

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
& SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

I.T.A. Nos.1961/Ahd/2025
(Assessment Years: 2009-10)

Rohitkumar Chinubhai Modi, 10, Shyam Kunj Society, Opp. Shanti Tower, Nehru Nagar Char Rasta, Ambawadi, Ahmedabad-380015	Vs.	Assistant Commissioner of Income Tax, Circle-5(2), Now, Deputy Commissioner of Income Tax, Circle-2(1)(1), Ahmedabad
[PAN No.ADLPM5066E]		
(Appellant)	..	(Respondent)

I.T.A. Nos.1960/Ahd/2025
(Assessment Years: 2009-10)

Saurabhbhai Rohitbhai Modi, 10, Shyam Kunj Society, Opp. Shanti Tower, Nehru Nagar Char Rasta, Ambawadi, Ahmedabad-380015	Vs.	Assistant Commissioner of Income Tax, Circle-5(2), Now, Deputy Commissioner of Income Tax, Circle-2(1)(1), Ahmedabad
[PAN No.AAYPM2507N]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Satish Solanki, AR
Respondent by:	Shri Yogesh Mishra, Sr. DR

Date of Hearing	18.02.2026
Date of Pronouncement	20.02.2026

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

These are two appeals filed by the assessee against the order passed by
Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”)

National Faceless Appeal Centre (in short “NFAC”), Delhi vide orders dated 19.05.2025 & 17.09.2025 passed for Assessment Year 2009-10. Since common facts and issues for consideration are involved for both the years under consideration (both the appeals filed by the assessee before us being co-owners with respect to the same property), both the appeals are disposed of by way of a common order.

We shall first discuss the assessee’s appeal in the case of Rohitkumar Chinubhai Modi (in ITA No. 1961/Ahd/2025), our observations in the present matter would equally apply to ITA No. 1960/Ahd/2025

2. The assessee has taken the following grounds of appeal:

ITA No. 1961/Ahd/2025

“1. The Ld. CIT(A) grievously erred in law and on facts in not appreciating the fact that the notice issued u/s.148 dated 23-3-2016 was illegal, unlawful and without jurisdiction, hence, required to be quashed.

2. The Ld. CIT(A) erred in law and failed to appreciate the fact that AO proceeded to complete the assessment without providing a copy of the reasons recorded for reopening the assessment to the assessee. This was mandatory as directed by the Hon'ble Supreme Court in the case of GKN Driveshaft (I) Ltd vs ITO 259 ITR 19(SC).

3. The Ld. CIT(A) erred in law and on facts by not appreciating the fact that the assessee's case was subjected to detailed scrutiny twice. Once u/s. 143(3) on 14-9-2011 and u/s.143(3) r.w.s.147 on 17-12-2014, and there was no failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment as provided under the proviso to section 147.

4. The Ld. CIT(A) erred in law and on facts by not appreciating the fact that the AO was in possession of the loose paper seized from the premises of M/s. Bhailal A. Patel on 27-8-2008. Even though, no adverse inference was drawn while passing the assessment under section 143(3) on 14-9-2011 and 143(3) r.w.s.147 dated 17-12-2014.

5. The Ld. CIT(A) erred in law and on fact by not appreciating the fact that the AO issued notice relying on the order u/s.263 passed by the CIT-IV, Ahmedabad. However, as per para 14 (i) (c) of the said order passed under section u/s.263, the Ld. CIT categorically held that the buyers failed to prove the payment of cash to the assessee.

6. The Ld. CIT(A) erred in law by not appreciating the fact that the AO passed the order based on third-party documents which had never been provided to the assessee for rebuttal. The following judgements cover the issue:

i. *Smt. Lilaben Rameshbhai Savalia ITANo. 1124/Ahd/2017 dated 17-4-2024 ITATAhmedabad 'A' Bench.*

ii. *Rana Iqbal Singh Vs, ITO ward 1, Delhi (AU) ITANo. 496/Asr/2024 dt.9-6-2025 ITAT DB Amritsar.*

7. *The Ld. CIT(A) erred in law and on fact by not appreciating the fact that the AO has not provided an opportunity to the assessee to cross-examine Shri Hintendra B. Patel, the purchaser, based on whose statement additions were made in his income. The following judgment covers the issue:*

i. *Mustafamiya H. Sheikh Vs. ACIT Circle-11 ITA No.2588/Ahd/2012 dated 15-2-2013 ITAT 'A' Bench Ahmedabad.*

8. *The Ld. CIT(A) erred in law and facts by confirming the additions made by the AO as unaccounted consideration as short-term capital gains without providing a copy of the loose papers and the statement of the third party, based on which the AO relied.*

9. *The Ld. CIT(A) erred in law and on facts by confirming the additions made by the AO, as the survey was conducted in the case of M/S. Bhailal A. Patel on 27-8-2008 whereas the document for sale was registered on 12-12-2008 i.e. after 4 months, and there was nothing mentioned in the document about cash payment as per the loose paper.*

Your Appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal before or at the time of hearing."

3. At the outset, we note that there is a delay of 77 days in filing of the appeal before us. Looking into the totality of facts the quantum of addition made, the smallness of delay in filing of the present appeal and no perceptible prejudice being caused to the Department, we are hereby inclined to condone the delay in filing of appeal before us.

On Merits:

4. The brief facts of the case are that the assessee is an individual who filed his return of income for Assessment Year 2009-10 on 19.03.2010 declaring a total income of Rs.35,23,540/-. The return was processed under section 143(1) of the Income-tax Act, 1961 ("the Act"). Subsequently, the case was selected for scrutiny and an assessment under section 143(3) of the Act was completed on 14.09.2011 determining the total income at Rs.35,47,690/-. Thereafter, the case was reopened earlier and an assessment

under section 143(3) read with section 147 was completed on 17.12.2014 determining the total income at Rs.45,44,450/-Once again, the Assessing Officer initiated reassessment proceedings by issuing notice under section 148 on 23.03.2016 after recording reasons and obtaining approval as required under the Act. Since the assessee did not file a return in response to the notice under section 148 of the Act, a notice under section 142(1) read with section 148 of the Act dated 21.06.2016 was issued. In response, the assessee requested that the original return filed on 19.03.2010 be treated as the return filed in response to notice under section 148. The reasons recorded for reopening were thereafter communicated to the assessee.

5. The reasons recorded stated that the assessee, along with three other co-owners, had sold agricultural land situated at Sarkhej bearing Survey Nos.117 and 153 vide sale deeds dated 10.12.2008 for a consideration of Rs.53,72,100/- and Rs.1,10,17,500/- respectively, aggregating to Rs.1,63,89,600/-. Each of the four co-owners had an equal share. The purchasers of the said land were Shri Hitendrakumar Bhailalbhai Patel (50% share), Shri Ajaybhai Haribhai Patel (12.5% share) and Shri Parimal Sureshbhai Patel (37.5% share).

6. The Assessing Officer observed that during proceedings under section 263 of the Act in the case of one of the purchasers, namely Shri Hitendrakumar Bhailalbhai Patel, it had come to light that a survey under section 133A of the Act was conducted on 27.08.2008 at the business premises of M/s Bhailal A. Patel, **in which certain loose papers were found and impounded**. Based on those loose papers, Shri Hitendra Patel **had claimed deduction under section 54B of the Act in respect of cash**

payments amounting to Rs.6,63,26,283/- for his 50% share in the purchase of the land. On the basis of this **material and the admission of the purchaser, the Assessing Officer formed a belief that the total cash consideration paid by all the purchasers aggregated to Rs.13,26,52,566/- and that the assessee's 25% share therein amounted to Rs.3,31,63,140/-, which had not been disclosed in the return of income.**

7. During the reassessment proceedings, the assessee denied receipt of any cash consideration and submitted that the entire sale consideration was received only by cheque as per the registered sale deeds. The assessee relied on sworn statements recorded, the assessee denied knowledge of and submitted that there was no connection with the loose papers found from the premises of a third party, and submitted that there no corroborative evidence to establish receipt of cash by the assessee.

8. The Assessing Officer, however, was not satisfied with the explanation furnished by the assessee. The Assessing Officer relied on the loose papers impounded during the survey in the case of M/s Bhailal A. Patel, the admission of cash payment by Shri Hitendra Patel, and the principle of preponderance of probabilities. The Assessing Officer held that the impounded documents **were not dumb documents, that they directly related to the transaction in question, and that the purchasers had clearly admitted payment of on-money.** Accordingly, the Assessing Officer treated the sum of Rs.3,31,63,138/- being the assessee's share of the alleged cash consideration as unaccounted sale consideration received in cash and added the same to the assessee's income under the head short-term capital gains. The assessment was accordingly completed assessing the total income

at Rs.3,66,86,678/-. Penalty proceedings under section 271(1)(c) were also initiated separately.

9. Aggrieved by the reassessment order, the assessee carried the matter in appeal before the Commissioner of Income-tax (Appeals). Before the first appellate authority, the assessee challenged both the validity of the reopening under sections 147 and 148 of the Act as well as the addition on merits. The assessee contended that there was no failure on the part of the assessee to disclose fully and truly all material facts, that the reopening was based on third-party material already available with the department for several years, and that the sanction under section 151 of the Act was invalid. On merits, the assessee submitted that that the addition was based solely on loose papers found from a third party, **that no opportunity of cross-examination of the purchaser was granted, and that no corroborative evidence existed to prove receipt of cash.**

10. The Commissioner of Income-tax (Appeals), after considering the submissions, upheld the reopening of the assessment. He held that there was tangible material in the form of impounded documents and admission of the purchaser which constituted sufficient reason to believe that income had escaped assessment. Relying on judicial precedents, the CIT(Appeals) observed that at the stage of reopening, it is not necessary for the Assessing Officer to conclusively establish escapement of income and that prima facie material is sufficient. Accordingly, the grounds challenging the validity of reopening were dismissed.

11. On the issue of addition, the CIT(Appeals) noted that the evidence was collected **from the original purchaser of the land and not from an unrelated third party**. He further observed that the purchaser had claimed deduction under section 54B of the Act by including the cash component in his return of income, which served as corroborative evidence against the assessee. The CIT(Appeals) held that the impounded loose papers, coupled with the admission of the purchaser and the claim made in the return of income, established that cash consideration had indeed been paid and received. The explanations of the assessee were found to be unsatisfactory, and the CIT(Appeals) held that there was no reason to interfere with the findings of the Assessing Officer. Consequently, the addition of Rs.3,31,63,138/- was confirmed and the appeal of the assessee was dismissed.

12. The assessee is in appeal before us against the order passed by the Commissioner of Income-tax (Appeals) dismissing the appeal of the assessee.

13. Before us, the learned counsel for the assessee submitted that the assessee is a regular taxpayer and that the return of income for A.Y. 2009-10 was duly filed and subjected to scrutiny twice prior to the impugned reassessment. It was argued that the notice under section 148 of the Act issued on 23.03.2016 was bad in law, as the reasons for reopening were not furnished as mandated by law and there was no failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. It was further contended that the reopening was initiated beyond four years from the end of the relevant assessment year and, therefore, the proviso to section 147 squarely applied. The learned counsel submitted that the Department was already in possession of the so-called incriminating loose papers since 2008

and yet no action was taken during the original scrutiny or the earlier reassessment proceedings. The reopening after such a long lapse of time, based on the same material, was argued to be nothing but a change of opinion. It was also contended that the sanction under section 151 was mechanical and invalid, as evident from the information obtained under the Right to Information Act, wherein no proper satisfaction was recorded by the competent authority. On merits, the learned counsel vehemently argued that the entire addition was based solely on loose papers found from the premises of a third party, which neither belonged to the assessee nor were in his handwriting or possession. It was submitted that such loose sheets are dumb documents and cannot form the sole basis of addition without independent corroborative evidence. The learned counsel submitted that that the registered sale deeds did not record any cash consideration and that no evidence of actual receipt of cash by the assessee was ever found. It was further argued that the assessee was never afforded an opportunity to cross-examine the purchaser, whose statement was heavily relied upon, thereby violating principles of natural justice. The learned counsel also pointed out that in the proceedings under section 263 in the case of Shri Hitendra Patel, the Commissioner had categorically held that the purchaser failed to prove payment of cash and that reliance on loose papers was misplaced. According to the learned counsel, it was contradictory for the Department to reject the purchaser's claim of cash payment for the purpose of deduction under section 54B of the Act and yet to tax the alleged receipt of cash in the hands of the assessee. A large number of judicial precedents were relied upon to contend that additions based solely on third-party documents and statements, without

corroboration and without granting cross-examination, are unsustainable in law.

14. In response, the learned Departmental Representative placed reliance on the observations made by the Commissioner of Income-tax (Appeals) in the appellate order and supported the findings of the lower authorities.

15. We have carefully considered the rival submissions, perused the material available on record and examined the judicial precedents relied upon by both the parties. Upon an overall consideration of the facts, circumstances and the settled position of law, we find no merit in the appeal filed by the assessee and the same is liable to be dismissed for the reasons recorded hereinafter.

16. At the outset, the contention of the assessee that the assessment is vitiated on account of denial of opportunity of cross-examination of Shri Hitendrakumar Bhailalbai Patel cannot be accepted. It is an undisputed fact that the reassessment proceedings were initiated and carried out on the basis of the admission of the said purchaser and the impounded loose papers found during the survey proceedings. The record clearly shows that the assessee was fully aware, right from the stage of reopening, that the proceedings were founded upon the statement and admission of Shri Hitendrakumar Bhailalbai Patel. Despite such knowledge, the assessee never made any specific request during the course of reassessment proceedings seeking cross-examination of the said purchaser. It is well settled that the right of cross-examination, though an important facet of natural justice, is not an automatic or absolute right and has to be specifically demanded at the appropriate stage.

Failure to seek cross-examination at the assessment stage disentitles the assessee from subsequently raising such a grievance. We are of the considered view that where the assessee did not seek cross-examination at the relevant stage, the plea of violation of natural justice cannot be entertained at a later stage. The present case, therefore, does not suffer from any violation of principles of natural justice on this count.

17. Coming to the contention that the loose papers impounded during the survey are dumb documents, we find ourselves unable to agree with the assessee. The impounded documents, when examined in conjunction with the surrounding circumstances, cannot be treated as vague or meaningless documents. The most significant aspect is that the cheque component reflected in the loose papers exactly tallies with the consideration recorded in the registered sale deeds. Such exact matching establishes a live and direct nexus between the impounded documents and the transaction of sale of land undertaken by the assessee and the other co-owners. Further, the cash component recorded in the same set of documents has been specifically admitted by the purchaser, Shri Hitendrakumar Bhailalbai Patel. Once a part of the document is found to be correct, reliable and corroborated by registered instruments, the assessee cannot be permitted to selectively accept one portion of the document and conveniently disown the remaining portion merely because it is adverse to him. The Hon'ble Supreme Court in **CIT v. Durga Prasad More (1971) 82 ITR 540 (SC)** has held that taxing authorities are entitled to look into the surrounding circumstances to find out the reality of a transaction. Similarly, in **Sumati Dayal v. CIT (1995) 214 ITR 801 (SC)**, it has been held that the apparent must be considered real only until it

is shown that there are reasons to believe that the apparent is not the real. Applying these principles, the impounded documents in the present case are clearly “well-speaking documents” and not dumb documents as contended by the assessee.

18. The argument that the reassessment under section 147 of the Act is invalid on the ground that the assessee had disclosed all material facts also does not hold water. What is relevant for the purpose of the proviso to section 147 of the Act is not merely disclosure of primary facts as recorded in the registered sale deeds, **but disclosure of true and full facts relating to the real consideration received.** The material on record demonstrates that the assessee had disclosed only the registered consideration and not the cash component of sale consideration which, as established, formed part of the same transaction. The existence of tangible material in the form of impounded documents and the admission of the purchaser constituted sufficient reason to believe that income chargeable to tax had escaped assessment. At the stage of reopening, the Assessing Officer is not required to conclusively prove escapement of income. It is sufficient if there exists prima facie material leading to formation of such belief. This legal position is well settled by the Hon’ble Supreme Court in *CIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd.* (2007) 291 ITR 500 (SC) and *Raymond Woollen Mills Ltd. v. ITO* (1999) 236 ITR 34 (SC). Therefore, the reopening of assessment in the present case cannot be said to be invalid or based on a mere change of opinion.

19. As regards the contention that the Department is taking contradictory stands by rejecting the purchaser’s claim of deduction under section 54B of

the Act in proceedings under section 263 and yet taxing the receipt of cash in the hands of the assessee, we find no substance in this plea. The proceedings under section 263 of the Act in the case of the purchaser were concerned with the allowability of a statutory deduction, which required strict proof of eligibility and compliance with the conditions prescribed under the Act. It is a settled position of law that findings in the case of one assessee do not operate as res judicata in the case of another assessee. Therefore, rejection of the purchaser's claim for deduction does not preclude the Department from examining and taxing the corresponding receipt in the hands of the assessee. **It is also of considerable importance that the statement of Shri Hitendrakumar Bhailalbhai Patel admitting payment of cash has never been retracted.** An admission, unless shown to have been obtained under coercion or subsequently retracted with cogent evidence, constitutes a strong piece of evidence. The Hon'ble Supreme Court in **Pullangode Rubber Produce Co. Ltd. v. State of Kerala (1973) 91 ITR 18 (SC)** has held that an admission is an extremely important piece of evidence, though not conclusive, and the burden lies on the person making it to show that it is incorrect. **In the present case, not only has there been no retraction by the purchaser, but the admission stands corroborated by documentary evidence in the form of impounded loose papers and matching cheque payments. The assessee has failed to bring on record any material to discredit or challenge this admission.**

20. Further, when the admission of the purchaser, the impounded documents, the exact matching of cheque components, and the surrounding circumstances are collectively considered, the probability of receipt of

unaccounted cash consideration by the assessee overwhelmingly outweighs the bald denial made by the assessee. The Hon'ble Supreme Court in *Sumati Dayal v. CIT* (supra) has categorically held that the test of human probabilities has to be applied in such matters, and on application of such test, the explanation of the assessee in the present case is found to be wholly unconvincing.

21. Lastly, the huge difference (almost ten times) between the registered value and the apparent market value of the land, as evidenced by the impounded documents, also lends support to the conclusion that the transaction was not confined to the recorded consideration alone. Such huge disparity, coupled with the admission of the purchaser and corroborative documentary material, further reinforces the inference that on-money was paid and received in the transaction.

22. In view of the foregoing discussion, we are of the considered opinion that the Assessing Officer was justified in making the addition of Rs.3,31,63,138/- as unaccounted sale consideration received in cash and that the Commissioner of Income-tax (Appeals) was correct in confirming the same. No infirmity, either factual or legal, has been pointed out before us warranting interference with the impugned order.

23. We note that the Counsel for the assessee has relied upon a large number of judicial precedents. However, in our considered view those have been rendered in their particular set of facts and have no applicability to the facts of the case of the assessee. It is a well-settled law that judicial

precedents do not have general applicability and facts of each case have to be analyzed whether the applicability to the assessee.

24. Further, we have passed the present order on the basis of grounds/arguments taken before us during the course of detailed hearing which took place. Other grounds which was not argued before us or for which no specific arguments/submissions were made have not been dealt within the order.

25. Accordingly, the appeal filed by the assessee is dismissed.

26. **In the result, the appeal of the assessee stands dismissed.**

Now we come to ITA No. 1960/Ahd/2025

27. The assessee has raised the following grounds of appeal:

ITA No. 1960/Ahd/2025

“1. *The Ld. CIT(A) grievously erred in law and on facts in not appreciating the fact that the notice issued u/s.148 dated 23-3-2016 was illegal, unlawful and without jurisdiction, hence, required to be quashed.*

2. *The Ld. CIT(A) erred in law and failed to appreciate the fact that AO proceeded to complete the assessment without providing a copy of the reasons recorded for reopening the assessment to the assessee. This was mandatory as directed by the Hon'ble Supreme Court in the case of GKN Driveshaft (I) Ltd vs ITO 259 ITR 19(SC).*

3. *The Ld. CIT(A) erred in law and on facts by not appreciating the fact that the assessee's case was subjected to detailed scrutiny twice. Once u/s. 143(3) on 14-9-2011 and u/s.143(3) r.w.s.147 on 17-12-2014, and there was no failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment as provided under the proviso to section 147.*

4. *The Ld. CIT(A) erred in law and on facts by not appreciating the fact that the AO was in possession of the loose paper seized from the premises of M/s. Bhailal A. Patel on 27-8-2008. Even though, no adverse inference was drawn while passing the assessment under section 143(3) on 14-9-2011 and 143(3) r.w.s.147 dated 17-12-2014.*

5. *The Ld. CIT(A) erred in law and on fact by not appreciating the fact that the AO issued notice relying on the order u/s.263 passed by the CIT-IV, Ahmedabad. However, as per para 14 (i) (c) of the said order passed under section u/s.263, the Ld. CIT categorically held that the buyers failed to prove the payment of cash to the assessee.*

6. *The Ld. CIT(A) erred in law by not appreciating the fact that the AO passed the order based on third-party documents which had never been provided to the assessee for rebuttal. The following judgements cover the issue:*

- i. Smt. Lilaben Rameshbhai Savalia ITANo. 1124/Ahd/2017 dated 17-4-2024 ITAT Ahmedabad 'A' Bench.*
- ii. Rana Iqbal Singh Vs, ITO ward 1, Delhi (AU) ITANo. 496/Asr/2024 dt.9-6-2025 ITAT DB Amritsar.*

7. *The Ld. CIT(A) erred in law and on fact by not appreciating the fact that the AO has not provided an opportunity to the assessee to cross-examine Shri Hintendra B. Patel, the purchaser, based on whose statement additions were made in his income. The following judgment covers the issue:*

- i. Mustafamiya H. Sheikh Vs. ACIT Circle-11 ITA No.2588/Ahd/2012 dated 15-2-2013 ITAT A Bench Ahmedabad.*

8. *The Ld. CIT(A) erred in law and facts by confirming the additions made by the AO as unaccounted consideration as short-term capital gains without providing a copy of the loose papers and the statement of the third party, based on which the AO relied.*

9. *The Ld. CIT(A) erred in law and on facts by confirming the additions made by the AO, as the survey was conducted in the case of M/S. Bhailal A. Patel on 27-8-2008 whereas the document for sale was registered on 12-12-2008 i.e. after 4 months, and there was nothing mentioned in the document about cash payment as per the loose paper.*

Your Appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal before or at the time of hearing.”

28. Since identical facts are involved in ITA No. 1960/Ahd/2025, the appeal of the assessee is hereby dismissed.

29. In the combined result, both the appeals filed by the assessee are dismissed.

This Order is pronounced in the Open Court on	20/02/2026
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Sd/-
(NARENDRA P. SINHA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 20/02/2026
TANMAY, Sr. PS

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad