

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

BEFORE SHRI JOGINDER SINGH (JUDICIAL MEMBER)

AND

SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)

I.T.A. No.800/Mum/2011
(Assessment Year: 2005-06)

Shri Rajnikant C Shah M/s Sreeji Transport Services Pvt Ltd Sreeji Kripa, Plot No.107 Sector No.29/C, Phase-II Vashi, Navi Mumbai.	Vs	ITO,Wd.10(2)(2) Mumbai
PAN : AAGPS0703G		
(Appellant)		(Respondent)

Appellant by	Shri Sanjay C Shah
Respondent by	Shri B.S. Bist

Date of hearing : 15-06-2016
Date of pronouncement : 13 -07-2016

ORDER

Per ASHWANI TANEJA, AM

This appeal has been filed by the assessee against the order of Ld. CIT (A)-22, Mumbai [hereinafter called as CIT(A)] dt 18-10-2010 passed against the assessment order u/s 143(3) r.w.s. 147 of the I.T. Act dt 30-11-2009 for A.Y. 2005-06 on the following grounds:

2. It is noted that this appeal has been filed late by 16 days. During the course of hearing, Ld. Counsel of the assessee drew our attention to the

petition for condonation of delay duly supported by an affidavit from one Shri Bharat Bhat, who was entrusted with the job of filing of appeal. Our attention was drawn on the facts deposed on oath in detail by Shri Bhat wherein Shri Bhat accepted that delay occurred inadvertently on his part due to delay in handing over the documents to the concerned persons. This affidavit was shown to Ld. DR also. Nothing wrong in the affidavit was pointed out by the Ld. DR. No serious objection was made by the Ld. DR for granting condonation of delay and the filing of this appeal. Thus, taking into account the facts and circumstances of the case and in the interest of justice and fair play, delay is condoned and this appeal is admitted for adjudication.

3. The brief facts as culled out from the orders of the lower authorities are that the assessee had filed its return of income on 30-03-2006 declaring total income at Rs.3,83,650. During the year under consideration, the assessee was a director in M/s Sreeji Transport Service Pvt Ltd and was deriving income from salary and income from other sources. A survey action u/s 133A was carried out in the premises of the said company, M/s Sreeji Transport Service Pvt Ltd on 24-02-2006. During the course of survey action, loose paper marked as page No.6a of Annexure A-I was impounded wherein it was observed that certain transactions were recorded relating to the purchase of a Flat by the assessee at Vijay Kunj, Ghatkopar. The scanned copy of this document is reproduced below:

5/7/2011 ✓

✓ Vijay Kunj - 4th Floor. Base. id. 35m

Mr. Rajnikant C. Shah

UC 2611. Societal Repaid

42.50 ✓
- 25.00 ✓
<hr/> 17.50 x
- 0.11 ✓
<hr/> 17.39 Bal.
- 5.00 5/8/04 ✓
<hr/> 12.39
- 6.00 4/9/04 ✓
<hr/> 6.39
- 6.00 2/10/04 ✓
<hr/> 0.39
- 0.39 6/10/04 ✓
<hr/> NIL

3.1. The assessee admitted that aforesaid document belonged to him and furnished copy of agreement of purchase of Flat. As per agreement, the value was at Rs.25 lacs whereas the transactions recorded in the above seized document showed at Rs.42.50 lacs as the total expenditure incurred for the purchase of the property. The AO noted that assessee had invested Rs.17.50 lacs in unaccounted manner. In view of these facts, the AO recorded detailed findings and added an amount of Rs.17,50,000/- in total income returned by assessee as unexplained investment u/s 69B of I.T. Act.

4. Being aggrieved, the assessee filed an appeal before the Ld. CIT(A) wherein exhaustive submissions were filed and it was submitted that addition of unexplained investment u/s 69B is actually the payment of brokerage to Mr. Chetan Shah to the tune of Rs.421,500/- in connection with the purchase of residential Flat at Vijay Kunj building. Assessee further submitted that Mr. Chetan Shah broker is being assessed to tax and has also filed a confirmation thereof and accordingly claimed that the addition has been wrongly made by the AO which is based on mere presumption. Assessee further submitted that

AO was free to issue summons to the broker; it was not done and enquiry if any conducted by the AO has not been confronted to the assessee.

5. Keeping in view the request of the assessee, Ld. CIT(A) sent the written submissions to the file of the Assessing Officer for enquiry / verification regarding the genuineness of the assessee's claim and sending remand report. Accordingly, the Assessing Officer submitted remand report dated 23-08-2010 through Addl. CIT, Range-3 vide letter dated 25-08-2020. The CIT(A) considered the entire submissions of the assessee as well as the remand report of the A.O. and found that the addition made by the Assessing Officer was justified in law and facts. The explanation submitted by the assessee was not found to be sustainable. Accordingly, addition made by the Assessing Officer was confirmed and ground raised by the assessee was dismissed.

6. Being aggrieved again, assessee carried the matter before the Tribunal. During the course of hearing before us, Ld. Counsel vehemently made his arguments to assail the orders of lower authorities. Our attention was drawn upon page 1 of the paper book which is photocopy of the impugned document recovered from the assessee. It was submitted that this document is not in the handwriting of the assessee. It was further submitted that this document contains details of payments made on account of brokerage fee which has been wrongly interpreted by the lower authorities as payment on account of Flat. It was further submitted that statement of the broker was recorded but no opportunity of his cross examination was given. Our attention was drawn to the statement of the assessee recorded at the time of survey u/s 133A. Our attention was further drawn on the copy of list of advances received as on 31-03-2005 procured by the Assessing Officer directly from the builder from whom said Flat was purchased by the assessee showing that the assessee had paid only a sum of Rs.18,25,000/-. Our attention was also drawn on the fact that

during the remand proceedings statement of broker, Shri Chetan Shah was recorded wherein the broker confirmed the fact that he had received brokerage fee of Rs.42,500/-. He submitted that lower authorities erred in law and facts in not providing opportunity of cross examination of Shri Chetan Shah. In this regard, he placed reliance on the following judgments:

1. R.W. Premises Pvt Ltd vs ACIT 93 CCH 143 (Bom)
2. CIT vs Rajesh Kumar 306 ITR 2W7 (Del)
3. Cannon Industries vs DCIT 167 TTJ 82 (Mum)

He further placed reliance upon the judgement of the Punjab & Haryana High Court in the case of CIT vs Atam Valves Pvt Ltd 184 Taxmann 6 (P&H) for the proposition that no addition can be made on the basis of loose sheets in absence of any other material.

7. Per contra, the Ld. DR submitted that the orders of lower authorities are justified as per law, and these are based upon facts of the case. He supported the reasoning given by the Ld. CIT(A) for confirming the addition made by the Assessing Officer. It was submitted that the explanation given by the assessee was not plausible at all. It was submitted that no person will give full amount of brokerage to the broker without completion of the transaction. It was further submitted by him that if the version of the assessee is accepted, then it will show that the assessee had made small payments of Rs.110 and Rs.390 to the broker at different points of time which seems to be quite impracticable and ridiculous. In this case, it is not merely a loose sheet because in the statement recorded by the assessee all facts have been accepted including the fact that this paper belongs to purchase of the Flat. The only variation in the version taken by the assessee subsequently is that as per AO, the payments shown therein belong to the payments made to the builder, whereas as per assessee, the details pertain to payments made to the broker. Under these circumstances,

the limited issue remains to be checked is whether the payment is on account of purchase of or on account of payment of brokerage fee. The story set up by the assessee has no logic and not acceptable at all. The facts and circumstances clearly reveal that the payment is towards 'on-money', i.e. cash component involved in the transaction of purchase of Flat. The paper found is self-explanatory and fully speaking and supported by other circumstantial evidences.

8. We have gone through the orders passed by lower authorities and considered the submissions made by both the sides as well as all the judgements relied upon before us. It is noted by us that the Ld. CIT(A) had decided this issue after giving full opportunity to the assessee. The CIT(A) called for remand report. During the remand proceedings, the AO gave opportunity to the assessee to explain the facts. Ld. CIT(A) considered the remand report of the AO as well as exhaustive submissions made by the assessee and considered all the aspects as were brought before him to challenge the observations made by the AO. Before giving our reasoning, we find it appropriate to discuss and reproduce hereunder the useful observations given by the Ld. CIT(A):

"2.5 I have gone through the assessment order, perused the submissions made by the appellant and also discussed the case with the A/R of the appellant. During the course of survey on 24.02.2006 in the premises of M/s Sreeji Transport Services Pvt. Ltd. wherein assessee is the director, loose paper marked as Page 6a of Annexure A1 was impounded details of which have been reproduced above. Assessee filed its return on 30.03.2006 i.e. after the date of survey which did not incorporate the additional income as appearing in the loose paper. Accordingly, notice u/s. 148 was issued proposing to make an addition of Rs.17.50 lakhs being the difference between the investment made on account of Flat purchased for Rs.42.50 lakhs (-) Rs.25 lakhs being purchase price shown in the books. The appellant before A.O. stated that the said amount was Rs. 42,500/- paid as brokerage to Mr. Chetan Shah in connection with purchase of Flat at 4th Floor in Vijaykunj at Ghatkopar by assessee, A.O. however, for the reasons recorded in the assessment order did not agree with the contention of the

appellant and made addition u/s.69B. During the course of appellate proceedings objection was raised by the appellant stating that the payment on the loose paper impounded represented brokerage to Mr. Chetan Shah of Rs.42,500/- which A.O. wrongly presumed that the figures were in lakhs and without making requisite inquiries or summoning Mr. Chetan Shah, who had filed confirmation regarding brokerage received. The matter was referred to the A.O. for making inquiries vide his office letter dated 15.02.2010. The remand report dated 23.4.2010 has been received, relevant part of the same is reproduced as below:-

"Statement of Shri Chetan Shah has been recorded on 27.07.2010 in connection with the purchase of residential flat at Vijaykunj building by the assessee. He has stated that a brokerage amount of Rs.42,500/- was received by him from Mr. Rajnikant C. Shah in cash. Moreover, on enquiries with the builder M/s. Shubham Sai Enterprises has stated vide its letter dated 27.02.2010 that it has sold the Flat No. 404 to Mr. Rajnikant C Shah directly and no any brokers were involved.

Shri Chetan P. Shah has also stated that he does not know the builder. In this situation it is very difficult to believe that he received the brokerage for selling the Flat to Shri R. C. Shah. It is further noted that Shri Chetan Shah is not having any experience or a setup to carry out this type of business activity. He himself vide his statement confirmed that he does not have any worthwhile experience in this field. Moreover, he has also stated that the assessee Mr. R.C. Shah is his family friend from last 15-20 years.

Further, Shri Chetan P Shah was not filing his return of income during this period. Hence, it is not possible to verify the receipt of brokerage by any documentary evidence. Copy of statement recorded of Shri Chetan P. Shah is enclosed for your ready reference."

From the facts gathered by the A.O. on inquiries, the detailed submission by the appellant and facts available in the assessment order it may be noted that in the loose paper it is clearly mentioned that same relate to the Flat purchased by Shri Rajnikant C. Shah in Vijaykunj, 4th floor. On the top, the figure of 42.50 is mentioned. Below that 25.00 has been reduced giving balance of 17.50. Rs.25 lakh is purchase consideration paid by the appellant to the builder which is evident from the agreement on record. From the balance 17.50 certain figures have been reduced subsequently

which are 0.11 (recd) 5.00 on 5.8.04, 6.00 on 4.9.04, 6.00 on 2.10.04 and 0.39 on 6.10.04 and thereafter Nil is mentioned. The appellant says that these figures are in thousands. If these figures were to be in thousand then there was no need to write four digits with a decimal; in between. Further, if the figure were in thousands then how will the figure of 0.39 be interpreted. As per appellant's interpretation it has to be Rs.390/-, which is never written in this fashion. Obviously, these figures are in lakhs only. The appellant has further brought in one Mr. Chetan Shah whose confirmation was tiled. The A.O. has recorded the statement of Shri Chetan Shah during assessment proceedings and it is noted that he has not filed return of income for A.Y, 2005-2006. Further, the appellant claims that the brokerage was paid to Shri Chetan Shah in instalments which is unbelievable since after 02.10.2004 the next payment has been made on 06.10.2004. If the assessee's interpretation was correct, then Rs.6,000/- was paid on 02.10.2004 and Rs.390/- was paid on 06.10.2004 which is unbelievable that for such a small amount of Rs,390/- any broker will approach the assessee and also it is unbelievable that on 02.10.2004, appellant was not having Rs.390/- for which it had to call the broker after 4 days. It is further unbelievable that the appellant who is investing Rs.25 lakhs as per books will ever pay the brokerage in instalments, which as per assessee's interpretation are Rs.110/-, Rs.5,000/., Rs.6.000/- and Rs.390/-. Further, the theory of the appellant also is unbelievable since on slip impounded name of the broker is not mentioned. Further, the so-called brokerage has been paid in cash. Return of income for the year under consideration has been filed by the appellant on 10.03.2006 i.e. after more than 1 month of the date of survey and hence the entry in ledger account in the name of the so call broker is not reliable. The builder M/s. Shubham Sai Enterprise through their letter dated 27.02.2010 have informed the A.O. that Flat No 404 sold by them to the appellant had no broker in between. Even Mr. Chetan Shah in his statement has confirmed that he doesn't know the builder. Also the builder flatly denies having any broker. In view of these facts, I am or the opinion that the appellant has cooked the story of existence of broker Mr. Chetan Shah to explain the expenditure of Rs.17.50 lakhs over and above the amount shown in the books or account. The appellant has tried to distinguish the case laws relied upon by the A.O. slating that in Ramilaben R. Shah Vs. CIT. the diary seized from the assessee's premises mentioned the amount paid in connection with the purchase of property, the name of vendor was mentioned and exact figures were written which is not there in the appellant's case. However, I do not agree with this distinction since in loose slip it is clearly mentioned the Flat at 4th floor, Vijaykunj by Shri Rajnikant C Shah and the figures given

therein as discussed above are the figures in lacs only. Further, as held by Hon'ble courts, in Income-tax proceedings, it is preponderance of probabilities which is to be looked into and analysed by the A. O. The loose paper impounded during survey is sufficient proof in support of the money having been paid by the appellant in cash for which there cannot be any evidence. Thus, Assessing Officer has rightly relied on the case laws in the assessment order. In view of these facts and legal position, I am of the considered opinion that the AO has rightly made addition of Rs.17.50 lakh u/s 69B which is upheld."

9. We have gone through the findings recorded by Ld. CIT(A). It is noted that in this case, statement of the assessee was recorded on oath at the time of survey. The statement was recorded at 5.00 PM on 24-02-2006. Some of the relevant questions and their answers are reproduced hereunder for the sake of ready reference:

"12. Kindly refer to the page no 6a mentioned above, do you again agree that the said paper was found in your personal purse in your personal bag lying in your office at this premises?"

Reply:- Yes I do agree that the said page no 6a was found in my purse in my personal bag lying in my office at this premises.

13. How come you do not know the contents therein?"

Reply:- I do not remember

14. In whose handwriting is the said paper been written? Reply:- I don't know

15. Do you agree what is the content of the said paper?"

Reply: The contents of the said paper are as under:

**Vijay Kunj - 4th Floor, backside, 3 BHK
Mr. Rajnikant C Shah**

40261/- Society Separate 42.50

- 25.00

17.50

- **0.11** Recd (-sd-)

17.39 Bal

- **5.00** 5/8/04 (-sd-)

12.39

- **6.00** 4/9/04 (-sd-)

6.39

- **6.00** 2/10/04 (-sd-)

0.39

- **0.39** 6/10/04 (-sd-)

Nil

16. Do you agree that the said paper makes a mention of the 4th floor Flat at Vijay Kunj where you have booked your ? (Consisting of 3 Bed Hall kitchen)

Reply :- Yes the said paper refers to the booked by me at 4th floor at Vijay Kunj consisting of 3 Bed Hall Kitchen

17.The name mentioned therein is Rajnikant Shah, which is your name, is it correct?

Reply :- Yes Rajnikant Shah mentioned therein is my name

Q18. Whose initial are appearing on the said paper?

Reply :- I do not know

19. What is the total consideration for which you have booked the Flat number 404 Vijay Kunj and when and on which date?

Reply: The Flat at 404 Vijay Kunj was booked in my name in 2004. I do not know the date The said Flat was booked for Rs. 25 lacs. The area of the said is 1084sq feet (super built up)

20. Why can't the said amount of Rs 42.50 be taken to be payment of

Rs 42.50 lacs made by you towards the Flat number 404 at Vijay Kunj?

Reply: I do not want to state anything in this regard.

Q.21 Do you agree that the consideration of Rs 25 lacs refers to the cheque consideration a Rs 25 lacs paid/payable by you for Flat at 404 Vijay Kunj at Ghatkopar?

Reply:- Yes the agreement value of the said Flat no 404 Vijay Kunj at Ghatkopar referred is Rs 25 Lacs as mentioned in the paper at page no 6a.

Q.22. Then why can't the balance amount of Rs 17.50 lacs be considered to have been paid you in cash?

Reply :- I do not want to state anything in this regard.

10. From the above, it can be seen from the reply to question No.12 that it was accepted by the assessee that the impugned document was found in the purse of the assessee (kept in assessee's personal bag) which was lying in assessee's office located at the premises where survey was carried out. The assessee was asked to reproduce legible contents of the said document vide question No.15. In reply, the assessee transcribed the contents of the document as has been reproduced above. Thereafter, during the course of recording of his statement the assessee answered that this paper belongs to Flat No.404 at Vijay Kunj (i.e. impugned Flat). While recording the statement, it was clearly pointed out in question no 20 that the said amount of Rs.42.50 is payment of Rs.42.50 lakhs made by the assessee towards total consideration of the said Flat. In response, the assessee did not deny the suggestion given by the officer. Thereafter, the officer asked again in question no 21 that the figure of 25 mentioned in the said document refers to cheque consideration of Rs. 25 lakhs paid / payable by the assessee for the said Flat. In reply to question No.21, the assessee confirmed that agreement value of the said Flat is Rs.25 lakhs as mentioned in the impugned document i.e. page 6A (Annexure A-1). Thereafter, pointed question

was again asked vide question no 22 that why not the balance amount of Rs.17.50 lakhs (i.e. Rs.42.50 lakhs – Rs.25 lakhs) should be treated as amount paid by the assessee in cash. In reply, the assessee did not deny even this suggestion given by the officer.

11. It is noted by us that this statement has neither been retracted nor denied by the assessee at any stage before the lower authorities or even before us. The validity of this statement has not been challenged before us. It is importantly noted that this document has been accepted by the assessee to be pertaining to the transaction of purchase of Flat. The only controversy raised before us was that as per the assessee, the amounts shown in this document are in thousands and pertain to the payment of brokerage paid in cash to the broker, Shri Chetan Shah, whereas, the AO has established that these amounts reflect the payments made to the builder for purchase of Flat and these are actually in lakhs. Thus, the limited issue to be decided by us here is, whether the version of the assessee as raised subsequently during the assessment proceedings is correct or that of the AO is correct?

12. In our considered view, we find force in the reasoning given by the AO and Ld. CIT(A), which have been further elaborated and well supported before us by Ld. DR. It is noted that the sale deed of the said Flat has been recorded on 7-12-2004. The agreement value of the same is Rs.23,25,000 on which further stamp duty and society charges have been paid by the assessee. The assessee has himself accepted in reply to question No. 21 that the figure '25' in the said document represents a sum of Rs.25 lakhs on account of cheque portion of the purchase price. Thus, the assessee has himself brought out this fact that these figures are in lakhs. This fact is further analysed that these figures cannot be in thousands. If these figures are taken to be in thousands, then it would mean that the assessee had paid a sum of Rs.110/- (0.11 x 1000) and Rs.390/- (0.39 x

1000) which is quite improbable and impracticable. Further, the last payment made by the assessee is on 6-10-2004 whereas the sale deed has been entered on 7-12-2004 for an under-construction Flat and possession was given much later sometimes in 2005. Under these circumstances, it cannot be believed that a person would pay full amount of brokerage even before registration of the sale deed. It is further brought to our notice that the assessee never brought on record any evidence to show that market value of the property was around Rs.25 lakhs only. In view of the self speaking document impounded from the personal possession of the assessee, the burden was shifted upon the assessee to prove it otherwise, especially when the assessee himself had read out contents of the document. As per section 292C, if any document is found in the possession of a person even during the course of survey u/s 133A, then in any proceedings under the Income Tax Act, it may be presumed that the contents of such documents are true. It is further noted by us that on this document, acknowledgement signatures have been given by the person who had received the payment on respective dates on which payments have been made by the assessee. Thus, this document was, in fact, an account of receipt of payments retained by the assessee as an evidence of payment to the builder. The foremost point here, which we are mentioning at the cost of repetition is that all these facts were put to the assessee while his statement was recorded wherein he accepted that this paper belonged to the transaction of purchase of Flat and figures mentioned therein pertained to the purchase consideration of the said Flat and above all, he did not deny the fact that figure of 17.50 represented a sum of Rs.17.50 lakhs paid towards cash component of the Flat. There is no such allegation, ever made by the assessee at any stage that this statement was recorded under any coercion, inducement or threat. This statement has not

been retracted also. The legislature has given requisite powers to the survey officials to record statement of a person at the time of survey u/s 133A (3).

12.1. Further, Ld. Counsel relied upon before us the statement of Shri Chetan Shah, i.e. the broker, wherein the broker stated that his amount was on account of brokerage fee. Nothing was brought on record in support of the statement of the broker. Further, the statement of the broker was at variance with the statement of the assessee himself. During the course of recording of his (assessee's) statement, the assessee never stated the factum of availing service of any broker and / or payment of any type of brokerage fee, and nor did the assessee relate this paper at any stage with the brokerage fee.

13. Ld. Counsel contended that in this case, cross examination was not granted and he relied upon some judgments as mentioned above. This case has been decided by the lower authorities as well as by us, on the basis of statement of the assessee himself, and **not** on the basis of statement of Shri Chetan Shah or on the basis of statement of the builder. Under these circumstances, the question of providing opportunity of cross examination did not arise and, therefore, these judgements are not applicable on the facts of this case.

14. Further, the assessee relied upon few judgements to contend that no addition can be made on the basis of loose paper in absence of any other material. On this issue we shall like to make reference to the views expressed by Justice Tulzapurkar, as his Lordship then was, of the **Bombay High Court** in the case of **J.S. Parkar vs. V.B. Palekar 94 ITR 616 (Bom)**, where, on a difference of opinion between Justice Deshpande and Justice Mukhi, Justice Tulzapurkar agreed with Justice Deshpande and held on the question whether the evidence established that the petitioner was the owner of the gold seized, though there was no direct evidence placed before the taxing authorities to prove that the petitioner had actually invested moneys for purchasing the gold in question, the

inference of the ownership of the gold in the petitioner in that case rested upon circumstantial evidence. In the said case, gold was seized from a motor launch belonging to the petitioner in that case. There, a contention was raised that the provision in section 110 of the Evidence Act where a person was found in possession of anything, the onus of proving that he was not the owner was on the person who affirmed that he was not the owner, was incorrect and inapplicable to taxation proceedings. This contention was rejected. The High Court of Bombay held that what was meant by saying that the Evidence Act did not apply to the proceedings under the Act was that the rigour of the rules of evidence contained in the Evidence Act was not applicable but that did not mean that when the taxing authorities who were desirous of invoking the principles of the Act in proceedings before them, they were prevented from doing so. Secondly, all that s. 110 of the Evidence Act does is that it embodies a salutary principle of common law jurisprudence which could be attracted to a set of circumstances that satisfy its conditions.

14.1. Subsequently, **Hon'ble Supreme Court** in the case of **CHUHARMAL vs CIT 172 ITR 250**, analysed aforesaid judgment and approved the majority view of Hon'ble Justice Tulzapurkar and Hon'ble Justice Deshpande and observed that – *“We are of the opinion that this is the correct approach and following this principle, the High Court in the instant case was right in holding that the value of the wrist-watches represented the concealed income of the assessee.....”*.

14.2. The facts of the case before the Hon'ble Supreme Court were that the High Court in its order noted that the raiding party by virtue of the search entered into the bedroom of the assessee on 12th May, 1973, and seized the watches. A panchnama was prepared. The Department found that the assessee was the owner. In these facts Hon'ble Supreme Court held that:

“...Section 110 of the Evidence Act is material in this respect and the High Court relied on the same which stipulates that when the question is whether any person is owner of any-thing of which he is shown to be in possession, the onus of proving that he is not the owner is on the person who affirms that he is not the owner. In other words, it follows from the well-settled principle of law that normally, unless the contrary is established, title always follows possession. In the facts of this case, indubitably, possession of the wrist-watches was found with the petitioner. The petitioner did not adduce any evidence, far less discharge the onus of proving that the wrist-watches in question did not belong to the petitioner. Hence, the High Court held, and in our opinion rightly, that the value of the wrist-watches is the income of the assessee....”

15. In the case before us, the document found from the possession of the assessee is not only self speaking, but the same was duly admitted, explained and confirmed by the assessee himself. The explanation/narration of contents of the document given by the assessee at earliest stage could not be negated by the assessee with cogent evidences at any stage. The statement given by the assessee has been discussed in detail in earlier part of our order. The stories constructed before the AO or before the CIT(A) or even before us by the assessee to change his earlier version, were not plausible at all in view of the detailed discussion made by us earlier. All the contents of the impugned document have been verified and confirmed by the assessee himself. Thus, we find that payment of cash component of Rs.17.50 lakhs in the purchase of Flat by the assessee is duly established with the help of sufficient evidence found in own possession of the assessee. We find support of our view from the judgement of **Hon’ble Gujarat High Court** in the case of **Bhanu Vijaysingh M Vaghela vs ITO 353 ITR 146 (Guj)** wherein addition was made on the basis of loose paper found

during the course of search which clearly indicated that amount of loan was given by the said assessee which could not be proved by the assessee from disclosed sources. The addition was deleted by Ld. CIT(A), but the same was upheld by the Tribunal. Hon'ble High Court held that the Tribunal was right in holding that if the document clearly indicated that the amount of loan was given by the assessee which was supported by the statements of the parties, then under these circumstances, it was feasible to hold under the law that amount of loan was given by the assessee, even in absence of any other material, if the seized document and statement of the parties read together constituted sufficient material to establish the fact of giving of loan by the assessee.

16. Thus, in view of facts and circumstances of this case, we find that the lower authorities were justified on facts as well as law, in making this addition. As a result, appeal filed by the assessee is dismissed.

Order pronounced on this 13th day of July, 2016.

Sd/- (JOGINDER SINGH)	Sd/- (ASHWANI TANEJA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 13th July, 2016

Pk/- & Patel

Copy to :

1. The appellant
2. The respondent
3. The CIT(A)
4. The CIT

5. The Ld. Departmental Representative for the Revenue, D-Bench
(True copy) By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES