

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“DB” BENCH, SURAT**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &  
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**I.T.A. No. 506 & 507/SRT/2025  
Assessment Year: 2017-18 & 2018-19**

ACIT, CC – 2 Room No. 505, 5 <sup>th</sup> Floor, Aayakar Bhawan, Majura Gate, Surat <b>PAN – ALZPP0233C</b>	Vs	Manoj Chhitubhai Patel Hall Mark Tour & Travels, Nishal Falia, Puna Gam, Tal. Chorysai, Surat.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Bharat Jhaveri, Ld.AR
Revenue by	Shri Mukesh Jain, CIT(DR)

Date of Hearing	09.10.2025
Date of Pronouncement	22.12.2025

**ORDER**

**Per: SHRI. SANDEEP GOSAIN, J.M.:**

The present appeals have been filed by the revenue challenging the different impugned orders dt. 25.02.2025 passed under section 250 of the Income Tax Act, 1961 (‘the Act’), by the National Faceless Appeal Centre (NFAC) / CIT(A) for the assessment year 2017-18 & 2018-19.

2. Since all the issues involved in these two appeals are common and identical, therefore, they have been clubbed, heard together and consolidated order is being passed for the sake of convenience and brevity. We shall take **ITA**

**No. 506/SRT/2025, A.Y 2017-18** as lead case and facts narrated therein.

**ITA No. 506/SRT/2025, A.Y 2017-18**

The revenue has raised the following grounds of appeal.

*1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the incriminating nature of evidences & facts detailed by the AO relating to the protective addition of Rs. 41,67,45,000/- being unaccounted investment of the Assessee as unearthed on the basis of cogent incriminating details/document recovered during the Search proceedings.*

*2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the incriminating nature of evidences & facts detailed by the AO relating to the protective addition of Rs. 3,27,350/- being unexplained money (5000 US Dollars) of the Assessee found in course of the Search Action.*

*3. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition made by the Assessing Officer ignoring the principle of "Human Probability Test" i.e. preponderance of probability which is applicable to Income Tax proceedings as laid down in Sumati Dayal vs. CIT (1995) 214 ITR 801: 80 Taxman 89 (SC) and CIT v. Durga Prasad More (1971) 82 ITR 540.*

*4. The appellant craves to add, amend, alter, substitute, modify the above ground of appeal, raise any new ground of appeal, if necessary, either before or during the course of the hearing of the appeal on the basis of submissions to be made.*

3. All the grounds raised by the revenue are interrelated and interconnected and relates to challenging the order of Ld. CIT(A) in sustaining the additions made by the AO of Rs. 41,67,45,000/- & 3,27,350/- with regard to protective

additions. Therefore, we have decided to adjudicate these grounds through the present consolidated order.

4. We have heard the counsels for both the parties, perused the material placed on record, judgments cited before us and also the orders passed by the revenue authorities. From the records we noticed that Ld. CIT(A) dealt in detail these grounds in its order the relevant portion is contained in para 6 to 6.5 and the same is reproduced herein below:

*Decision:*

*6. In Ground No.1, the appellant has challenged the action of the AO in making addition of Rs.416745000/- on account of unaccounted investment and addition of Rs.3,27,350/- u/s 69A of the Act on account of unexplained money, both the additions have been made on protective basis. According to the AO, a search action u/s 132 of the Act was carried out on 18.03.2017 in the group cases of Hallmark Tour of Surat, during which some incriminating documents were found related to the appellant. The appellant, being a partner in Hallmark Tour, was also subjected to Search action. During Search, data was taken from mobile phone of the appellant and on analysis of the same, it was noticed that page 10 [a sauda chithi] for land situated at Survey No. 203 Khajod, Surat, contained details such as situation of land, rate, area, terms & conditions for payment, signatures of seller & purchaser with date. The appellant during his statement stated that the said land admeasuring 9.45 Bigha is an agricultural land of "Juni Sharat". On the said page / sauda chithi, the rate written as 8.82 per Bigha was decoded as Rs.8,82,00,000/- per Bigha. The AO noticed that the details mentioned in the sauda chithi can be ascertained on plain*

*reading except the ID of buyer and seller, as the same was not legible. It was further stated that the sauda chithi was received on his whatsapp from Shri Jayantibhai Babariya of Avadh Group, Surat. However, the appellant failed to substantiate the actual buyers or to produce any sort of evidence.*

*6.1 The appellant in reply, by way of affidavit, stated that he has not purchased any land at Khajod as alleged. The incriminating paper relied upon was sent by Shri. Jayantibhai Virjibhai Babariya. The said land was neither purchased by Sh. Jayantibhai Babariya nor has he put his signature on page 10. The appellant has also requested to cross examine the owners of the land and the other persons whose name were appearing on the said page. However, the AO did not agree with the appellant and held that sauda chithi was decoded by the appellant himself which proved that he was aware of the land transaction. Hence, the provisions of section 132(4A) rws 292C of the Act were found to applicable as the sauda chithi was recovered from the mobile of the appellant. The AO further held that the appellant himself had explained the terms and conditions mentioned in the agreement i.e. first 25% of value of land was paid by 08.05.2016, second 25% of value of land was paid by 13.12.2016, third 25% payment was to be made on 18.07.2017 and balance 25% payment was to be made on 28.02.2018. Accordingly, the amount of Rs.41,67,45,000/- was treated as unaccounted investment made by the appellant and the same was added on protective basis.*

*6.2 Further, during search proceedings, foreign currencies in INR value at Rs.8,64,831.3/- was found at the premises of M/s. Hallmark Tour. In this context, during recording of statement of the appellant, Annexure FC was shown to him, to which it was submitted that 5000 Dollars belonged to him and 5000 dollars belonged to Shri Himanshu Kapadia [5000 dollars each of the partners of M/s. Hallmark Tour] and the remaining foreign currencies belonged to the staff that goes on tours of M/s. Hallmark Tour. However, no documentary evidence such as withdrawal from capital accounts, conversion details etc. was furnished and hence, the source of foreign currency (5000\*65.47) i.e. Rs.3,27,350/- remained*

*unexplained and the same was treated as unexplained money in the hands of the appellant on protective basis.*

*I have gone through the assessment order and the various submissions made by the AR of the appellant. On perusal of the material available on record, it is noted that the AO has made substantive addition of Rs. 41.67,45,000/- in the hands of Shri. Jayantibhai Virjibhai Babariya (PAN AFHPB0820M). It was submitted that both the CIT(A) as well as Hon'ble ITAT have delered the substantive addition so made. This fact was also confirmed by the AO during remand proceedings that the CIT(A) has deleted the addition vide order dated 12 08.2021 and on further appeal, the Hon'ble ITAT vide order dated 22.11.2022 has confirmed the findings given by the CIT(A) and that the Department has filed further appeal before the Hon'ble Gujrat High Court. Since, the substantive addition has been deleted by the Hon'ble ITAT, the protective addition too, is required to be deleted since, basis for protective addition no longer exists. It has also been held by various judgments that once the substantive-addition is deleted, then the protective additions are not sustainable. This includes Judgments of (i) CIT Vs PV Kalyansundaram (Madras High Court); (ii) ITO vs Bhagwati Steel (Mumbai ITAT) and (iii) PCIT vs Ojas Tarmake Pvt Ltd (Gujrat High Court). In view of above judgments including Binding decision of Hon'ble Gujrat High Court, since substantive addition is deleted, protective addition of Rs.41,67,45,000/- is directed to be deleted.*

*6.4 Further, the second addition of Rs.3,27,250/- on protective basis was made as amount of 5000 dollars was found from the business premises of M/s Hallmark Tour. It is noted that M/s Hallmark Tour made disclosure of Rs.3.81 Cr. So, in my view, there is no requirement of separate addition in the hands of the appellant. Hence, addition of Rs.3,27,250/- is also directed to be deleted.*

*6.5 Accordingly, Ground No.1 is allowed.*

5. After having gone through the facts of the case and hearing the parties at length, we found that additions in this case were made in the hands of the assessee on

protective basis, whereas substantive additions were made in the hands of Shri jayantibhai Babariya of Avadh Group, Surat. However Ld. CIT(A) and Coordinate Bench of ITAT have already deleted the substantive additions so made. Therefore as per the settled preposition of law in the case of **Shri Prabodh Chandra Jayantibhai Patel, ITA No. 134 to 137/SRT/2021**, wherein it has been held that '*once substantive additions are deleted then the protective additions are not sustainable*'. Therefore in our view Ld. CIT(A) has not committed any illegality in deleting the protective additions in the present case.

6. No new facts or circumstances have been brought before us by the revenue during the course of arguments in order to controvert or rebut the findings so recorded by Ld.CIT(A). Therefore we have no reasons to interfere into or deviate from the lawful findings so recorded by Ld. CIT(A). Hence, we uphold the decision of the Ld. CIT(A) and dismiss the grounds raised by the revenue.

7. In the result, the appeal filed by the revenue stands dismissed.

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8. as the facts and circumstances in this appeal is identical to ITA No. 506/SRT/2025 for the AY 2017-18 (except variance in figures) would apply '***mutatis mutandis***' for this appeal also. Accordingly, the grounds of appeal of the revenue stands dismissed.

9. In the result, both the appeals filed by the revenue are stands dismissed.

Order pronounced in the open court on 22/12/2025

Sd/-  
**OM PRAKASH KANT**  
**ACCOUNTANT MEMBER**

Sd/-  
**SANDEEP GOSAIN**  
**JUDICIAL MEMBER**

Surat:  
Dated: 22/12/2025

*KRK, Sr. PS.*

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt.Registrar)  
**ITAT, Surat**