



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट ।
IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
DR. DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 288/RJT/2022
Assessment Year: (2013-14)
(Physical Hearing)

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|--|--------------------------------|---|
| Classic Network Pvt. Ltd., 202, Arpan Complex, Kalwad Road, Opp. Swaminarayan Temple, Rajkot – 360001 | बनाम / Vs. | The Deputy Commissioner of Income Tax, Central Circle -1, Amruta Estate Building, Nr. Girnar Cinema, M. G. Road, Rajkot-360001 |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCC8197Q | | |
| (Assessee) | | (Respondent) |

आयकर अपील सं./ITA No. 176/RJT/2024
Assessment Year: (2014-15)

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| Classic Network Pvt. Ltd., 202, Arpan Complex, Kalwad Road, Opp. Swaminarayan Temple, Rajkot – 360001 | बनाम / Vs. | The Deputy Commissioner of Income Tax, Central Circle -1, Amruta Estate Building, Nr. Girnar Cinema, M. G. Road, Rajkot-360001 |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCC8197Q | | |
| (Assessee) | | (Respondent) |

आयकर अपील सं./ITA No. 286/RJT/2024
Assessment Year: (2014-15)

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| The Deputy Commissioner of Income Tax, Central Circle -1, Amruta Estate Building, Nr. Girnar Cinema, M. G. Road, Rajkot-360001 | बनाम / Vs. | Classic Network Pvt. Ltd., 202, Arpan Complex, Kalwad Road, Opp. Swaminarayan Temple, Rajkot – 360001 |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCC8197Q | | |
| (Assessee) | | (Respondent) |

आयकर अपील सं./ITA No. 289/RJT/2022
Assessment Year: (2015-16)

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| Classic Network Pvt. Ltd., 202, Arpan Complex, Kalwad Road, Opp. Swaminarayan Temple, Rajkot – 360001 | बनाम / Vs. | The Deputy Commissioner of Income Tax, Central Circle -1, Amruta Estate Building, Nr. Girnar Cinema, M. G. Road, Rajkot-360001 |
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCC8197Q

(Assessee)

(Respondent)

आयकर अपील सं./ITA No. 273/RJT/2022

Assessment Year: (2015-16)

| | | |
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| The Deputy Commissioner of Income Tax, Central Circle -1, Amruta Estate Building, Nr. Girnar Cinema, M. G. Road, Rajkot-360001 | बनाम / Vs. | Classic Network Pvt. Ltd., 202, Arpan Complex, Kalwad Road, Opp. Swaminarayan Temple, Rajkot – 360001 |
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCC8197Q

(Assessee)

(Respondent)

आयकर अपील सं./ITA No. 177/RJT/2024

Assessment Year: (2016-17)

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| Classic Network Pvt. Ltd., 202, Arpan Complex, Kalwad Road, Opp. Swaminarayan Temple, Rajkot – 360001 | बनाम / Vs. | The Deputy Commissioner of Income Tax, Central Circle -1, Amruta Estate Building, Nr. Girnar Cinema, M. G. Road, Rajkot-360001 |
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCC8197Q

(Assessee)

(Respondent)

आयकर अपील सं./ITA No. 287/RJT/2024

Assessment Year: (2016-17)

| | | |
|--|--------------------------------|--|
| The Deputy Commissioner of Income Tax, Central Circle -1, Amruta Estate Building, Nr. Girnar Cinema, M. G. Road, Rajkot-360001 | बनाम / Vs. | Classic Network Pvt. Ltd., 202, Arpan Complex, Kalwad Road, Opp. Swaminarayan Temple, Rajkot – 360001 |
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCC8197Q

(Assessee)

(Respondent)

आयकर अपील सं./ITA No. 03/RJT/2021

Assessment Year: (2017-18)

| | | |
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| Classic Network Pvt. Ltd., 202, Arpan Complex, Kalwad Road, Opp. Swaminarayan Temple, Rajkot – 360001 | बनाम / Vs. | The Deputy Commissioner of Income Tax, Central Circle -1, Amruta Estate Building, Nr. Girnar Cinema, M. G. Road, Rajkot-360001 |
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCC8197Q

(Assessee)

(Respondent)

आयकर अपील सं./ITA No. 13/RJT/2021
Assessment Year: (2017-18)

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| The Assistant Commissioner of Income Tax, Central Circle -1, Amruta Estate Building, 2 nd Floor, Nr. Girnar Cinema, M. G. Road, Rajkot-360001 | बनाम / Vs. | Classic Network Pvt. Ltd., 202, Arpan Complex, Kalwad Road, Opp. Swaminarayan Temple, Rajkot – 360001 |
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCC8197Q

(Assessee)

(Respondent)

आयकर अपील सं./ITA No. 290/RJT/2022
Assessment Year: (2018-19)

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| Classic Network Pvt. Ltd., 202, Arpan Complex, Kalwad Road, Opp. Swaminarayan Temple, Rajkot – 360001 | बनाम / Vs. | The Deputy Commissioner of Income Tax, Central Circle -1, Amruta Estate Building, Nr. Girnar Cinema, M. G. Road, Rajkot-360001 |
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCC8197Q

(Assessee)

(Respondent)

आयकर अपील सं./ITA No. 274/RJT/2022
Assessment Year: (2018-19)

| | | |
|--|--------------------------------|--|
| The Deputy Commissioner of Income Tax, Central Circle -1, Amruta Estate Building, Nr. Girnar Cinema, M. G. Road, Rajkot-360001 | बनाम / Vs. | Classic Network Pvt. Ltd., 202, Arpan Complex, Kalwad Road, Opp. Swaminarayan Temple, Rajkot – 360001 |
|--|--------------------------------|--|

स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCC8197Q

(Assessee)

(Respondent)

आयकर अपील सं./ITA No. 291/RJT/2022
Assessment Year: (2019-20)

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|--|--------------------------------|--|
| Classic Network Pvt. Ltd., 202, Arpan Complex, Kalwad Road, Opp. Swaminarayan Temple, Rajkot – 360001 | बनाम / Vs. | The Deputy Commissioner of Income Tax, Central Circle -1, Amruta Estate Building, Nr. Girnar Cinema, M. G. Road, Rajkot-360001 |
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCC8197Q

(Assessee)

(Respondent)



आयकर अपील सं./ITA No. 275/RJT/2022

Assessment Year: (2019-20)

| | | |
|--|------------------|--|
| The Deputy Commissioner of Income Tax, Central Circle -1, Amruta Estate Building, Nr. Girnar Cinema, M. G. Road, Rajkot-360001 | बनाम / Vs. | Classic Network Pvt. Ltd., 202, Arpan Complex, Kalwad Road, Opp. Swaminarayan Temple, Rajkot – 360001 |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCC8197Q | | |
| (Assessee) | | (Respondent) |

आयकर अपील सं./ITA No. 178/RJT/2024

Penalty appeal u/s 270A

Assessment Year: (2017-18)

| | | |
|--|------------------|--|
| Classic Network Pvt. Ltd., 202, Arpan Complex, Kalwad Road, Opp. Swaminarayan Temple, Rajkot – 360001 | बनाम / Vs. | The Deputy Commissioner of Income Tax, Central Circle -1, Amruta Estate Building, Nr. Girnar Cinema, M. G. Road, Rajkot-360001 |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCC8197Q | | |
| (Assessee) | | (Respondent) |

निर्धारित की ओर से/Assessee by : Shri D. M. Rindani, Ld. AR &
Ms. Devina Patel, Ld. AR
राजस्व की ओर से/Respondent by : Shri Sanjay Punglia, Ld. CIT(DR)

सुनवाई की तारीख/Date of Hearing : 22/01/2026
घोषणा की तारीख/Date of Pronouncement : 30/01/2026

आदेश /ORDER

Per, Bench:

This is bunch of 14 appeals, consisting eight appeals filed by the assessee and six appeals filed by the revenue, all these appeals are directed against the separate orders passed by the Commissioner of Income tax (Appeals), which in turn arise out of separate assessment orders passed by the assessing officer under sections 143(3) r.w.s.147 of the Act, and a penalty order passed by the assessing officer under section 270A of the Act.



2. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order.

3. First, we shall take following appeals of assessee and Revenue:

- (i) Assessee's appeal in ITA No.288/RJT/2022, for assessment year 2013–14.
- (ii) Assessee's appeal in ITA No.176/RJT/2024, for assessment year 2014–15.
- (iii) Revenue's appeal in ITA No.286/RJT/2024, for assessment year 2014–15.

In these appeals, the assessee has challenged the reopening of assessment under section 147/148 of the Act, on the plea that in order to reopen the assessment under section 147/148 of the Act, the primary condition is that the approval given by the higher authorities under section 151 of the Act, is neither digitally signed nor manually signed, hence, assessing officer does not have jurisdiction to reopen the assessment under section 147/148 of the Act. In order to adjudicate, this technical ground of the assessee, for assessment years 2013–14 and for assessment 2014–15, the grounds as well as the facts narrated in ITA No.288/RJT/2022, for assessment year 2013–14, have been taken into consideration for deciding the above appeals *en masse*.

4. Grounds of appeal raised by the assessee, in lead case in ITA 288/Rjt/2022 for Assessment Year 2013-14, are as follows:

“1. The learned Commissioner of Income Tax (Appeals) - 11, Ahmedabad erred in upholding the assessment u/s 143(3) r.w.s. 147 of the Act.

2. The learned Commissioner of Income Tax (Appeals) - 11, Ahmedabad erred in estimating suppressed sales of Rs. 5,01,82,334/- being 2% of accounted turnover and making addition of Rs. 40,14,587/- by estimating 8% gross profit thereon, thereby enhancing it from Rs. 25,00,000/- made by the A.O.

3. The Assessee craves leave to add, amend, alter and withdraw any ground of appeal anytime up to the hearing of this appeal.”



5. Before we proceed to adjudicate the above technical ground of the assessee, we advert to the relevant facts, on merits of the case of the assessee, in the succinct manner, to appreciate the controversy and the issue for adjudication. The brief history of the case is that the assessee is a closely held Private Limited company, Indian Resident, civil contractor engaged in the business of development of infrastructure, facility, that is, construction of roads, dams, water supply, water purification on behalf of Government. On 26.09.2018, the business premise of the assessee, that is, M/s. Classic Network Pvt. Ltd. (CNPL) was covered under survey proceedings u/s 133A of the Act, as part of the Search and seizure action named "Operation Star Alliance" conducted by the Investigation Wing of the Income Tax Department. During the course of survey proceedings, at the premise of M/s. Classic Network Pvt. Ltd (CNPL), various incriminating documents in the form of loose papers and digital data in the form of computer backup were found and impounded. The impounded data revealed unaccounted transactions pertaining to different financial years. While passing the assessment/reassessment orders, the assessing officer had made various additions based on various loose documents and papers/digital data impounded during the course of survey action. The additions made by the assessing officer in the assessment orders are summarized as follows:

- (a) For assessment year (AY) 2013-14, the assessing officer made an addition to tune of Rs. 25,00,000/- u/s 69C of the Act, on account of unexplained expenditure.
- (b) For assessment year (AY) 2014-15, the assessing officer made an addition to tune of Rs.5,99,06,750/- on account of unexplained expenditure under section 69C of the Act and on account of profit chargeable to tax as per section 41(1) of the Act.



6. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Ld.CIT(A), who has enhanced the assessment, in the assessment year 2013– 14, from Rs.25,00,000/- to Rs.40,14,586/- .For assessment year 2014–15, the ld CIT(A) partly allowed the appeal of the assessee by estimating the gross profit on unrecorded sales/receipt of Rs.5,99,06,750/-, at the rate of 9% at Rs.53,91,608/- (9% of Rs.5,99,06,750).

7. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

8. Shri D. M. Rindani, Learned Counsel for the assessee, argued that during the re-assessment proceedings, the approval given by the Income Tax Authority, u/s 151 of the Act is unsigned, therefore, the reassessment order framed by the assessing officer, based on defective approval under section 151 of the Act, may be quashed. The ld. Counsel thus stated that re-assessment proceedings initiated by the assessing officer is bad in law, as it is based on the defective approval, given by the Income Tax Authority under section 151 of the Act. Therefore, re-assessment proceedings u/s 147/148 of the Act is vitiated on account of defective approval u/s 151 of the Act, hence, reassessment order framed by the assessing officer under section 147, read with section 143(3) of the Act, should be treated invalid, and therefore, the reassessment order framed by the assessing officer, may be quashed and for that, learned Counsel for the assessee relied on the judgement of Hon'ble High Court of Allahabad in the case of Vikas Gupta (2022) 142 taxmann.com 253 (Allahabad HC). The learned Counsel also relied on the decision of the Coordinate Bench of ITAT Rajkot in the case of Aditya Plastic vide ITA No. 185/Rjt/2024, for A.Y. 2013-14 (Rajkot Tribunal).



9. On the other hand, the Ld. DR for the revenue submitted that when the approval document is generated through system (computer system of the income tax department) then it should be treated valid document in the eye of law, even if, it is not signed by the appropriate income tax Authority.

10. We have heard the rival parties and have gone through the material placed on record. For the sake of clarity and also being pertinent, we reproduce the approval, for assessment year 2013–14, given by the Income Tax Authority, under section 151 of the Act, as follows:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
CIT CEN AHM AT RKT

Approval u/s 151 of the IT Act, 1961

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|--------------------|----------------|----------------------|---|
| PAN: AABCC8197Q | AY: 2013-14 | Dated: 12/03/2020 | DIN & Document No : ITBA/AST/S/118/2019-20/1026521584(1) |
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| Name and Address of Assessee: CLASSIC NETWORK PRIVATE LIMITED |
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|----------------------------------|--------------|
| Approving Authority | PCIT/CIT |
| Category | Reassessment |
| Income Escaped Amount >= 1 Lakh | Yes |
| Income Escaping Assessment (Rs.) | 25,00,000 |

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|--------------------------|-----------------------|
| Proposal Details: | |
| Name of Officer | GURPREET SINGH |
| Designation | DCIT/ACIT CENT-1, RKT |
| Date of Proposal | 20/01/2020 |
| Reason(s) to Believe: | As per Annexure |

| | |
|--------------------------------|---|
| Recommendation Details: | |
| Name | ROHIT ASSUDANI |
| Designation | ADDL.CIT/JT.CIT CEN RANGE, RKT |
| Recommended (Yes/No) | Yes |
| Recommendation Date | 20/02/2020 |
| Recommendation Remarks | I have gone through the facts of the case vis.a.vis. the reasons recorded by the A.O. I am satisfied that this is a fit case for issuing notice u/s. 148 of the I.T. Act. Recommended, accordingly. |

| | |
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| Approval Details: | |
| Name | SANDEEP JAIN |
| Designation | CIT CEN AHM AT RKT |
| Approval Status | Approved |
| Date of Approval | 12/03/2020 |
| Remarks of approving authority | I have carefully perused the reasons recorded and the facts mentioned therein. The assessee has made cash payment which is covered under the provision of section 40(A)(3). The source of cash is also not established hence I am satisfied that income has escaped assessment as not disclosed truly and correctly. Approval is accorded to issue notice u/s. 148 r.w.s 147 of the I.T Act. |

SANDEEP JAIN

Note: If digitally signed, the date of digital signature may be taken as date of document.
RAYAN CHAMBER, AHMEDABAD, INCOME TAX OFFICE, NR NEHRU BRIDGE, ASHRAM ROAD CIRCLE, ASHRAM ROAD, AHMEDABAD,
Gujarat, 380009

Document identification No.



ANNEXURE

REASONS RECORDED FOR THE NOTICE U/S.148 OF THE I.T. ACT

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|----------------------------------|---|
| Name of the Assessee and address | CLASSIC NETWORK PRIVATE LIMITED 202, ARPAN COMPLEX, KALAWAD ROAD, OPP SWAMINARAYAN TEMPLE, RAJKOT |
| PAN | AABCC8197Q |
| A.Y. | 2013-14 |
| Jurisdictional Assessing Officer | JCIT(OSD), Central Circle-1, Rajkot |

1. The business premises of M/s Classic Network Private Limited was covered in the search/survey action named "Operation Star Alliance". The search/survey was conducted on 26-09-2018. The group cases have been centralized recently with this circle and the search related block assessments u/s 153A/153C r.w.s.143(3) of the Act for A.Y.2013-14 to 2018-19 and u/s 143(3) for A.Y.2019-20 are pending. Meanwhile, for A.Y.2012-13. Further, certain incriminating materials found and impounded from the business premises of M/s Classic Network Private Limited during the course of survey proceeding.

2. As per appraisal report and impounded material, a paper was impounded as page No.32 of print out of digital data back up from M/s Classic Network Pvt. Ltd. As per this page, there is cash payment of Rs. 25 lacs. This is working of bill of Bhadar Stone Metal Suppliers-Bipinbhai. The total bill of Bhadar Stone Crusher is Rs. 47.46,907/-, out of that the assessee has paid cash of Rs. 25,00,000/- on dated 05/02/2013 and 28/03/2013 of Rs. 10,00,000/- and Rs. 15,00,000/- respectively.. On verification of this page, it is noticed that M/s Classic Network Private Limited has made payment against the bill raised by the contractor in cash mode to the extent of Rs.25,00,000/- on various dates during F.Y.2012-13.

3. During the recording of statements u/s 131(1A) from Shri Smitbhai Parshottambhai Kaneria, the Managing Director of M/s Classic Network Private Limited, the said impounded paper was provided to him and he has confronted the question about the impounded page and he was requested transaction written in the page by furnishing the ledger accounts of the said to explain the contractor of relevant period and also about cash payments made to the contractor. However, he has not given any explanation on the issue.

4. In view of the above, it is clear that the assessee company has violated the provision of section 40A(3) of the Act by making payment of total Rs.25,00,000/- to the contractor in cash and therefore the entire amount of Rs.25,00,000/- requires to be added in the hands of M/s Classic Network Private Limited for F.Y.2012-13 related to A.Y. 2013-14 to protect the interest of revenue. Further, there are also possibilities open that the assessee company would not have debited these expenses in the books of account and made the payment through unaccounted sources executing out of books transaction.



5. *The return of income filed by M/s Classic Network Private Limited for A.Y.2013-14 was processed u/s 143(1) on 28-09-2014 at returned income of Rs. 10,55,46,860/- Thereafter, the case was selected for scrutiny and the assessment u/s 143(3) was completed on 25-03-2016 at Rs.10,55,74,940/-. Thus, the assessee has neither disclosed the above facts in his return of income nor before the A.O.during the assessment proceedings. As such, an income of Rs.25,00,000/- chargeable to tax has escaped assessment by reason of failure on the part of assessee to disclose fully and truly all material facts necessary for his assessment. It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration and assessment as stipulated u/s 2(40) of the Act was made u/s u/s 143(3) of the Act. Therefore, provisions of clause (c) of explanation 2 to section 147 are applicable to facts of this case and I have reasons to believe that the amount of Rs.25,00,000/-being sum as unexplained cash transaction[also violation of section 40A(3) of the Act] is chargeable to tax has escaped within the meaning of Sec 147 of the Act and the assessment year under consideration is deemed to be a case where Income chargeable to tax has escaped assessment. Thus, Rs.25,00,000/-is required to be taxed in the case of M/s Classic Network Private Limited in the capacity of company in view of the above said facts.*

6. *In this case more than four years have elapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice u/s 148 has been obtained separately from Principal Commissioner of Income Tax as per the provisions of section 151 of the Income-tax Act.”*

11. The approval, for assessment year 2014–15, given by the Income Tax Authority, under section 151 of the Act, as follows:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
PCIT (Central), Ahmedabad AT R

Approval u/s 151 of the IT Act, 1961

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|--------------------|----------------|----------------------|---|
| PAN: AABCC8197Q | AY: 2014-15 | Dated: 28/03/2021 | DIN & Document No : ITBA/AST/S/118/2020-21/1031843059(1) |
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|---|--|
| Name and Address of Assessee: CLASSIC NETWORK PRIVATE LIMITED | |
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|----------------------------------|--------------|
| Approving Authority | PCIT/GIT |
| Category | Reassessment |
| Income Escaped Amount >= 1 Lakh | Yes |
| Income Escaping Assessment (Rs.) | 5,99,06,750 |

| | |
|--------------------------|-----------------------|
| Proposal Details: | |
| Name of Officer | MARIHANT SINGHI |
| Designation | DCIT/ACIT CENT-12 RKT |
| Date of Proposal | 09/03/2021 |
| Reason(s) to Believe: | As per Annexure |

| | |
|--------------------------------|---|
| Recommendation Details: | |
| Name | MUKESH KUMAR SHARMA |
| Designation | ADDL CIT/JT. CIT-CEN RANGE RKT |
| Recommended (Yes/No) | Yes |
| Recommendation Date | 09/03/2021 |
| Recommendation Remarks | In view of the reasons recorded by the AO, I am satisfied that this is a fit case for initiation of proceedings u/s. 147. Hence, recommended for said approval. |

| | |
|--------------------------------|--|
| Approval Details: | |
| Name | SANDEEP JAIN |
| Designation | PCIT (Central), Ahmedabad AT R |
| Approval Status | Approved |
| Date of Approval | 28/03/2021 |
| Remarks of approving authority | I have gone through the detailed reasons recorded by AO. It is apparent from the incriminating documents that assessee has unaccounted cash transactions which has not been disclosed and escaped assessment. Therefore, I am satisfied on the reasons recorded by the Assessing Officer that income has escaped assessment due to failure of assessee to disclose fully and truly all the material facts. Hence it is a fit case for the issuance of notice u/s 148 of the I. T. Act. Approval is accorded to initiate proceedings u/s. |

Note: If digitally signed, the date of digital signature may be taken as date of document.
NARAYAN CHAMBER, AHMEDABAD, INCOME TAX OFFICE, NR NEHRU BRIDGE, ASHRAM ROAD CIRCLE, ASHRAM ROAD, AHMEDABAD,
Gujarat, 380009

* DIN- Document Identification No.

12. We have gone through the approval given by the income tax Authority under section 151 of the Act for assessment year 2013-14 and for assessment year 2014-15 and noticed that these two approvals have neither been signed digitally nor signed manually, by the income tax authority. Under the Income Tax Act, 1961, the Specified Authority defined in



Section 151 plays a critical oversight role in the process of assessing income that has escaped assessment. Their primary function is to provide mandatory prior approval before certain jurisdictional actions can be taken by an Assessing Officer. According to Section 151, the "Specified Authority" for the purposes of Sections 148 and 148A is the Additional Commissioner, the Additional Director, the Joint Commissioner, or the Joint Director etc. An Assessing Officer is prohibited from issuing a notice under Section 148 (which initiates the reassessment process) without prior approval from the specified authority if the information suggesting the escape of income was received through a scheme notified under Section 135A of the Act. Under the procedure for determining whether income has escaped assessment, the Assessing Officer must obtain the prior approval of the specified authority to pass an order under Section 148A(3) of the Act. This order determines whether or not a case is "fit" to issue a notice under Section 148 based on available material and the assessee's reply to a show-cause notice. The role of the Specified Authority under Section 151 of the Act, is to act, as a statutory check, ensuring that reassessment proceedings and notices are only initiated after a high-ranking official has reviewed the information and granted formal sanction. Therefore, approval under section 151 of the Act, should be signed by the appropriate income tax Authority.

13. Therefore, we note that without a valid and properly signed approval under Section 151 of the Income Tax Act, 1961, reassessment proceedings under Sections 147/148 of the Act cannot be validly initiated. The requirement of approval under Section 151 is mandatory and jurisdictional; failure to comply with this condition precedent renders the entire reassessment invalid. The law is not a mere formality, it safeguards taxpayers against arbitrary reopening of assessments. Under Section 151 of the Act, before issuing a notice under Section 148 of the Act, (which



triggers reassessment under Section 147), the Assessing Officer must obtain prior approval from the specified higher authority (e.g., Commissioner, Principal Commissioner, Principal Chief Commissioner, etc., as applicable) and must record the reasons on which this approval is based. The statutory scheme makes this a condition precedent to the validity of any reassessment proceedings. Therefore, we find that Section 151 sanction is jurisdictional, without it, the assessing officer has no authority to issue a notice under Section 148 of the Act, and the proceedings would be void ab initio. A document that is not signed cannot automatically be treated as a valid document in Indian law. If the approval note under Section 151 of the Act is not signed, reassessment proceedings initiated thereafter are to be quashed.

14. In the assessee's case under consideration, we find that approval u/s 151 of the Act, by the CIT is unsigned and hence not proper. That is the approval note dated 12-03-2020 granted by the CIT, Central - Ahmedabad at Rajkot is unsigned by the approving authority; it bears neither a physical nor a digital signature; one of which is a must to authenticate the communication of approval. In other words, due to absence of digital signature, there should have been a physical signature by the approving authority, which is ex-facie not there on a copy supplied by the Department to the assessee hence in absence of any signature, the approval becomes unauthenticated and consequently improper and non-est, non-existent and invalid in law, for that reliance is placed on the judgement of Hon'ble Allahabad High Court in the case of *Vikas Gupta* (2022) 142 taxmann.com 253 (Allahabad HC).

15. On identical facts, our view is fortified by the decision of the Co-ordinate Bench of ITAT- Rajkot in the case of *Aditya Plastic*, vide ITA No.



185/Rjt/2024, A.Y. 2013-14 (Rajkot Tribunal), wherein the Tribunal held as follows:

“8. We have heard both the parties, perused the material available on record. We note that the approval of the PCIT is without any signature of the Ld.PCIT and without generating any DIN number which is reproduced below:

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX
PCIT 3, RAJKOT**

Approval u/s 151 of the IT Act, 1961

| | | | |
|---|----------------|---|---|
| PAN: AAJFA4558N | AY: 2013-14 | Dated: 20/03/2020 | DIN & Document No : ITBA/AST/S/118/2019-20/1026810985(1) |
| Name and Address of Assessee: ADITYA PLASTIC | | | |
| Approving Authority | | PCIT/CIT | |
| Category | | Assessment | |
| Income Escaped Amount >= 1 Lakh | | Yes | |
| Income Escaping Assessment (Rs.) | | 22,35,842 | |
| Proposal Details: | | | |
| Name of Officer | | KAMLESH KESHAVLAL PANDYA | |
| Designation | | ITO WD 3(1)(2), RKT | |
| Date of Proposal | | 18/03/2020 | |
| Reason(s) to Believe: | | As per Annexure | |
| Recommendation Details: | | | |
| Name | | SUHAS JANARDAN MISTRY | |
| Designation | | JCIT RANGE 3(1), RAJKOT | |
| Recommended (Yes/No) | | Yes | |
| Recommendation Date | | 19/03/2020 | |
| Recommendation Remarks | | On examination of the reasons recorded u/s 147, the case is fit for issue of notice u/s 148 | |
| Approval Details: | | | |
| Name | | NIRAJ KUMAR | |
| Designation | | PCIT 3, RAJKOT | |
| Approval Status | | Approved | |
| Date of Approval | | 20/03/2020 | |
| Remarks of approving authority | | On the basis of information in possession of the AO, further verification done by the AO, it has been, prima facie, found that there is a case of escapement of tax and I am satisfied that it is a fit case for issue of notice u/s 148 of the IT Act. | |

NIRAJ KUMAR
PCIT 3, RAJKOT

Note: If digitally signed, the date of digital signature may be taken as date of document.
JAYAKAR BHAWAN, RACE COURSE RING ROAD, RAJKOT, Gujarat, 360001
Email: RAJKOT.CIT3@INCOMETAX.GOV.IN.

* DIN- Document Identification No.

8.1. Therefore, the Ld.Counsel for the assessee has stated that the approval u/s.151 of the Act dated 30/03/2020 is not signed by the Ld.PCIT and, hence, it is not considered as a valid approval/satisfaction and, thus, the notice u/s.148 of the Act issued on the basis of said approval is bad in law and without jurisdiction. For that, reliance is placed on the judgement of Hon'ble High Court of Allahabad in the case of Vikas Gupta reported at (2022) 142 taxmann.com 253 (Allahabad HC). The relevant part of judgement is reproduced:

13. Thus, as per provision of section 151 of the Income-tax Act, 1961, an assessing officer gets jurisdiction to issue notice to an assessee under



section 148 of the Act, 1961 after Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax is satisfied on the reason recorded by the assessing officer that it is a fit case for issuing such notice. The date and time of the approval granted digitally under section 151 of the Act and the date and time of the notice under section 148 of the Act, shows that the satisfaction was recorded by the PCTT digitally after the notice under section 148 was digitally signed.

29. In the present set of facts there was no valid satisfaction recorded by the by the Prescribed Authority under section 151 of the Act, 1961 when the Assessing Officer issued notice to the assessee under section 148 of the Act, 1961. At the time when the notice under section 148 of the Act, 1961 was issued by the Assessing Officer to the petitioner there was no valid satisfaction recorded by the Prescribed Authority ie. the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. Subsequent to issuance of the notice under section 148 of the Act, 1961 by the Assessing Officer, the satisfaction under section 151 was digitally signed by the Prescribed Authority. Therefore, the point of time when the Assessing Officer issued notices under section 148, he was having no jurisdiction to issue the impugned notices under section 148 of the Act, 1961. Consequently the impugned notices issued by the Assessing Officer under section 148 of the Act, 1961 were without jurisdiction. The questions no. (a) and (b) are answered accordingly.

8.2. Therefore, based on these facts and circumstances of the case, the assessment order framed by the AO needs to be quashed as there was no approval u/s.151 of the Act for initiating the re-assessment proceedings by the Ld.PCIT, therefore, on this count the assessment order framed by the AO should be quashed.”

16. We are not that the DSC Policy-2018, issued by the Directorate of Income-tax (Systems) read with its letter No. F/181 dated 16-02-2018 requires officers to issue letters, notices, orders even within the Department by using digital signature. Even this policy is not followed in impugned matter. Further, while granting approval u/s 151 of the Act, the Commissioner of Income-tax has mentioned that assessee has made cash payment which is covered u/s 40A(3) of the Act. Hence, the approval was granted for addition u/s 40A(3) and not granted for addition to be made u/s 69C of the Act, vide approval under section 151 of the Act, for assessment year 2013–14, reproduced above in this order. Therefore, we note that provisions of section 151 of the Act is not an empty formality, it is a jurisdictional requirement for the assessing officer to exercise power to



issue notice u/s 148 of the Act, and if such approval is not signed, then consequences assessment proceedings, are invalid. Therefore, respectfully following the binding precedent of the Co-ordinate Bench of ITAT-Rajkot in the case of Aditya Plastic(supra), we quash the reassessment proceedings for assessment year 2013–14 and assessment year 2014–15, being void *ab-initio*.

17. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

18. In the result, appeals of the assessee, in ITA No.288/RJT/2022 and in ITA No. 176/RJT/2024, are allowed, whereas appeal of the revenue in ITA No.286/RJT/2024, is dismissed.

19. Now, we shall take assessee's appeal in ITA No.289/RJT/ 2022, for assessment year 2015- 16 and assessee 's appeal in ITA No. 177/RJT/ 2024 for assessment year 2016- 17 and corresponding cross appeals of revenue in ITA No. 273/RJT/ 2022 and in ITA No. 287/RJT/ 2024, respectively. In order to adjudicate these appeals, we take lead case in ITA No. 177/RJT/ 2024, for assessment year 2016- 17.

20.The grounds of appeal raised by the assessee, on merit, in lead case in ITA 177/Rjt/2024 for AY 2016-17, are as follows:

"1 The learned commissioner of Income tax (appeals) – 11, Ahmedabad erred in rejected the books of accounts and estimated the GP @ 9% instead of GP shown @8.1% and confirm the addition in respect of estimated the GP @ 9% on unrecorded sales of Rs.17,39,72,425/- which comes to Rs.1,56,57,518/-, is totally wrong, unwarranted, unjustified and bad in law.

2. The learned commissioner of Income tax (appeals) – 11, Ahmedabad erred in confirming the action of the assessing officer in respect of initiated the penalty proceedings u/s 271(1)(c) & 271AA, is totally wrong, unwarranted, unjustified and bad in law.



3. *The learned commissioner of Income tax (appeals) – 11, Ahmedabad erred in confirming the action of the assessing officer in respect of charging the interest u/s.234 A/B/C is totally wrong, unwarranted, unjustified and bad in law.*

4 *Your assessee reserves the right in addition or alteration in the grounds of appeal at the time of hearing.*

21. The assessee also raised additional grounds of appeal in ITA 177/Rjt/2024 for assessment year 2016-17, which are reproduced below:

Legal ground:

"The Learned Commissioner Appeals - 11, Ahmedabad erred in upholding action of the DCIT/ACIT, Central-1, Rajkot in issuing notice u/s 148 and framing of assessment u/s 147, which is bad in law."

22. Learned Counsel for the assessee, respectfully submitted that the aforesaid ground of appeal is purely legal in nature and does not require any fresh facts to be investigated, as it arises from the facts which are on record and goes to the root of the matter, therefore, above legal ground of the assessee may be admitted in the interest of justice, and it should be adjudicated, first. On the other hand, learned DR for the revenue, opposed the prayer of the assessee to admit the above legal ground.

23. We have considered the request of the assessee for admission of **additional ground**, which is purely of legal nature. On the basis of material available on record it is certain that additional ground raised by the assessee challenging the very jurisdiction of the AO to pass reassessment order is no longer res-Integra and it is well settled that an assessee can raise a legal ground at any stage of proceedings as held by the Apex Court in the case of **CIT v/s. Varas Internation** reported in **284 ITR 80(SC)** and **National Thermal Power Co Ltd. v/s CIT** reported in **229 ITR 383 (SC)** and Special Bench decision in the case of **DHL Operators** reported in **108 TTJ 152(SB)**. Keeping in view the facts and circumstances of the present case, we are of the view that the issue raised



in 'additional ground' regarding challenging the reassessment proceedings under section 147/148 of the Act, goes to the root of the matter and hence needs to be admitted. Hence, we hereby allow the assessee to raise additional ground of appeal. Since this ground raises question about the assumption of jurisdiction and validity of reassessment order itself, therefore we thought it appropriate to take up and decide this additional ground first.

24. For assessment year 2015–16, the assessee had already raised the above legal ground in the Memo of Appeal filed in Form 36 before the Bench, which reads as follows:

“The Learned Commissioner of Income tax (Appeals)–11 Ahmedabad, erred in upholding the assessment under section 143(3) read with section 147 of the Act”

25. Since, the legal grounds raised by the assessee, for assessment year 2015–16 and for assessment year 2016–17, are similar and identical. Therefore, in order to narrate the necessary facts, we take lead case in ITA No. 177/RJT/2024, for assessment year 2016–17.

26. Brief facts qua the issue as per lead case in ITA No. 177/RJT/2024, are as follows: Initial comments of the assessing officer in the assessment order reads as follows:

“In this case, assessment order was passed on 28.03.2023 and assessment order was issued and served to assessee, vide Din & order No.ITBA/AST/S/147/2022-23/1051608029(1), dated 28.03.2023. But due to some technical issue in ITBA system, incomplete assessment order was issued. Therefore, now the complete assessment order is being issued herewith”.

27. The assessee, a private limited company, is a civil contractor engaged in the business of development of infrastructure facility, that is, construction of roads, dams, water supply, water purification on behalf of Government. The assessee has filed its return of income for assessment year (A.Y.) 2016-17, on 21-10-2016, declaring income of Rs.



11,84,14,510/-. Subsequently, on 26.09.2018, the business premise of the assessee, M/s Classic Network Pvt Ltd (CNPL), was covered under survey proceedings u/s 133A of the Act, as part of the Search and seizure action named "Operation Star Alliance" conducted by the investigation wing. Survey proceedings were carried out at the premises of associated entities. Various builders were covered under this operation. Inquiries revealed that cash was being parked in the real estate projects carried out by these builders. During the course of survey proceedings, at the premise of M/s Classic Network Pvt Ltd (in brief "CNPL"), various incriminating documents in the form of loose papers and digital data in the form of computer backup were found and impounded. The impounded data revealed unaccounted transactions pertaining the year under consideration. In view of the impounded documents containing unaccounted transactions related to the assessee, the assessment for assessment year (A.Y.) 2016-17 has been reopened as per provisions of section 147 of the Act, after recording the reasons for re-opening and obtaining approval of the Pr. CIT(Central), Ahmedabad u/s 151 of the Act, dated 22/03/2021. The notice u/s 148 of the Act has been issued to the assessee, on 23/03/2021. On 24-03-2021, the assessee has filled a return of income in response to notice u/s 148, declaring therein total income of Rs. 11,84,14,510/-. Subsequently, notice u/s 143(2) was issued and served upon the assessee. Thereafter, notices u/s 142(1) calling for various details relevant to the assessment were issued and served upon the assessee. In response, Authorized Representative of the assessee, has submitted various details from time to time.

28. The assessing officer, vide notice u/s 142(1) cum show -cause notice dated 19/08/2021, of the assessing officer, at query no. 21, the assessee has been asked to submit page wise analysis with detailed explanation on the



incriminating documents impounded from the premise of the company during the survey. In response, vide assessee's submission dated 26/08/2021 (received by AO on 13/09/2021), the assessee has furnished page wise explanations, before the assessing officer.

29. The assessing officer, again issued show cause notice to the assessee, vide show -cause notice dated 28-02-2023, wherein, the assessee has been asked to explain, as to why following additions should not be made to the total income reported by the assessee, for the year under consideration:

| Page number of relevant impounded document | Amount in Rs. | Relevant Provision of the Income-tax Act |
|---|---------------|--|
| Page no. 10 of Annexure A2 | 910000 | Unexplained expenditure etc. u/s 69C |
| Page no. 11 of Annexure A2 | 2727750 | Unexplained expenditure etc. u/s 69C |
| Page no. 13 of Annexure A2 | 443798 | Unexplained expenditure etc. u/s 69C |
| Page no. 52 of Annexure A2 | 8659451 | Unexplained expenditure etc. u/s 69C |
| Page no. 56 of Annexure A2 | 2060000 | Unexplained expenditure etc. u/s 69C |
| Page no. 57 of Annexure A2 | 430800 | Unexplained expenditure etc. u/s 69C |
| Page no. 59 of Annexure A2 | 912345 | Unexplained expenditure etc. u/s 69C |
| Page no. 69 of Annexure A2 | 8917593 | Unexplained expenditure etc. u/s 69C |
| Page no. 78 of Annexure A2 | 2873216 | Unexplained expenditure etc. u/s 69C |
| Page no. 64 of the print outs from the impounded digital data | 500000 | Unexplained expenditure etc. u/s 69C |
| Page no. 31 of print outs taken from the impounded digital data | 637955 | Unexplained expenditure etc. u/s 69C |
| Page no. 33 to 37 of print outs taken from the impounded digital data | 143999517 | Unexplained/ unaccounted income |
| Page no. 55 of print outs taken from the impounded digital data | 900000 | Profits chargeable to tax as per Section 41(1) |
| Total | 17,39,72,425 | |

30. In response to the above show cause notice, the assessee has submitted the same details and documents again. However, the assessing officer



rejected the same and made the following additions in the returned income of the assessee for the year under consideration :

| Sr. No. | Amount in Rs. | Relevant Provision of the Income-tax Act |
|---------|---------------|--|
| 1 | 29072908 | Unexplained expenditure etc. u/s 69C |
| 2 | 143999517 | Unexplained / unaccounted income |
| 3 | 900000 | Profits chargeable to tax as per Section 41(1) |
| Total | 17,39,72,425 | Relevant Provision of the Income-tax Act |

31. Aggrieved by the order of the assessing officer, the assessee, carried the matter in appeal, before the Ld.CIT(A), who has partly deleted the addition, observing as follows:

“5.13 Having considered the various discrepancies found noted in the impounded papers and in absence of the reconciliation of various expenses with the books of account it could not be said that either the assessing officer was fully correct while making the additions or the assessee was fully correct in explaining the reasons of deletion of the additions. However, the assessee has derived the unaccounted income which have been utilised for payment towards various expenses. So there were unaccounted income as well as unaccounted expenses and unaccounted income have to be telescoped against the unaccounted expenses to determine the real income of the assessee. On-going through the working of various alternatives of Real Income, it has been noticed that the profit ratio of the assessee as per its regular books of accounts stands at 7.69%. It is seen from the records that my Ld. Predecessor had decided the appeal of the assessee for A. Y.2017-18 on the similar issue vide order no. CIT(A)-11/A' bad/CC- Rajkot/10199/2019-20 dated 15.12.2020 and estimate G.P. @ 7.94%. However, looking to the facts of the case and to meet the justice, it is reasonable to estimate GP of the assessee @ 8% in respect of unrecorded sales/receipt as determined hereinbefore

5.14 Hence the GP addition on account of the grounds of appeal amounting to Rs.3,02,56,860/- is confirmed for all the four assessment years. The year wise income under the head Business is arrived accordingly and detailed hereunder.-

| Sr. No. | Year Assessment | Suppressed Sales | Bogus Purchases | Total | Income @ 8.0% |
|---------|-----------------|------------------|-----------------|--------------|---------------|
| 1 | 2013-14 | 5,01,82,334 | - | 5,01,82,334 | 40,14,587 |
| 2 | 2015-16 | 6,67,76,311 | - | 6,67,76,311 | 53,42,105 |
| 3 | 2018-19 | 7,73,95,498 | 6,22,25,000 | 13,96,20,498 | 1,11,69,640 |
| 4 | 2019-20 | 10,22,94,595 | 1,93,37,000 | 12,16,31,595 | 97,30,528 |
| Total | | 29,66,48,738 | 8,15,62,000 | 37,82,10,738 | 3,02,56,860/- |

5.15 Therefore, addition made by the assessing officer in the assessment order is directed to be modified as under:-

| A.Y. | Addition made in the assessment order | Addition confirmed | Relief granted |
|---------|---------------------------------------|--------------------|----------------|
| 2013-14 | 25,00,000 | 40,14,587 | (-)15,14,587 |
| 2015-16 | 6,20,08,356 | 53,42,105 | 5,66,66,251 |



| | | | |
|---------|--------------|---------------|----------------|
| 2018-19 | 7,91,38,820 | 1,11,69,640 | 6,79,69,180 |
| 2019-20 | 5,93,16,000 | 97,30,528 | 4,95,85,472 |
| Total | 20,29,63,176 | 3,02,56,860/- | 17,27,06,316/- |

5.6 In view of the above decision, it is found that the undersigned had estimate GP of the assessee @ 8% in respect of unrecorded sales/receipt for A.Y.2013-14, A.Y.2015-16, A.Y.2018-19 & A.Y.2019-20. However, it is also stated that the undersigned had estimated the GP @ 9% in the case of assessee while adjudicating the appeal in the case of assessee for A.Y.2014-15 on the similar issue bearing appeal no. CIT(A), Ahmedabad-11/11415/2013-14 dated 29.02.2024. Therefore, looking to the facts of the case and to meet the justice, it is reasonable to estimate GP of the assessee @ 9% in respect of unrecorded sales/receipt amounting to Rs. 17,39,72,425/-, which comes to Rs.1,56,57,518/-. Therefore, addition to the extent of Rs. 1,56,57,518/- is confirmed out of total addition of Rs. 17,39,72,425/-. Remaining addition stands deleted. Thus, the grounds of appeal no. 2, 3 & 4 are partly allowed.”

32. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

33. Shri D. M. Rindani, Learned Counsel for the assessee, begins by pointing out that in respect of assessment year (AY) 2016-17, the assessing officer has issued two different DIN number. To issue two different DIN Number for the same assessment year, is not required as per the provisions of the Act. Therefore, based on this fact, the assessment order should be quashed, as the assessment order contains two different DIN number, which is against the provisions of the Income tax Act 1961.

34. The Ld. Counsel further argued that in the assessee's case under consideration, the information was received by the assessing officer, from the third-party, therefore, the assessment should be framed u/s. 153C of the Act instead of u/s. 147/148 of the Act. In the assessee's case under consideration, the assessment order was framed by the assessing officer under section 147/148 of the Act, therefore, reassessment proceedings may be quashed.



35. The Ld. Counsel also submitted that the reopening of assessment was made for particular reasons, say, for X, however, ultimate addition was made on different footing, say, for Y, therefore, re-assessment proceedings for assessment year 2015–16 and for assessment year 2016–17 should be quashed. The Ld. Counsel also pointed out that reasons recorded, by the assessing officer, are defective on several counts, hence, reassessment proceedings should be quashed for assessment year 2015–16 and for assessment 2016–17.

36. On the other hand, the Ld. DR for the revenue submitted that there is no harm, to the assessee, if the assessing officer issued two different DIN number for the same Assessment Year.

37. The Ld. DR further pointed out that the information was received by the assessing officer, from the third-party, therefore, assessing officer, may record the reasons for reopening the assessment, hence, assessing officer has rightly framed the assessment order u/s. 147/148 of the Act.

38. The Ld. DR also pointed out that the documents relating to reasons recorded are system generated document, therefore, the sufficiency of the reasons recorded should not be challenged. The Ld. DR also submitted that the assessing officer was right in making addition on different issue and reopening of the case u/s. 147 of the Act, as the reasons recorded by the assessing officer were sufficient reasons, based on the factual position.

39. We have heard the rival parties and have gone through the material placed on record. For the sake of clarity and also being pertinent, we reproduce, the reasons recorded by the assessing officer for the assessment year 2016–17 under section 147 of the Act:



“Reasons for reopening of the assessment in the case of M/s Classic Network Pvt Ltd for AY 2016-17 u/s 147 of the Act

1. Brief Details of the Assessee:

The assessee i.e. M/s Classic Network Pvt Ltd is a flagship company of Classic group based at Rajkot. It is a large civil construction company, predominantly a contractor who executes government contracts. The company is promoted by Shri Smit Kaneria. The return of income u/s 139 for AY 2016- 17 has been filed on 21/10/2016 with total income of Rs. 11,84,14,510 /- which was processed summarily u/s 142(1) of on 07/08/2017 resulting in a refund of Rs. 2,21,89,700/-.

1. Brief details of information collected/received by the AO:

A Search and seizure action named "Operation Star Alliance" was conducted on 26.09.2018. Besides, survey proceedings were also carried out at the premises of associate concerns. Various builders and contractors were covered under this operation. Inquiries revealed that all the entities were found dealing in huge unaccounted cash transactions in one or other form. The business premise of the assessee- company, M/s Classic Network Pvt Ltd was also surveyed u/s 133A of the Act during the operation. Various documents have been recovered in the form of loose papers and digital data backups from the business premise of M/s Classic Network Pvt Ltd. All the incriminating documents have been impounded and confronted to the promoter of the assessee-company Shri Smit Kaneria during the survey and also during the post search/survey inquiries conducted by the investigating officer.

2. Analysis of information collected/received:

The survey loose papers and inventoried the same as Annexure A1(120 pages), Annexure A2(122 pages) and Annexure A3(149 pages). Back up of digital data from 6 computers has also been obtained in Hard Disks and the same has been inventoried as Annexure A4.

Analysis of the documents and digital data impounded by the survey party revealed that the assessee company was indulged in the practice of recording various expenses related to its business activities, making payment through banking channel and receiving the benefit by taking it back in cash.

Instances of unaccounted cash expenses have also been noted.

1. Enquiries made by the AO as sequel to information collected/received:

The loose papers and digital data have been thoroughly perused and it has been ascertained that following pages contained details of various unaccounted transactions pertaining to FY 2015-16 relevant for AY 2016-17.

Page no. 10,11,12,13,52,56,57,59,69 and 78 of Annexure A2

Page no. 64 of Annexure A3

Page no. 31, 33 to 37 33 to 37 and 55 to 58 of the print outs taken from digital data backup.



The above stated pages from Annexure A2 contained details of various payments in respect of EPC as well as Joint Contracts incurred in cash to the tune of Rs. 4,32,24,895/-. Page 64 of Annexure A3 also contained details of one unaccounted cash expense of Rs. 5,00,000/-. Page 31 of the digital data backup contained details of one more unaccounted cash expense of Rs. 1,38,000/- and payable amount of Rs. 8,07,266/- to Baba Stone Crusher.

Further, pages 33 to 37 of the digital data contained details of out of books cash transactions of Rs. 14,39,99,517 and pages 55 to 58 of the digital data contained details of such other expenses of Rs. 9,00,000/- against which cash has been received back by the assessee during the year under consideration which was not accounted for regular books of the assessee- company

3. Findings of the AO:

The above stated facts are sufficient to draw an inference that the assessee-company has ventured into various out of books cash transactions which has escaped the assessment. Some in the form of out of books cash expenses and some in the form of recorded expenses but later recovered in cash.

4. Basis of forming reason to believe and details of escapement of income:

In view of the above discussion, I have reason to believe that income to the tune of Rs. 18,95,69,678/- (at least) has escaped assessment in this case by reason of failure on part of the assessee to disclose fully and truly on material facts, for which the case of the assessee for A.Y. 2016-17 needs to be re-opened within the meaning of section 147 of the Income-tax Act.

It is, therefore, requested that necessary approval may kindly be accorded for issuing notice u/s. 148 of the Income-tax Act in this case.

Income chargeable to tax in relating to any assets (including financial interest in any entity) located outside India:

Applicability of the provisions of section 147/ 151 to the facts of the case:

In this case a return of income was filed for the year under consideration but no scrutiny assessment u/s. 143(3) of the Act was made. Accordingly, in this case the only requirement to initiate proceeding u/s. 147 is reason to believe which has been recorded above.

It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as stipulated u/s 2(40) of the Act was made and the return of income was only processed u/s 143(1) of the Act. In view of the above, provisions of clause (b) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.

This case is within four years from the end of the assessment year under consideration. Hence necessary sanction to issue the notice u/s 148 has been



obtained separately from Joint Commissioner of Income Tax as per the provisions of section 151 of the Act.

40. We have gone through the above reasons recorded by the assessing officer and noticed that these reasons were recorded based on the guess work and conjuncture, and assessing officer did not have definite information to say that particular income of the assessee has escaped from assessment. It seems to us that assessing officer recorded the reasons, based on general information and instances and examples. In the above reasons recorded, the assessing officer has stated as follows:

“Instances of unaccounted cash expenses have also been noted.”

From the above reasons of escapement of income, stated in the reasons recorded, clearly proves that in the assessee’s case, reasons were recorded based on instances of unaccounted cash expenses, that is by citing examples/instances, the reasons were recorded, hence we notice that assessing officer did not have definite information to come a conclusion that in assessee’s case a definite income has escaped from assessment. The assessing officer did not mention in the reasons recorded that which are the instances/examples of of unaccounted expenses, hence, reasons recorded by the assessing officer, do not say that particular income of the assessee has escape from assessment. To make a general statement in the reasons recorded and fasten the tax liability on the assessee, is not acceptable.

41. The findings of the assessing officer in the above reasons recorded by the assessing officer is reproduced below for our analysis :

“3.Findings of the AO:

*The above stated facts are sufficient to draw an **inference** that the assessee-company has ventured into various out of books cash transactions which has escaped the assessment. Some in the form of out of books cash expenses and some in the form of recorded expenses but later recovered in cash”.*



The above findings of the assessing officer, in the reasons recorded are based on presumptions and assumptions and hypothesis, which is not acceptable in the eye of law. Based on the assumptions and hypothesis, the reasons should not be recorded.

42. The basis of forming reasons to believe and details of escapement of income in the reasons recorded is reproduced below, for our analysis:

“4. Basis of forming reason to believe and details of escapement of income:

In view of the above discussion, I have reason to believe that income to the tune of Rs. 18,95,69,678/- (at least) has escaped assessment in this case by reason of failure on part of the assessee to disclose fully and truly on material facts, for which the case of the assessee for A.Y. 2016-17 needs to be re-opened within the meaning of section 147 of the Income-tax Act.”

From the above reasons to believe and details of escapement of income, it is not clear from which sources, the assessing officer got the figure to the tune of **Rs. 18,95,69,678/-**, which is, **at least** figure. It means there is more amount which has escaped assessment, which the assessing officer did not want to bring on record, on the reasons recorded by him. Hence, it is abundantly clear that there is no any application of mind, on the part of the assessing officer instead to bring more income in the zone of escapement of income, only minimum figure to the tune of **Rs. 18,95,69,678/-**, has been stated by the assessing officer in the reasons recorded, and even for that figure, no any source, from which such figure was captured by the assessing officer, has been mentioned in the reasons so recorded by the assessing officer. Hence, the above reasons are arbitrary and unclear.

43. Hence, from the above analysis, we find that there is no whisper in the reasons recorded, of any tangible material which came to the possession of



the assessing officer. It reflects an arbitrary exercise of the power conferred under section 147/148 of the Act.

44. Article 265 of the Constitution of India lays down that, “No tax shall be levied or collected except by authority of law”. The Hon’ble Supreme Court of India has held that this provision under Article 265 of the Constitution of India is applicable not only for levy but also for the collection of taxes and the expression “assessment” within its compass covers both the aspects carried out by the executive functionary. *Chottabhai Vs. Union of India* 1962 SCR Supl.2 1006. Therefore, it is required that whole of the process of taxation must follow the procedures which are valid under the law and must adhere to law, that is, substantive one as well as procedural one too. Therefore, in other words it is provided in the Constitution of India that every step should be taken to ensure that levy and collection of the taxes is strictly in accordance with law – not only substantive one but the procedural law, as well.

45. We note that following conditions are laid down in section 147/148 to reopen the assessment. “If the A.O. has reason to believe that any income chargeable to tax has escaped assessment for any assessment year.”

- There must be material for the belief.
- Circumstances must exist and cannot be deemed to exist for arriving at an opinion;
- Reasons to believe must be honest and not based on suspicion, gossip, rumour or conjecture;
- Reasons referred to must disclose the process of reasoning by which the AO holds “reasons to believe” and change of opinion does not confer jurisdiction to reassess;
- There must be nexus between material and belief; and



- Reasons recorded must show application of mind by the AO.

Reasons must have a live link with the formation of the belief. This is supported by Circular No.549 dated 31.10.1989 which clarified that the words “reason to believe” did not mean a change of opinion. The Hon’ble Supreme Court in ITO vs Lakhmani Mewal Das [1976]103 ITR 437 has lucidly explained the power of assessing officer to bring to tax income escaping assessment u/s.147 of the Act. The Hon’ble Court first held that the section provides that there must exist “reasons to believe“ and not “reasons to suspect”. The following were the relevant observations:

“The fact that the words "definite information" which were there in section 34 of the Act of 1922, at one time before its amendment in 1948, are not there in section 147 of the Act of 1961, would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, far-fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence. The powers of the Income-tax Officer to reopen assessment, though wide, are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt, contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come to the notice of the income-tax authorities after the assessment has been completed.”

46. The purpose behind the relevant provisions imposing condition precedent for initiating reassessment proceedings is to ensure finality of proceedings. The Act also provides that such reason must be recorded in writing before issue of notice of reassessment so as to judge the existence of such belief before initiating reassessment proceedings by issue of notice u/s.148 of the Act. The above requirements are meant to ensure that powers to initiate reassessment proceedings are not exercised in an arbitrary manner. The Courts have analysed and explained in several cases as to what could be the valid reason to believe escapement of income,



which would enable the Assessing Officer to successfully reopen the assessment. It has been held that the words 'reason to believe' are stronger than the words 'reason to suspect' or 'reason to doubt'. It requires more than merely 'satisfaction' of the Assessing Officer. The belief entertained by the Assessing Officer must not be arbitrary or irrational. The expression 'reason to believe' does not mean purely subjective satisfaction of the Assessing Officer. The belief must be held in good faith. It cannot be merely pretence. Again, the belief must be of an honest and reasonable person based upon reasonable grounds. The Assessing Officer would be acting without jurisdiction, if the reasons for his belief are not material or relevant. There should be nexus between the information coming into possession of the AO and his belief on the basis of such information that income of the Assessee chargeable to tax has escaped assessment. We note that in the assessee's case under consideration, the reasons recorded, by the assessing officer, as already noted above, are vague and unclear, hence, reassessment proceedings should be quashed.

47. In the assessment year 2016–17, we find that addition of Rs. 9,00,000/-, in the reasons recorded dated 22-06-2021, on Page 3, the A.O. has mentioned that Rs. 9,00,000/- was received back by the assessee, during the year under consideration and was not accounted for in regular books of account. However, the same is added as profit chargeable to tax u/s 41(1) of the Act, in the order u/s 147 dated 30-03-2023 by the assessing officer. Hence, when no addition was made on which belief was formed, the A.O. could not make additions on some other grounds, for that reliance can be placed on the judgement of jurisdictional High Court of Gujarat, in the case of *Mohmed Juned Dadani* (2013) 30 taxmann.com 1 (Gujarat HC). On identical facts, the Coordinate Bench of ITAT -Rajkot in the case of



Nagichana Mahila Doodh Sahakari Mandali Ltd. in ITA No. 847/Rjt/2024 dated 02-06-2025 (Rajkot Tribunal), has held the same ratio.

48. In the assessment year 2015–16, regarding addition of Rs. 10,00,000/-, the A.O. in the reasons recorded on Page 3 has mentioned that the said amount is unaccounted income of the assessee- company whereas, the same is added as unexplained expenditure u/s 69C in the order u/s 147 dated 17-03-2022. Regarding addition of Rs. 5,22,54,327/- the assessing officer in the reasons recorded on page 5 has mentioned that the said amount was cash received against sale of bitumen to various party or cash received against bill issued. However, at the time of making addition the same is shown as profit chargeable to tax u/s 41(1) of the Act. Hence, when no addition was made on the ground on which belief was formed, the A.O. could not make additions on some other grounds, for that reliance can be placed on the judgement of jurisdictional High Court of Gujarat, in the case of Mohmed Juned Dadani (2013) 30 taxmann.com 1 (Gujarat HC). On identical facts, the Coordinate Bench of ITAT -Rajkot in the case of Nagichana Mahila Doodh Sahakari Mandali Ltd. in ITA No. 847/Rjt/2024 dated 02-06-2025 (Rajkot Tribunal), has held the same ratio.

49. In view of the reasons set out above, as also bearing in mind entirety of the case, we are of the considered view that the reasons recorded by the Assessing Officer, as set out earlier, were not sufficient reasons for reopening the assessment proceedings, for assessment year 2015–16 and for assessment year 2016-17. We, therefore, quash the reassessment proceedings. As the reassessment itself is quashed, all other issues on merits of the additions, and other technical arguments of Id. Counsel for



the assessee, in the impugned assessment proceedings, are rendered academic and infructuous.

50. In the result, the appeal of the assessee in ITA No.289/RJT/2022 for assessment 2015–16, and assessee’s appeal in ITA No.177/RJT/2024, for A.Y. 2016-17 are allowed, whereas corresponding cross appeals of revenue in ITA No.273/RJT/2022 for A.Y. 2015-16 and in ITA No.287/RJT/2024, for A.Y. 2016-17, are dismissed.

51. Now, on merit, following are the remaining appeals of assessee and revenue. In these appeals the plea of the assessee is that estimated addition sustained by the learned CIT(A) is on higher side and therefore it should be reduced further, considering the average audited profit of the assessee, however, plea of the revenue is that addition made by the assessing officer may be sustained. The details of these appeals, assessment year-wise are as follows:

1. Assessee’s appeal in ITA No.03/RJT/2021, for A.Y. 2017-18
Revenue’s appeal in ITA No.13/RJT/2021, for A.Y. 2017-18
2. Assessee’s appeal in ITA No.290/RJT/2022, for A.Y. 2018-19
Revenue’s appeal in ITA No.274/RJT/2022, for A.Y. 2018-19
3. Assessee’s appeal in ITA No.291/RJT/2022, for A.Y. 2019-20
Revenue’s appeal in ITA No.275/RJT/2022, for A.Y. 2019-20

52. In order to adjudicate these appeals on merit, we take lead case of assessee’s appeal in ITA NO. 03/Rjt/2021 for assessment year 2017-18. The grounds of appeal raised by the assessee in lead case in ITA No. 03/Rjt/2021, for assessment year 2017-18, are as follows:



1..The learned Commissioner of Income Tax (Appeals) 13, Ahmedabad erred in rejecting the books of accounts invoking the provision of section 145 of the IT Act is unwarranted, unjustified and bad in law.

2. The learned Commissioner of Income Tax (Appeals) 13, Ahmedabad erred in rejecting the books of accounts invoking the provision of section 145 of the IT Act and the G P Rate of the preceding year i.e. 7.94% is also applied in this year under consideration and the differential addition on this account i.e. 0.22% is worked out at Rs.73,78,755/- is unwarranted, unjustified and bad in law.

53. The facts necessary for disposal of these appeals on merit are stated in brief. In this case, return of income showing total income of Rs. 8,69,68,360/- was filed on 17.02.2018. The case was selected for scrutiny through CASS for complete scrutiny. Notice u/s. 143(2) dated. 26.09.2018 was issued and served upon the assessee on 27.09.2018. The accounts of the assessee are audited and Audit Report dated 13.02.2018 in Form No. 3CB/3CD and copy of audited accounts were filed during the assessment proceedings. Subsequently, notices u/s.142(1) of the I.T. Act dated. 24.09.2019 and dtd. 15.10.2019 were issued, and served upon the assessee calling for various details relevant to the assessment in the case of the assessee- company. In response to said notice, Authorized Representative of the assessee filed its submission through e-filing portal and submitted the required details from time to time, to the assessing officer. The assessing officer, after considering the reply of the assessee, made the following additions:



| | |
|---|--------------------|
| Total Income as per return of income :- | Rs. 8,69,68,360/- |
| Disallowance as per para 8.1(iii) :- | Rs. 3,18,242/- |
| Disallowance as per para 8.2(iii) :- | Rs. 2,25,72,255/- |
| Disallowance as per para 8.3(iv) :- | Rs. 42,50,000/- |
| Disallowance as per para 8.4(iii) :- | Rs. 48,35,406/- |
| Disallowance as per para 8.4(iv) :- | Rs 3675078 |
| Disallowance as per para 8.4(vi) :- | Rs. 1,13,25,000/- |
| Assessed Income :- | Rs. 13,39,44,341/- |
| Book Profit as per section 115JB:- | Rs. 8,08,56,596/- |

54. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the learned CIT(A), who has rejected the books of accounts of the assessee and estimated the profit observing as follows:

“On going through the records it is noticed that during the year consideration the assessee has shown the GP rate 7.72% and NP rate of 2.41% on the total turnover of Rs.3,35,39,72,992/-. Similarly, in the immediately preceding year the assessee has shown the GP rate of 7.94% and NP rate of 2.93% on the total turnover of Rs. 3,43,99,75,819/-. From the above it is apparent that there is fall in the GP rate and NP rate for the year under consideration as compared to the preceding year.

In this regard during the course of appellate proceedings the assessee was asked to explain the aforesaid discrepancies and why the books of accounts may not be rejected u/s 145 of I.T. Act and appropriate GP/NP rate should not be estimated for the year under consideration? In response the assessee has submitted that during the year under consideration the assessee has procured the work orders below the SOR and because of the reduced rate of contract value the gross receipts and margin of profit has reduced to large extent. In support of the same the assessee has submitted the details showing that there was substantial fall in the GP rate and NP rate for the year under consideration. The relevant details are reproduced as under:-



| Sr No: | Work Of Order | Biding price | SOR Value | Excepts/below |
|--------|--|----------------|---------------|------------------|
| 1 | Executive engineer PWD(B/R) Jashpur | 02146.59 lakhs | 3149.24 | 30.25% SOR Below |
| 2 | Bareja Nagar seva-sadan | 830.88 | 1109.42 | 25.10% SOR below |
| 3 | Surendra nagar dudhrej nagarseva- sadan(surendrangaar) | 3,32,70,747/- | 3,69,63,390/- | 9.99% down |



| | | | | |
|----|--|-----------------|----------------|---------------------------------|
| 4 | Executive engineer national highway division vadodara | 25,55,79,317/- | 39,37,25,271/- | 35.09% below |
| 5 | Executive engineer national highway Bharuch | | 15,10,15,000/- | All work taken below 12% |
| 6 | Executive engineer national highway Bharuch | | 16,35,32,000/- | |
| 7 | Executive engineer national highway Bharuch | | 17,36,48,000/- | |
| 8 | Executive engineer national highway Bharuch | | 18,80,40,000/- | |
| 9 | Executive engineer RNB division himmatnagar | 139,08,96,633/- | 73,00,04,611/- | 47.5155% below |
| 10 | Executive engineer Jashpur | 3512.52 lakhs | 4817.21 lakhs | 27.09% below |
| 11 | Executive engineer KV road Jamnagar | 4,23,71,438/- | 3,19,44,667/- | 24.61% below |
| 12 | Gujarat urban developer company Ltd | | | No Value mention in work order. |
| 13 | Nagrpalika Keshod | | | No Value mention in work order. |
| 14 | Keshod nagar palika | 14,42,72,022/- | 14,93,64,824/- | 3.53% below |
| 15 | Chief engineer Gujarat water supply Rajkot | 2,61,53,747/- | 2,94,40,019/- | 11.1626% below |
| 16 | Public health work division | 2,61,53,747/- | 2,94,40,019/- | 11.1626% below |
| 17 | Gujarat water supply | 26,51,04,050/- | 26,75,15,836/- | 0.90% below |
| 18 | Gujarat water supply | 17,80,13,152/- | 17,96,33,122/- | 0.90% below |
| 19 | Gujarat water supply & sewerage board | 28,80,39,491/- | 30,19,20,822/- | 4.81% above |
| 20 | Executive engineer project construction Dn No:4 Rajkot | 49,15,22,470/- | 60,74,55,215/- | 19.850% below |
| 21 | Executive engineer Rajkot | 7,58,37,224/- | 10,38,90,995/- | 27% below |
| 22 | Executive engineer Morbi | 9,58,39,224/- | 10,38,90,995/- | 27% below |
| 23 | Executive Engineer Jamnagar | 5,16,19,352/- | 6,89,76,985/- | 25.16% below |
| 24 | Executive Engineer Jamnagar | 5,16,19,352/- | 6,89,76,985/- | 25.16% below |
| 25 | Nagar palika seva sadan navsari | 1,27,20,000/- | 1,27,98,068/- | 0.61% below |
| 26 | Executive engineer national highway Bharuch | 31,57,47,862/- | | |
| 27 | Executive engineer national highway Bharuch | 13,05,78,781/- | 18,40,85,197/- | |



| | | | | |
|----|---|----------------|----------------|---------------------------------|
| 28 | Vadodara mahanagar seva sadan | 5,36,40,058/- | | |
| 29 | Executive engineer Jamnagar | 6,96,77,809/- | 9,45,42,027/- | 26.30% below |
| 30 | Executive engineer Jamnagar | 6,96,77,809/- | 9,45,42,027/- | 26.30% below |
| 31 | Gujarat water supply Ahmedabad | 23,21,80,910/- | 34,07,39,183/- | 31.8596% below |
| 32 | Executive engineer Mahanagr seva sadan vadodara | 7,40,46,105/- | | 27% below |
| 33 | National highway authority of india | 17,79,61,722/- | 1,77,96,172/- | |
| 34 | Executive engineer Rajkot | 09,96,72,686/- | 13,69,09,437/- | 27.09% below |
| 35 | Executive engineer Rajkot | 11,97,03,165/- | 10,05,66,550/- | 15.9767% below |
| 36 | Public health work division | 38,65,22,596/- | 49,86,14,149/- | 29% above |
| 37 | Gujarat urban development company ltd. | | | No value mention in work order. |

Most of the contract work taken is below tender value average below 20% arrived. So G.P. ratio is down. The copy of work order is submit herewith.

Having considered the various discrepancies found noted in the impounded papers and in absence of the reconciliation of various expenses with the books of account it could not be said that either the assessing officer was fully correct while making the additions or the assessee was fully correct in explaining the reasons of deletion of the additions. Moreover, the assessee has derived the unaccounted income towards sale of bitumen which have been utilised for payment towards various expenses. So there were unaccounted income as well as unaccounted expenses and unaccounted income have to be telescoped against the unaccounted expenses to determine the real income of the assessee.

On going through the reasons for fall in GP and NP rate on account of reduced tender value the same is found to be acceptable to certain extent. However, it is also a fact that the assessee has made certain unaccounted expenses and unaccounted sale proceeds also which could not be denied. So considering the unaccounted transactions and to pluck the leakage of revenue the books of accounts are rejected invoking the provisions of section 145 of the IT Act and the GP rate of the preceding year i.e.7.94% is also applied in the year under consideration and the differential addition on this account i.e. 0.22% is worked out at Rs.73,78,755/- which is found to be reasonable and justified. Hence the GP addition on account of the grounds of appeal from Sr.No.2 to 6 amounting to Rs.73,78,755/- is confirmed. Relief is granted for the balance amount of the disallowance/additions made on unaccounted expenditures/receipts. Thus, the grounds of appeal are partly allowed.

55. Aggrieved by the order of the learned CIT (A), the assessee, as well as revenue, both are in appeal before us. In these appeals, by and large, the



plea of the assessee is that estimated addition sustained by the learned CIT(A) is on higher side and therefore it should be reduced further, considering the average audited profit of the assessee, at the rate of 3.27% however, plea of the revenue is that addition made by the assessing officer may be sustained.

56. Learned Counsel for the assessee submitted before Bench, year-wise written submissions, on merit, which are reproduced below:

A.Y. 2017-18:

(i) On merits the CIT(A) has estimated gross profit 7.94% (of last year) and addition of differential gross profit of 0.22% on turnover of Rs. 3,35,39,72,992/- is made.

(ii) However, if at all the profit was to be estimated, the adoption of gross profit rate is bad in law as only net profit could have been estimated as held by various judicial precedents (mentioned hereinbelow). Average net profit of the assessee is 3.27%.

- a. Poonam Developers ITA Nos. 15/SRT/2021 dated 06-05-2022 (Surat Tribunal);
- b. Kishor Mohanlal Telwala ITA No. 4712/Ahd/1996 dated 02-09-1988 (Ahmedabad Tribunal) - confirmed by Gujarat High Court;
- c. Yagneshkumar Gandhi ITA No. 959/A/2024 A.Y. 2020-21, dated 28-11-2024 (Ahmedabad Tribunal).

A.Y. 2018-19:

(i) The CIT(Appeals) has estimated suppressed sales of Rs. 7,73,95,498/- by extrapolating 2% of accounted sales of Rs. 3,68,97,74,915/- and G.P.



rate of 8% is applied on suppressed sales to estimate the income element and 8% of bogus purchase of Rs. 6,22,25,000/-.

(ii) The estimation of suppressed sales done by the CIT(Appeals) by extrapolating certain percentage on accounted sales is unwarranted and also adoption of gross profit rate on suppressed sales is bad in law as if at all the profit was to be estimated, only net profit could have been estimated as held by various judicial precedents (mentioned hereinbelow). Average net profit of the assessee is 3.27%.

- a. Poonam Developers ITA Nos. 15/SRT/2021 dated 06-05-2022 (Surat Tribunal);
- b. Kishor Mohanlal Telwala ITA No. 4712/Ahd/1996 dated 02-09-1988 (Ahmedabad Tribunal) - confirmed by Gujarat High Court;
- c. Yagneshkumar Gandhi - ITA No. 959/A/2024 A.Y. 2020-21, dated 28-11-2024 (Ahmedabad Tribunal).

A.Y. 2019-20

(i) The CIT(Appeals) has estimated suppressed sales of Rs. 10,22,94,595/- by extrapolating 2% of accounted sales of Rs. 5,11,47,29,738/- and G.P. rate of 8% is applied on suppressed sales to estimate the income element and 8% of bogus purchase of Rs. 1,93,37,000/-.

(ii) The estimation of suppressed sales done by the CIT(Appeals) by extrapolating certain percentage on accounted sales is unwarranted and also adoption of gross profit rate on suppressed sales is bad in law as if at all the profit was to be estimated, only net profit could have been estimated as held by various judicial precedents (mentioned hereinbelow). Average net profit of the assessee is 3.27%.



- a. Poonam Developers ITA Nos. 15/SRT/2021 dated 06-05-2022 (Surat Tribunal);
- b. Kishor Mohanlal Telwala ITA No. 4712/Ahd/1996 dated 02-09-1988 (Ahmedabad Tribunal) - confirmed by Gujarat High Court;
- c. Yagneshkumar Gandhi-ITA No. 959/A/2024 A.Y. 2020-21, dated 28-11-2024 (Ahmedabad Tribunal).

57. However, learned DR for the revenue relied on the findings of the assessing officer in respect of the above assessment years, appeal- wise.

58. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the learned CIT(A) and other materials brought on record. We have gone through the findings of the assessing officer, for assessment year 2017–18 and for assessment year 2018–19 and for assessment 2019–20. We have also gone through the entire findings of the learned CIT(A) for assessment year 2017–18 and for assessment year 2018–19 and for assessment 2019–20. We have heard in detail learned DR for the revenue and learned Counsel for the assessee, on merit, in respect of these assessment years. In sum and substance, the plea of ld. Counsel for the assessee is that estimated addition sustained by the learned CIT(A) is on higher side and therefore it should be reduced further, considering the average audited profit of the assessee, at the rate of 3.27%. The learned Counsel for the assessee also submitted a chart before the bench, showing average profit rate @ 3.27%, which we have gone through. However, plea of the ld DR for the revenue is that addition made by the assessing officer may be sustained.



59. We have considered the above written submissions, of Id.Counsel, and considered the arguments of Id.DR for the revenue, we have also gone through the findings of the learned CIT(A), on merit, in each assessment year, and for the sake of brevity, we do not reproduce, the findings of learned CIT(A) year wise. We find that learned CIT (A) has rightly rejected the books of accounts and estimate the profits on reasonable basis, hence, assessee does not deserve for further relief. After a valid estimate of profits is made by Id.CIT(A), the Revenue should not have grievance, considering the settled position of law that only profit element embedded in the various payments and receipts should be added. We also noted that profit estimation made by the learned CIT(A) in above assessment years, is not arbitrary. In the wake of above delineation, we see no error in the conclusion drawn by the CIT(A) in this regard, in each assessment year, noted above, on merit. The CIT(A) in our view, has rightly made the profit estimation. We thus, decline to interfere with the conclusion so drawn by the CIT(A) whose order is under challenge by the revenue and assessee, as well. Hence, we dismiss all these appeals of the assessee, as well as, revenue.

60. In the result, following appeals of the assessee, and revenue, are dismissed:

- (a) Assessee's appeal in ITA No.03/RJT/2021, for A.Y. 2017-18
- (b) Revenue's appeal in ITA No.13/RJT/2021, for A.Y. 2017-18
- (c) Assessee's appeal in ITA No.290/RJT/2022, for A.Y. 2018-19
- (d) Revenue's appeal in ITA No.274/RJT/2022, for A.Y. 2018-19
- (e) Assessee's appeal in ITA No.291/RJT/2022, for A.Y. 2019-20
- (f) Revenue's appeal in ITA No.275/RJT/2022, for A.Y. 2019-20



61. Now coming to the assessee's penalty appeal in ITA No. 178/RJT/2024, for assessment year 2017–18. We have heard both the parties. We note that assessing officer imposed the penalty under section 270A of the Act for assessment 2017-18 at Rs. 48,79,274/-. The Ld. Counsel for the assessee submitted that no penalty should be levied on the estimated addition. However, the Ld. DR relied on the findings of the assessing officer. In assessment year 2017–18, the learned CIT(A) has estimated the profit of the assessee, as noted above, by us. We find that penalty on estimation is not sustainable in the eye of law. Hon'ble ITAT. Ahmedabad Bench "D", Ahmedabad in the case of Natubhai Naranbhai Virani, Surat in ITA No. 1433/AHD/09, held that addition of Rs. 1,00,000/- was made merely on estimate and the revenue could not bring any material on record to show that agriculture income of Rs. 3,00,000/- disclosed by the assessee was actually and inflated one. In absence of any such material brought on record by the revenue, in our considered opinion merely because of difference due to estimate penalty under section 271(1)(c) cannot be levied. Hon'ble Bombay High Court has in the case of CIT vs. Arkay Saree Museum 187 ITR 147 (Bom) held that

"Mere addition to income on estimated basis would not constitute basis for levy of penalty u/s. 271(1)(c), now section 270A, unless the revenue proves the ingredients of concealment or that of furnishing of inaccurate particulars."

Hon'ble High Court of Punjab & Haryana has in the case of CIT vs. Sangrur Vanaspati Mills Ltd. (SLP ITR 303 TR St. P-18 (SC) held that: "*When the addition of income is based on estimate, penalty is not leviable.*" Hon'ble High Court of Gujarat has in the case of CIT vs. Lallubhai Jogibhai Patel 139 ITR 1028 has held that no penalty could be sustained in respect of estimated addition. Considering these facts and circumstances, we delete the penalty of Rs. 48,79,274/- under section 270A of the Act, and allow the appeal of the assessee.



62. In the result, appeal filed by the assessee in ITA No.178/RJT/2024, is allowed.

63. In the combined result, all appeals of the revenue, are dismissed, whereas appeals of the assessee in ITA Nos.288/Rjt/2022, 176/Rjt/2024, 289/Rjt/2022, 177/Rjt/2024 and 178/Rjt/2024 are allowed and assessee's appeal in ITA No.3/Rjt/2021, 290/Rjt/2022, 291/Rjt/2022 are dismissed.

Order is pronounced in the open court on 30/01/2026.

Sd/-

(Dr. Dinesh Mohan Sinha)

न्यायिक सदस्य/ **Judicial Member**

Rajkot

Date: 30/01/2026.

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

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

// True copy //

Sd/-

(Dr. Arjun Lal Saini)

लेखा सदस्य/**Accountant Member**

By order,

Assistant Registrar/Sr.P.S/PS
ITAT, Rajkot