



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.451/RJT/2013
(Assessment Years: (2008-2009))

Shri Vashrambhai Ghelabhai Ramani, 22, Ranchodnagar Society, Kuvadava Road, Rajkot.	Vs.	The DCIT, Central Circle-2, Rajkot.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BFLPR5056N		

आयकर अपील सं./ITA Nos.65/RJT/2014
(Assessment Years: (2010-11))

&

आयकर अपील सं./ITA Nos. 63/RJT/2014 &407/RJT/2014
(Assessment Year: 2011-2012)

Shri Kamlesh Vashrambhai Ramani, Prop. Marutinandan Petroleum, 22, Ranchodnagar Society,Rajkot.	Vs.	Deputy Commissioner of Income-tax, Central Circle-2, Rajkot.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AHQPR2043D		

निर्धारितकीओरसे/Assessee by : Shri Samir Bhuptani, AR

राजस्वकीओरसे/Revenue by : Shri Sanjay Kumar, CIT- DR

सुनवाईकीतारीख/ Date of Hearing : Heard on 16/06/2025
refixed for clarification on 09.10.2025
& heard on 27.01.2026

घोषणाकीतारीख/Date of Pronouncement :10/02/2026



आदेश/ORDER

Per, Bench:

This is bunch of four appeals, filed by the different assesseees, pertaining to Assessment Years, 2008-09, 2010-11 & 2011-12, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), which in turn arise out of the separate assessment orders passed by the assessing officer (AO) u/s.153A r.w.s 143(3) of the Income Tax Act, 1961 (in short, 'the Act') and a penalty order passed by the AO u/s. 271AAA of the Income Tax Act.

2. The brief details of all these appeals are as follows:

(i). Appeal in ITA No.451/Rjt/2013, for assessment year (AY) 2008-09, pertains to Shri Vashrambhai Ghelabhai Ramani, wherein the assessing officer has framed the assessment order u/s.153A r.w.s 143(3) of the Act, by making addition of Rs.21,50,000/-, on account of unexplained cash payment for running petrol pump. On appeal, by assessee, the learned CIT(A) restricted the same addition to Rs. 10,76,392/-.

At the outset, learned Counsel for the assessee, informs the Bench that in this appeal, the assessee does not wish to press ground No.2 and 3 raised by him, therefore, we dismiss ground No.2 and 3 raised by the assessee, as not pressed.

(ii). Appeal in ITA No.65/Rjt/2014 for AY 2010-11, pertains to Shri Kamlesh Vashrambhai Ramani, wherein the assessing officer framed the assessment



u/s.153A r.w.s 143(3) of the Act, by making addition of Rs.25,00,000/- and Rs.1,45,35,035/-.

At the outset, learned Counsel for the assessee, informs the Bench that in this appeal, the assessee does not wish to press ground No.3 and 4 raised by him, therefore, we dismiss ground No.3 and 4 raised by the assessee, as not pressed.

(iii). Appeal in ITA No.63/Rjt/2014, for AY 2011-12, pertains to Shri Kamlesh Vashrambhai Ramani, wherein the assessing officer (AO) framed the assessment u/s.143(3) of the Act, by making addition of Rs.63,25,000/- on account of unaccounted receivables. On appeal, by assessee, the learned CIT(A) enhanced the assessment (further addition on account of unaccounted receivables) by Rs. 75,00,000/-).

At the outset, learned Counsel for the assessee, informs the Bench that in this appeal, the assessee does not wish to press ground No.3 and 4 raised by him, therefore, we dismiss ground No.3 and 4 raised by the assessee, as not pressed.

(iv). Appeal in ITA No.407/Rjt/2014 for AY 2011-12, pertains to Kamlesh Vashrambhai Ramani, wherein the assessing officer (AO) imposed the penalty u/s.271AAA of the Act to the tune of Rs.7,50,000/-, (10% of Rs. 75,00,0000) on account of undisclosed income, in a relation to addition enhanced by Id.CIT(A), on account of unaccounted receivables by Rs. 75,00,000/-

3. Since, the issues involved in all these appeals are common and identical, and these appeals pertain to son and father, therefore we have clubbed these appeals



and heard together and a consolidated order is being passed for the sake of convenience and brevity.

4. First, we shall take assessee's appeal in **ITA No.451/Rjt/2013 for AY 2008-09**, wherein the effective ground of appeal raised by the assessee are as follows:

(1) The learned Commissioner of Income Tax (Appeal)-IV, Ahmedabad has erred in restricting the addition to Rs. 10,76,392/-, as against Rs. 21,50,000/-, made by the Assessing Officer on account of unexplained cash payment for running petrol pump.

5. Succinctly, the factual panorama of the case is that assessee before us is an Individual. A search action u/s.132 of the Act was carried out at the premises of the assessee on 24.06.2010. During the course of search, various materials were found and seized. The proceedings u/s. 153A of the Act was initiated by issuing of notice dated 04.01.2011, which was duly served upon the assessee. The assessee was required to file return of income within 30 days of the receipt of the notice. The return of income showing total Income of Rs. Nil was filed on 31.01.2012. The assessee has also shown agricultural income of Rs 10,73,608/-. A notice u/s 143(2) of the Act, was issued on 29.08.2012, which was served upon the assessee. Further detailed questionnaire was issued on 11.09.2012, along with a notice issued u/s 142(1) of the Act. In response to the notices of hearing, authorized representative of the assessee, attended from time to time and filed submissions, before the assessing officer. Copies of Profit & Loss account and balance sheet were also filed, before the assessing officer. The assessee has income from Agricultural activities. During the course of recording of statement u/s132(4) of the I. T. Act, 1961, on 24-06-2010, Shri Kamlesh Vashrambhai Ramani, son of the assessee, vide question No.44, had admitted that M/s Balaji Petroleum, situated at Ahmedabad-Rajkot High-way, Maliyasan, in which the assessee and Shri



Kishorbhal Shantibhai Padiya are partners, had made following advances, as working capital to meet the expenditure of the said petrol pump.

Sr. No.	Date	Amount in cash (Rs.)
1	15-08-2007	5,00,000/-
2	10-11-2007	10,00,000/-
3	08-12-2007	6,50,000/-
	Total	21,50,000

Shri Kamleshbhai Vashrambhai Ramani, had also admitted that the said total amount of Rs. 21,50,000/-, is not reflected in the regular books of accounts of the assessee or in the regular books of accounts of Balaji Petroleum. Shri Kamlesh Vashrambhai Ramani, in his above statement, made on the behalf of the assessee, had made voluntary disclosure of Rs. 21,50,000/-, as unaccounted/undisclosed income in the hands of the assessee and promised to pay due tax on it. However, on verification of the return of income filed by the assessee, it was noticed by the assessing officer that assessee had not offered the aforesaid amount. He was therefore asked to show cause as to why addition of Rs. 21,50,000/- should not be made in his hands.

6. In response to the notice of the AO, the assessee has submitted written submission before the AO, on 06.11.2012, which are reproduced by the AO, at page no.3 to 4 of the assessment order. In reply, the assessee submitted that assessee had agriculture income and out of agriculture income amount of Rs.21,50,000/- was given to Manojbhai Arjanbhai Nandasana. The assessee also submitted that he does not carry out any business activity except agriculture therefore no addition should be made in the hands of the assessee.



7. However, the AO rejected the reply of the assessee and observed that the claim of the assessee that the cash payments were out of his agricultural income, is not correct. It is also not correct to say that the assessee was not having any source of income other than agriculture income because Mr. Kamlesh Ramani son of the assessee is controlling the affairs of the petrol pumps and therefore it is clear that the unaccounted income from petrol pump business has been brought back by the assessee for running the petrol pump. The statement has been given by Shri Kamlesh Ramani with sound mind and without any coercion or threat. Further, the assessee's submission that he has filed an affidavit retracting the disclosure has also been duly verified and assessing officer noticed that though the assessee has prepared the affidavit on 30.06.2010, the same has not been submitted before the department and copy of the same has been given only with the submission during the assessment stage. Therefore, it is clear that the cash payment of Rs. 21,50,000/- made for running day to day affairs of petrol pump is out of undisclosed source of income of the assessee. Accordingly, an amount of Rs. 21,50,000/- was added to the total income of the assessee on account of undisclosed income.

8. Aggrieved by the order of the AO, the assessee carried the matter in appeal before the Ld.CIT(A), who has partly deleted the addition. The Ld.CIT(A) observed that the claim of the assessee that these advances of Rs.21,50,000/-, were given out of agricultural income earned in earlier years cannot be accepted, as assessee was not maintaining regular books of account and has not filed returns of income before search. His claim of using agricultural income of earlier years for making these advances cannot be accepted. However, the AO, in the assessment order for AY 2008-09, has accepted of earning agricultural income of Rs. 10,73,608/- by the assessee. Accordingly, assessee is entitled to claim that out of total advances of



Rs.21,50,000/- made by him in this year, advances to the extent of Rs. 10,73,608/- were made out of current year's agricultural receipts. Therefore, the addition made by the AO of Rs.21,50,000/- was reduced by ld.CIT(A) to Rs. 10,76,392/- (21,50,000- 10,73,608).

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

10. 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 ld. CIT(A) and other materials brought on record. The Ld.Counsel for the assessee submitted before us that assessee has 250 vigha agricultural land which is inherited agricultural land. The assessee has been doing agriculture activities, since long and amount of Rs.21,50,000/- was given out of agriculture income. The assessee does not have any income except agriculture income. In response to notice u/s.153A of the Act, the assessee has filed the return of income, showing agriculture income, and prior to that also assessee had shown agriculture income. The Ld.Counsel for the assessee also submitted, addition should not be made, based on the assessee's son statement, as there was no incriminating material, in the hands of the AO to make addition. Therefore, ld. Counsel contended that remaining addition sustained by the learned CIT(A) may be deleted.

11. On the other hand, the Ld.DR for the Revenue submitted that statement was not recorded during survey, however, there was a search simultaneously, that is, a search action was also conducted. Therefore, the statement recorded by the AO



u/s.132(4) of the Act, on 24.06.2010, of the son of assessee should be relied. Besides, the addition was not solely made based on the statement of the assessee but also based on the documents seized during search action in the assessee's case. The search was conducted on 24.06.2010 and thereafter the assessee filed a retraction in Gujarati on 30.09.2010, therefore retraction should not be accepted, as it is an after- thought device. The Ld.DR stated that the son's statement taken u/s.132(4) of the Act should be considered by this Tribunal and since Ld.CIT(A) has given all reasonable relief, therefore the assessee should not be given further relief. Hence, addition sustained by the Ld.CIT(A) to the tune of Rs.10,76,392/- should be upheld. We note that in assessee's case, the assessment was framed for assessment year (AY) 2007-08, u/s.153A r.w.s 143(3) of the Income tax Act 1961, vide order dated 04.03.2013, wherein AO has not made the addition about the cash deposit out of the agriculture income. Therefore, assessing officer also accepted the agricultural income in the previous assessment year 2007-08. Therefore, it is proved that assessee is having only source from agricultural income. We rely on the judgment of the Co-ordinate Bench of ITAT, Indore, in the case of Madhusudan Dhakad Vs. ITO in ITA No.9/Ind/2022 pronounced on 28.06.2022, wherein it was held that assessee was having agriculture income, as sole source of income and there is no other source of income brought on record by the AO, therefore addition was deleted. Therefore, we note that assessing officer accepted the agricultural income in the hands of the assessee in the previous assessment year as well as in the current assessment year also and assessee does not have any source of income except agricultural income, therefore respectfully following the binding precedent in the case of Madhusudan Dhakad(supra), we delete the remaining addition of Rs. 10,76,392/-.



12. In the result, appeal filed by the assessee, (in ITA No.451/RJT/2013), is allowed.

13. Now, we shall take assessee's appeal in ITA No. 65/Rjt/2014, for assessment year (AY) 2010-11, in the case of Shri Kamlesh Vashrambhai Ramani, wherein the effective grounds of appeal raised by the assessee, are as follows:

“(1) The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad, has erred in dismissing the appeal of the assessee, whereby upholding the addition of Rs. 25,00,000/- made by the Assessing Officer, on the alleged ground of income from other sources is unwarranted, unjustified and bad in law.

(2) The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad, has erred in dismissing the appeal of the assessee, whereby upholding the addition of 1,45,35,035/- made by the Assessing Officer on the alleged ground of unaccounted investment/expenditure as per seized annexure (diary A-14) is unwarranted, unjustified and bad in law.”

14. Ground no.1 raised by the assessee, relates to addition of Rs.25,0000/- under the head income from other sources. Brief facts, qua the issue are that during the assessment proceedings, the assessing officer noticed that seized documents have clearly revealed that assessee has agreed to purchase a land situated at RS No.47 in Rajkot city from Shri Dineshbhai Bhanjibhai Vadher, Power of Attorney holder of Shri Ghoghabhai Premjibhai Kukadia for Rs. 1,60,00,000/- and as advance to this transaction, the assessee has paid cash of Rs.75 lakhs on 21-08-2008. This fact has also been accepted by the assessee, as assessee has withdrawn the appeal filed for AY 2008-09, wherein the AO made the addition of Rs.75,00,000/-, to the income of the assessee on this account. Even otherwise, sufficient evidences were found during the search like complaint made by the assessee to the police, copy of Civil Suit No.274/08 filed by the assessee, before the Principal Civil Senior Judge of Rajkot. In both these complaints assessee has himself accepted that he has paid



cash of Rs.75,00,000/- to Shri Vadher and, therefore, the authenticity of agreement of purchase entered into by the assessee with Shri Dineshbhai Bhanjibhal Vadher is proved. The assessing officer also noticed that subsequently, Shri Dineshbhai Bhanjibhal Vadher, could not make final document in favour of assessee and this fact is also undisputed. After the above stated legal dispute, involving complaints before the police and judiciary, there was an 'Out of Court Settlement' between the assessee and Shri Vadher dated 29-12-2009, a copy of which was seized, vide pages 22 & 23 of Annexure A-7.

15. The assessing officer noted that as per this 'Out of Court settlement', it was decided that in lieu of advance payment of Rs. 75,00,000/-, made by the assessee, Shri Vadher would provide two other pieces of lands to the assessee at RS No. 149 and land at RS No.47 paiki 9, amounting to Rs.1,00,00,000/-. There is no dispute between the assessee and the Department till this stage, as assessee has also accepted all these events, mainly because of the fact that all the related documentary evidences were found during search. Therefore, assessing officer during assessment proceedings, treated the benefit of Rs. 25,00,000/- earned by the assessee [Value of two new lands at Rs.1,00,00,000- Cash advance of Rs. 75,00,000/-) as 'interest income / income from other sources',.

16. Aggrieved by the above action of the assessing officer, the assessee carried the matter in appeal before the learned CIT (A). Before learned CIT(A), the assessee submitted that this '**Out of Court settlement**' was also not honoured by both the parties and instead of getting another land at RS No.149 and RS No.47, assessee has received back, cash of Rs.75 lakhs from Shri Vadher. However, learned



CIT(A) rejected the above contention of the assessee and confirmed the action of the assessing officer. Therefore, the assessee is in further appeal before us.

17. We have given our thoughtful consideration to rival contention. We have perused case file as well as paper books furnished by assessee. The learned Counsel for the assessee argued before us that the assessee, vide letter dated 04.02.2013 submitted that the conclusion of earning Rs. 25,00,000/-, on this property after compromising with the party is totally wrong and it is totally imagination and presumption made. The assessee also filed a copy of affidavit made between him and Shri Dinesh B Vadher on 06.02.2013 that the agreement made between them on 29.12.2009, was not executed and therefore, Shri Vadher has paid back Rs. 75,00,000/-. However, learned DR for the revenue submitted before us that the content of the agreement that, they have mutually agreed that in lieu of payment of Rs. 75,00,000/- cash by the assessee, Shri Vadher has agreed to sell land worth Rs.1,00,00,000/-, to the assessee. The affidavit filed by the assessee is self- serving document and cannot be believed. Therefore, learned DR for the revenue, contended and that the addition made by the assessing officer may be sustained.

18. We have considered the submissions of both the parties and noted that the assessee submitted that the '**Out of Court settlement**' was not honoured by both the parties and instead of getting another land at RS No.149 and RS No.47, the assessee has received back, the cash to the tune of Rs.75 lakhs from Shri Vadher. The assessee filed an affidavit dated 06-02-2013 of Shri Vadher stating above facts. We note that assessee admitted that he had paid Rs.75,0000/- in cash and on the said cash component, income was assessed in the assessment year (AY) 2008-



09 and assessee has paid the taxes thereon. Therefore. addition pertaining to Rs.75,0000/- has already suffered tax therefore there should not be tax again on the said income. The assessee has entered into agreement and out of the court settlement the matter was settled for that the assessee had produced the relevant papers, which are there in the assessee`s paper book, filed before us, which state that out of court settlement, the matter was settled, however, the AO made the addition on the differential amount of Rs. 25,00,000/- (1,00,00,000 – 75,00,000), which is not justifiable. We note that the assessee has the right to decide whether to enter into or cancel any agreement/contract, and the Income-tax authorities cannot interfere with such business decisions. It is a well-settled principle that the Income-tax authorities cannot sit in the armchair of a businessman and dictate how business should be conducted. The assessee has the right to carry on business in the manner he deems fit, and the tax department`s role is only to examine the taxability of income and allowability of expenditure under the Income-tax Act, 1961. The commercial expediency must be judged from the assessee`s point of view, not the Assessing Officer`s point of view. We also find that if an expenditure is incurred out of commercial expediency, it must be allowed, and the tax authorities cannot substitute their own decision in place of that of the businessman. The businessman`s decision is final, as long as it is bona fide and related to business; the assessing officer cannot question the necessity of such decisions. The Revenue authorities cannot dictate terms of business prudence. Based on these facts and circumstances, we delete the addition.

19. In the result, ground no.1 raised by the assessee is allowed.



20. The ground no. 2 raised by the assessee, relates to the addition of Rs.1,45,35,035/- made by the AO, on account of unaccounted investment/ expenditure, as per the seized annexure (diary A-14).

21. Brief facts of the issue in dispute are stated as under. During the course of search, several incriminating documents / loose papers/ diaries were seized from the premises of the assessee. In the seized diary, annexure A-14, on various pages, the details of financial transactions were recorded. When the statement of the assessee was recorded u/s 132(4) on 24-06-2010, he was asked to explain the contents of noting recorded on pages of Annexure A-14. For the sake of convenience the page no, the relevant question & answer of the statement, details of financial transactions and reply of the assessee are summarized as below:

Page No. of Annexure A-14	Relevant Question & Answer No. of the statement	Details of financial transactions notings	Amount disclosed u/s 132(4) (Rs.)
4	12	Investment of cash of Rs.15,10,000/- in NRI Royal Bungalow, Plot No.D-46-47	15,10,000/-
6	14	Unaccounted expenditure of Rs.20,15,545/- on renovation of house at Akshar Marg	20,15,545/-
8	16	Unaccounted expenditure on furniture and bathroom fittings of house at Akshar Marg	10,09,500/-



12	20	Cash paid of Rs.40,00,000/- for purchase of land of area 1 acre 34 gunthas at Morvi Road	40,00,000/-
14	22	Cash paid of Rs.60,00,000/- for purchase 12 acres of land at Village Khijadia, Rajkot	60,00,000/-
			1,45,35,045/-

However, assessee did not disclose the above income in the return of income filed in response to 153A notice. The assessee submitted before the assessing officer that the books of accounts, income tax returns and other relevant records were not available while making disclosure in the statement, therefore, addition should not be made in the hands of the assessee.

The assessee submitted that the presumption, that assessee has made unexplained investment/investment on the basis of such document seized is completely untenable and unsustainable and additions based on such presumption cannot be sustained. No adverse inference can be drawn about the assessee on such presumption. Nothing has been found during the search and no such assets had been recovered. Therefore, such additions made only on the basis of a statement which has been retracted immediately thereafter are not sustainable.

22. However, the assessing officer rejected the above contention of the assessee and held that in addition to admission of the assessee, in the statement recorded u/s



132(4), there are sufficient credible and believable evidences found during the course of search which prove beyond doubt that assessee has made unaccounted investment / expenditure of Rs.1,45,35,045/-, details of which are recorded in Annexure A-14. Therefore, assessing officer made addition of Rs.1,45,35,045/- to the income of the assessee.

23. On appeal, the Id. CIT(A) confirmed the action of the assessing officer. Therefore, assessee is in appeal before us.

24. We have heard both the parties. The Ld.Counsel for the assessee submitted that the entry mentioned in the diary does not show that the assessee paid the cash. This said diary pertains to the assessment year (AY) 2010-11 and 2011-12, therefore, the amount recorded in the diary is not conclusive proof, that it is assessee`s unaccounted investment/ expenditure. The said diary contains the transaction for subsequent years also. Hence, the addition should not be made. The Ld.counsel for the assessee also took us through the paper book at page no.90 and 91 and stated that the entries mentioned in the diary do not show the reality that the assessee has paid the amount.

25. On the other hand, the Ld.DR for the Revenue submitted that the assessee is indulging in cash transaction and assessee is receiving money in cash therefore the addition made by the AO should be sustained. The Ld.DR also pointed out that the conduct of the assessee, clearly shows that assessee is habitually engaged in cash transaction to avoid the payment of taxes, therefore the addition made by the AO should be sustained.



26. We have considered the submissions of both the parties and noted that the books of accounts, income tax returns and other relevant records were not available while making disclosure in the statement by the assessee. The assessing officer forced assessee to make the disclosure. Except agriculture and petrol pump, there were no other business or activities of the assessee, which could yield profit of 2 to 3 crores. An affidavit dated 30-06-2010 was filed before the ADIT, Rajkot retracting the disclosure of unaccounted income. In fact, even if an assessee inadvertently failed to claim any legitimate claim, the revenue has to correct it and due tax has to be collected. In this regard Hon'ble Gujarat High Court in the case of S.R. Koshti vs. CIT 276 ITR 165 (Guj) has held that ***"the authorities under I.T. Act, 1961 are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee under a mistake, misconception or not being properly instructed is over assessed, the authorities under the Act are required to assist him and assure that only legitimate taxes due are collected"***.

27. In fact, in a situation like that of the assessee, number of appellate authorities have opined that the revenue authorities are expected to collect the legitimate revenue and we had placed on record the CBDT's Circular No. 114 XL-35 of 1955, dated 11-4-1955, which read as under:

"Administrative instructions for guidance of Income-tax Officers on matters pertaining to assessment

1. The Board has issued instructions from time to time in regard to the attitude which the Officers of the Department should adopt in dealing with assessee in matters affecting their interests and convenience. It appears that these instructions are not being uniformly followed,



2. *Complaints are still being received that while Income-tax Officers are prompt in making assessments likely to result into demands and in effecting their recovery, they are lethargic and indifferent in granting refunds and giving reliefs due to assessee under the Act. Dilatoriness or indifference in dealing with refund claims (either under section 48 or due to appellate, revisional, etc., orders) must be completely avoided so that the public may feel that the Government are actually prompt and careful in the matter of collecting taxes and granting refunds and giving reliefs.*

(3) Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the department for it would inspire confidence in him that he may be sure of getting a square deal from the department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessee on whom it is imposed by law, officers should—

(a) Draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;

(b) Freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs.

4. Public Relation Officers have been appointed at important centres, but by the very nature of their duties, their field of activity is bound to be limited.”

28. We note that the diary, so seized by the department, pertains to the assessment year (AY) 2010-11 and 2011-12, therefore, the amount recorded in the diary is not pertaining to assessment year 2010-11, under consideration. The said diary contains the transaction for subsequent years, hence, the addition should not be made in the assessment year 2010–11. Besides, the entries mentioned in the diary do not show the reality that the assessee has paid the amount, therefore, based on the factual position, we delete the addition.

29. In the result, ground no.2 raised by the assessee, is allowed.



30. Now, we shall take appeal in ITA No.63/Rjt/2014, for AY 2011-12, in the case of Kamlesh V. Ramani, wherein the effective grounds of appeal raised by the assessee are as follows:

“(1) The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in dismissing the appeal of the assessee whereby upholding the addition of Rs. 63,25,000/- made by the Assessing Officer on the alleged ground of unaccounted receivables, is unwarranted, unjustified and bad in law.

“(2) The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in dismissing the appeal of the assessee whereby enhancing the income by Rs. 75,00,000/-, is unwarranted, unjustified and bad in law.”

31. The ground no.1 raised by the assessee pertains to the addition of Rs.63,25,000/- made by the AO, on account of unaccounted receivables and ground No.2 relates to enhancing the income by Rs. 75,00,000/-. Since both the grounds of appeal are interconnected and mix, therefore we shall adjudicate them together.

32. The brief facts qua the issue are that during the assessment proceedings, the assessing officer noticed that page No. 16, 18, 29, 31 & 33 of the diary (Annexure A- 14) impounded during the course of survey proceedings, at the business premises of M/s Maruti Nandan Petroleum situated at 318, Heera Panna Complex, Dr.Yagnik Road, Rajkot, it was observed that the said pages record the certain amounts receivables from the different parties. The transactions recorded on the said pages, are reproduced/narrated as under:

Sr.No.	Page No.	Date	Amount(Rs.)	Name of the Party
1	16	06-04-2010	15,00,000/-	Rajesh Ramani
2	“	“	7,50,000/-	Suresh Ramani
3	“	“	10,00,000/-	Jadav govani
4	18	15-04-2010	12,50,000/-	Jagdish Ramani



5	“	“	15,00,000/-	Vallabh Ramani
6	“	“	10,00,000/-	Chatur Meghji
7	29	25-04-2010	8,50,000/-	Dipak Madhavji
8	“	“	7,50,000/-	Hasmukh Bechar
9	“	“	5,50,000/-	Panchabhai chovatiya
10	“	“	5,00,000/-	Babubhai Moliya
11	31	02-05-2010	7,00,000/-	Hasmukh Mavji
12	“	“	10,00,000/-	Ghela Pragji
13	“	“	10,00,000/-	Haresh Ghela Ramani
14	33	06-06-2010	7,50,000/-	Chatur Moliya
15	“	“	5,00,000/-	Pragji Ramani
16	“	“	2,25,000/-	Babu Moliya
Total			1,38,25,000/-	

In assessee`s statement recorded during survey/search, the assessee vide question No.24, 26, 37, 39 & 41, had admitted that the transactions written on page No. 16, 18, 29, 31 & 33 of the seized diary, amounting to Rs.1,38,25,000/- (Rs.32,50,000/- + Rs.37,50,000/- Rs.26,50,000/- + Rs.27,00,000/- + Rs.14,75,000), pertains to cash receivables from different parties. The assessing officer noticed that these transactions are not recorded in assessee`s regular books of accounts. However, in the return of income, it was noticed by the assessing officer that the assessee has not disclosed the aforesaid amounts representing undisclosed income in the return of income filed by him. Therefore, vide assessing officer`s show -cause notice dated 30.10.2012, the assessee was asked to explain as to why the aforesaid receivables not offered by him, as his unaccounted income in the return of income should not be added to his total income.

33. In reply, the assessee, vide letter dated 08.11.2012, filed written submission. The assessee also filed copy of affidavit dated 30.6.2010, claimed to have been filed before the Investigation Wing, and also filed copy of a letter dated 25.01.2012 in which he has retracted from disclosure of additional income. The assessee



submitted that no such amount was receivable from the person as mentioned in the chart reflected at serial number 11 of the show -cause notice. In fact, the persons and parties shown in the chart are fictitious. Further, the assessee in his reply dated 04.02.2013, in which he has made disclosure of income in respect of cash payment of Rs.75,00,000/- for assessment year 2008–09, land dealings, therefore, requested to give credit of the said cash received by him on settlement with parties against the receivables mentioned in the diaries. The assessee also filed a copy of bank statement of CC loan taken by M/s Maruti petroleum, his proprietary concern which is showing debit balance of Rs. 66,64,680/-, as on 01.01.2010 and claimed that he had given these receivables out of said cash credit (CC) account. Therefore, he claimed credit from both these amounts out of receivables.

34. However, the assessing officer, rejected the above contention of the assessee and observed that since the assessee has made disclosure of Rs. 75,00,000/- in respect of unaccounted cash payment for purchase of land and its subsequent receipt on settlement for which addition has already been made in assessment year (AY) 2008-09, on agreed basis, therefore, the credit of Rs. 75,00,000/- was given by the assessing officer, against unaccounted receivables mentioned in the diary and which was disclosed by the assessee as his unaccounted income of Rs.1,38,25,000/-. After giving credit of Rs. 75,00,000/-, which has been disclosed and added to the total income in AY 2008-09, the net addition on account of unaccounted receivables comes to Rs. 63,25,000/- (Rs.1,38,25,000- Rs. 75,00,000). Therefore, the assessing officer made addition to the tune of Rs. 63,25,000/-.

35. Aggrieved by the order of the AO, the assessee carried the matter in appeal before the Ld.CIT(A), who has confirmed the action of the AO. The Ld.CIT(A)



held that assessee had 'unaccounted receivables' of Rs.1,38,25,000/- (Rs.75,00,000 + Rs.63,25,000), the details of which were recorded in seized Annexure A-14. These 'unaccounted receivables' represent undisclosed income of the assessee, earned from undisclosed sources and not offered for taxation. No set off of Rs.75,00,000/- lakhs can be given to the assessee, as no cash was received back by the assessee from Shri Vadher. In view of this, addition made by the AO of Rs.63,25,000/- was confirmed by CIT(A) and income of assessee was enhanced by Rs.75,00,000/-. Therefore, the assessee is in further appeal before us.

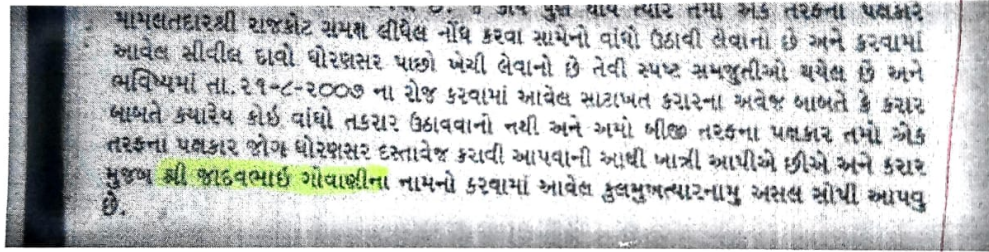
36. We have heard both the parties. Learned Counsel for the assessee submitted that the admission of additional income was not based on any credible evidences. The seized diary A-14 was a dumb document with some rough notings recorded therein. There are no specific details of dates, amounts and names of persons from whom amounts were receivable by the assessee. The assessee has been able to disprove the entries recorded in A-14 by submitting supportive evidences. Besides, there are no corroborative evidences to prove that entries recorded in A-14 are correct and actually represent the unaccounted financial dealings of assessee. The assessee has admitted the disclosure without examining the books of account/return. After verifying the books, the assessee was of the view that the disclosure made by him during search was incorrect. The assessee also submitted that except petrol pump/agricultural income there is no other sources of income which could yield crores of rupees. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.



37. We note that enhancement of income made by the learned CIT(A) is not in accordance with law as there was no need to make enhancement, as the amount of Rs. 75,00,000/- had already been taxed in the assessment year (AY) 2008-09. Therefore, the enhancement of the same amount in the AY 2011-12 is not justifiable. About issue of enhancement made by CIT(A) of Rs. 75,00,000/-, we note that AO allowed set off of Rs. 75.00 Lakh in respect of the addition made in the A.Y. 2008-09 against unexplained investment made in the "Receivables" of Rs. 1,38,25,000/-, in the A.Y. 2011-12, by accepting the fact and submission that ultimately the transaction did not materialize and hence the amount given as advance in the A.Y. 2008-09 (and also taxed in the hands of the appellant in that year) was to be returned back to the appellant and the same is available to the appellant for the purpose of making advances to the various persons. We find that Ld. CIT(A) contended that the transaction was actually materialized and the appellant did receive the property which he later on sold to one Mr. Jadav Govani hence the set off given by AO was erroneous. We note that Ld. CIT(A) inquired with the revenue records and found that the property, which was to be received by the appellant was sold by one Mr. Jadav Govani to some third party and from the impounded diary of the appellant it is noted that the appellant was to receive sum of Rs. 10.00 Lakh from Mr. Jadav Govani. Based on this Ld. CIT(A) contended that the appellant did receive the property from Mr. Dinesh Vadher and sold the same to Mr. Jadav Govani and ultimately Mr. Jadav Govani sold the same to some third party. The sales consideration was received by the appellant and balance sum of Rs. 10.00 lakh was only pending, which was reflected in the impounded material. Thus, the appellant could not have received any sum back from Mr. Dinesh Vadher and hence set off of Rs. 75.00 Lakh was not to be allowed.



38. Thus, we note that the contention of AO is that the transaction did not materialize and hence the appellant received money back from Mr. Dinesh Vadher and contention of Id. CIT(A) is that the transaction did materialize and ultimately the property was sold by the appellant to Mr. Jadav Govani and he has received money from Mr. Jadav Govani and not from Dinesh Vadher. Undisputed fact in the contention of AO as well as Id. CIT(A) is that the appellant did receive sum of property back in the A.Y. 2011-12. However, we note that Jadav Govani was not the buyer of the property, in fact he was holding interest in the property even before the appellant made advance payment of Rs. 75.00 Lakh. His name was also appearing in the "Out of court settlement dated 29.12.2009 extracted hereunder:



“.....and as per this agreement we will handover original power of attorney executed on the name of Jadavbhai Govani to the party of the first part.

Therefore, we note that Jadav Govani was not the buyer of the property from appellant, he was already holding interest in the property at the time of "Out of Court Settlement" and the sum receivable of Rs. 10.00 Lakh from him also substantiate the fact that the transaction not materialized and the appellant did receive back his sum of Rs. 75.00 Lakh back, out of which Rs. 10.00 Lakh was yet



to be received from Jadav Govani and hence the same was appearing in the impounded diary. Thus, the appellant is entitled to set-off.

39. About issue of addition of Rs. 1,38,25,000/- in the A.Y. 2011-12, we note that the addition was made on the basis of the diary impounded in the course of the survey u/s 133A inventoried as Annexure A-14. The diary contains noting of "Amount receivable" on different date from different person. The addition was confirmed by both the lower authorities on the basis of the diary and statement of the appellant.

However, we note that the addition ought to be restricted to the PEAK balance only as the sum of receivables are pertaining to the different persons on the different date which means that the sum receivable on the earlier date must have been realized/ recovered by the appellant and hence the name appearing on earlier date are not found in later date. For an example, the sum of receivable from the different persons noted on 1st date are different from the sums of receivable from persons noted on 2nd date, meaning thereby the receivables as of 1st have been recovered and fresh receivable are appearing on 2nd date. Thus, the sum receivable on earlier date are available for giving advance to other parties appearing on 2nd date. Under such circumstances the peak amount only can be added and not the total of receivables of the different dates from the different persons. The working of the peak is given hereunder:



Sr. No.	Page no.	Date	Amount (Rs.)	Name of Party	Total
1	16	06-04-10	1,500,000	Rajesh Ramani	
			750,000	Suresh Ramani	
			1,000,000	Jadav Govani	3,250,000
2	18	15-04-10	1,250,000	Jagdish Ramani	
			1,500,000	Vallabh Ramani	
			1,000,000	Chatur Meghji	3,750,000
3	29	25-04-10	850,000	Dipak Madhavji	
			750,000	Hasmukh Bechar	
			550,000	Panchabhai Chovatiya	
			500,000	Babubhai Moliya	2,650,000
4	31	02-05-10	700,000	Hasmukh Mavji	
			1,000,000	Ghela Pragji	
			1,000,000	Haresh Ghela Ramani	2,700,000
5	33	06-06-10	750,000	Chatur Moliya	
			500,000	Pragji Ramani	
			225,000	Babu Moliya	1,475,000
				TOTAL	13,825,000

40. In view of the above table the peak would be worked out at Rs. 37,50,000/- on 15.04.2010. The above facts and data were already on record of lower authorities, that is, assessing officer and Id.CIT(A), therefore, above chart produced by the learned Counsel for the assessee, is not an additional evidence before us. Since, the amount to be set off (either Rs. 75.00 Lakh or Rs. 1.00 Crore) is higher than the peak investment therefore, no addition is warranted in the assessment year (A.Y.) 2011-12, on account of unexplained receivables. Hence, we allow both the grounds raised by the assessee.

41. In the result, ground no.1 and 2 raised by the assessee is allowed.



42. Now we shall take assessee's penalty appeal in ITA No.407/Rjt/2014 for AY 2011-12, which pertains to the Kamlesh V Ramani, wherein the grounds of appeal raised by the assessee are as follows:

The Ld.CIT(A)-IV, Ahmedabad has erred in passing order u/s.271AAA of the Act, levying penalty of Rs.7,50,000/- is unjustified, unwarranted and bad in law."

43. We note that assessing officer, had initiated penalty u/s 271AAA of the Act, for enhanced income of Rs.75,00,000/-. The assessing officer held that assessee has generated Rs. 75,00,000/- out of his financial dealings, the profit of which was not recorded in the regular books of accounts and no taxes were paid thereupon. Therefore, assessee has earned undisclosed income to the extent of Rs. 75,00,000/-, the details of which were found recorded in the seized material. As per section 271AAA of the Act, assessee is liable to pay penalty at the rate of 10% of the undisclosed income of the specified previous year. Therefore, assessing officer imposed penalty u/s. 271AAA of the Act, at the rate of 10% of the 'undisclosed income' of Rs.75,00,000/-, which comes to Rs 7,50,000/-.

44. The Ld.Counsel for the assessee submitted the Ld.CIT(A) is not authorized to levy penalty u/s.21AAA of the Act. Therefore, the penalty order framed by the Ld.CIT(A), was in violation of provision of section 271AAA of the Act, as the Commissioner does not have the power to impose the penalty u/s.271AAA of the Act, therefore initiation of the penalty proceedings are itself bad in law and hence the penalty should be quashed. The Ld. Counsel for the assessee took us through the definition of the assessing officer (AO) u/s. 2 (7A) of the Act and stated that nowhere Commissioner of Income Tax (Appeals) is mentioned, in the definition of the assessing officer. Besides, as per the section 271AAA of the Act, the CIT(A) is



not authorized to levy penalty and framed the penalty order u/s 271AAA of the Act therefor the said penalty may quashed. On the other hand, the Ld.DR for the Revenue submitted that CIT(A) has power, as that of AO, and in respect of enhancement amount, the CIT(A) had derived the satisfaction to levy the penalty u/s.271AAA of the Act. Therefore, penalty imposed by the Ld.CIT(A) is in accordance with law.

45. We have heard both the parties and perused the materials available on record. We note that the Co-ordinate Bench of Delhi in ITA No.2835/Del/2015 order dated 09.10.2018 in the case of Tripat Kaur vs. ACIT wherein the Tribunal has held as follows:

“27. Penalty of Rs. 23 lakhs initiated and levied by the learned Commissioner-A is otherwise unsustainable in law as only the assessing officer is authorized to levy it. Commissioner -A is not an assessing officer as defined under section 2 (7A) of the act. Therefore, according to us the penalty initiated by the learned commissioner appeals and levied by him of Rs. 23 lakhs is not sustainable, as he is not authorized to levy the same. If authority is given expressly by affirmative words upon a defined condition, the expression of that condition excludes the doing of the Act authorized under other circumstances than those as defined. It is also established principle of law that if a particular authority has been designated to perform an action on any particular issue, then it is that authority alone who should do that action. We draw support from various decision of Honorable High courts in (2012) 345 ITR 223 (Del-HC) 2012 Tax Pub(DT) 1806 (Del-HC) and also of the Honourable Supreme Court Anirudhsinhji Karansinhji Jadeja v. State of Gujarat (1995) 5 SCC 302 where in hon. Supreme court held as under-

13. It has been stated by Wade and Forsyth in 'Administrative Law, 7th Edition at pages 358 and 359 under the heading 'SURRENDER, ABDICATION, DICTATION' and sub-heading 'Power in the wrong hands' as below:-

'Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with some one else, or may allow some one else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by parliament is exercised, at least in part, by wrong authority, and the resulting decision in ultra vires and void. So strict are the courts in applying this principle that they condemn some



administrative arrangements which must seem quite natural and proper to those who make them, Ministers and their departments have several times fallen foul of the same rule, no doubt equally to their surprise.'

46. We also note that quantum addition of Rs.75,00,000/- has been deleted by us, therefore penalty does not have any leg to stand. That is, there is no foundation to sustain the penalty. Once the foundation fails, the superstructure also fails, that is, the penalty also is to be deleted. In this regard, we place reliance on the legal maxim “*Sublato fundamento cadit opus*” (meaning thereby that foundation being removed, structure /work falls). Hence the initial action of the revenue itself is not in consonance with law, then all the subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. Based on these facts and circumstances, we delete the penalty.

47. In the result, appeal filed by the assessee, (in ITA No.407/RJT/2014,) is allowed.

48. In the combined result, all appeals of these two assesses` are allowed.

Order pronounced in the open court on 10-02-2026

Sd/-

(Dr. Dinesh Mohan Sinha)

न्यायिक सदस्य/ Judicial Member

Sd/-

(Dr. Arjun Lal Saini)

लेखा सदस्य/Accountant Member

Rajkot

Date: 10/02/2026.

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 //

By order,

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