be conclusive proof of money transaction of the assessee. None of the value of those assets found in the*

*digital image had been corroborated by Assessing Officer with any other finding relating to payment of on-money on purchase of Block No. 4B, Kumbhariya during the assessment proceedings. No supporting evidence regarding transaction of on-money paid relating to the property were found in the search action. The value found in the digital image with respect to assets had not been conclusively proved that the assessee had paid any on-money amount on transaction of purchase of land in Block No. 4B, Kumbhariya. On the basis of such finding, the Ld. CIT(A) deleted the entire addition.*

*8. "Being a search case, we have independently examined the facts of the present case. We find that the Assessing Office in entire assessment order has nowhere mentioned that there was any incriminating material found during the course of search action on Kuberji Group that the assessee made any undisclosed investment on purchase of various lands. The Assessing Officer has not examined the seller of land. There is no finding of Assessing Officer whether the consideration paid by assessee was not in accordance with Jantri rate or less than the value determined by the Stamp Valuation Authority. It is settled law that no addition on estimation basis can be made in the search action in absence of incriminating material. The Assessing Officer while making addition, made addition on estimation value on the basis that in the seized material found in the form of digital evidence, the assessee has shown value of four properties admeasuring 5960 square meter. The Assessing officer clubbed all four properties and estimated the value at the rate of Rs. 58724/- per square meter without appreciating any corroborative evidence. Thus, in view of the aforesaid factual discussion, we do not find any reason. Thus, in view of the aforesaid factual discussion, we do not find any reason to interfere with the order of Ld. CIT (A) which we affirm. In the result, grounds of appeal raised by revenue are dismissed."*

79.5 In view of the above, we do not find any reason to disturb the finding of CIT(A). The grounds are, accordingly, dismissed.

80. Ground No.3 to 5 is relate to additions made by the AO of Rs.3,37,75,000/- being 25% share of unexplained investment in property at Plot No. 155, Bhanodara. One MoU was found and seized in the case of Shankarlal Uttamchandani (Page 7 to 15 of A-4) and the same is reproduced on page 19 to 25 of the assessment order. As per the said MOU, property at 155, Bhanodara was purchased jointly by three persons viz. Sunil Manharbhai Kapadia, Naresh B. Agrawal (assessee) and Shankarlal Uttamchandani in the ratio of 50 : 25 : 25 respectively for Rs. 1.61 Cr. As per the seized records which is reproduced on

page 5 of the assessment order, the value was estimated at Rs.15.12 Cr. Hence, the AO made addition of Rs.3,37,75,000/-[25 % share of (15.12 Cr. – 1.61 Cr.)].

80.1 Before Ld. CIT(A), the assessee filed written submission which is reproduced in para 8.2 of the appellate order. The CIT(A) deleted the entire addition as the list of properties belonging to Kuberji Group were prepared with estimated value for bank loan purpose. The CIT(A) observed that no other supporting evidence regarding transactions of on money paid were found during the course of search. Accordingly, addition made of Rs. 3,37,75,000/- u/s. 69B stands deleted.

80.2 The Ld. CIT DR has relied on the order of AO. He submitted that the addition was made on the basis of seized records showing list of properties of Kuberji Group and family members of Naresh Agrawal. As per the seized records, the value of this property is for Rs.15.12 Cr. and the accounted value was Rs.1.61 Cr. and hence difference of Rs.13.51Cr. was considered for taxation. The assessee had 25 % share and hence addition of Rs. 3,37,75,000/- was made in this case.

80.3 On other hand, Ld. AR submitted that Naresh Agrawal had estimated value of several properties belonging to the partnership firm and other associate concerns and family members. The value was estimated for bank loan purpose. He also submitted that some of the properties were also tendered as security to the bankers. He argued that neither in his case nor in the case of firm, any

evidence of actual unaccounted money payment for the said property was found. He also submitted that no corroborative evidence was found for actual payment of unaccounted money against the said plot. He also submitted that similar nature of addition was made in the case of Shree Kuberji Associates (supra) which was deleted by this co-ordinate Bench. The AR relied upon following cases: (i) CIT vs. Maulikkumar K. Shah (307 ITR 137) (Guj.); (ii) CIT vs. Patel Proteins (P) Ltd (2017) 393 ITR 274 (Guj.) and (iii) PCIT vs. Gladder Ceramics Ltd (2018) 401 ITR 205 (Guj.).

80.4 We have heard rival submission of both the parties and pursued the material available on records. We have also deliberated various case law relied upon by the Ld. AR. There is no dispute that the property at Plot No. 155, Bhanodara was purchased by three co-owners including the assessee, who was having 25% share thereof. There is no evidence of actual payment of unaccounted money and hence, no addition is required. Further, addition of similar nature was made in the case of Shree Kuberji Associates (supra) on the basis of same seized records. The co-ordinate Bench of this Tribunal has deleted the addition and the relevant part of the order has been reproduced above at para-79.4 of this order. Thus, the issue is covered by the decision of this Bench in the case of Shree Kuberji Associates (supra). Ground Nos. 3 to 5 of revenue's appeal are, accordingly, dismissed.

81. The revenue has raised a ground that the CIT(A) has erred in ignoring the principles of "Human Probability Test". The Ld. CIT-DR has not argued as to how

the above principles would apply to the facts of the present case. The CIT(A) has decided the issue after duly appreciating the facts of the case and by following the various decisions on the subject issue. Therefore, we do not find any merit in the above ground and same is dismissed.

82. In the result, appeal of revenue is dismissed.

**ITA No. 136/SRT/2023 (AY: 2013-14)**

83. The assessee has raised ground no. 1 in respect of undisclosed payment of interest of Rs. 5,17,000/-. The same is not pressed by the AR. Hence, this ground of appeal is dismissed as “not pressed”.

84. In the assessee’s appeal is dismissed as not pressed.

85. In combine result: (a) Revenue appeals are dismissed. (b) assessee’s appeals IT(SS)A No.25 to 27/Srt/2023 are partly allowed whereas ITA No.136/Srt/2023 and CO No.4/Srt/2025 are dismissed as “not pressed”.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963  
on 31/10/2025 in the open court.

Sd/-  
(DINESH MOHAN SINHA)  
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-  
(BIJAYANANDA PRUSETH)  
लेखा सदस्य/ ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 31/10/2025

Dkp Outsourcing Sr.P.S\*

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

// True Copy //

सहायक पंजीकार  
आयकर अपीलीय अधिकरण, सूरत