

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 321/SRT/2022 (AY: 2020-21)

A.C.I.T., Central Circle-4, Surat.	Vs.	Shri Shanker Nebhumal Uttamchandani, 15, Adarsh Society, Athwalines, Surat-395001. PAN No. AABPU 3188 Q
Appellant/ Revenue		Respondent/ Assessee

Department represented by	Shri Ravinder Sindhu, CIT-DR
Assessee represented by	Shri Ramesh Malpani, C.A.
Date of hearing	08/01/2024
Date of pronouncement	28/02/2024

Order under section 254(1) of Income tax Act

1. This appeal by the revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-4, Surat (in short, the Id. CIT(A)] dated 23/08/2022 for the Assessment year (AY) 2020-21. In this appeal, the revenue has raised following grounds of appeal:

“(i) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.24,70,787/- (unexplained income of Rs.20,43,500/- + undisclosed interest - Rs.4,27,287/-) made by the Assessing Officer on account of unexplained money u/s. 69A of the I.T. Act, without appreciating the fact that the additions were made on the basis of incriminating documents extracted from the mobile phone of the assessee during the course of search proceedings and the assessee has failed to furnish any credible evidences or explanation in respect of the entries found therein.

(ii) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 17,02,40,000/- (Rs. 13,30,00,000/- - unexplained money and Rs.3,72,40,000/- unexplained interest) made by the Assessing Officer u/s. 69A of the I. T. Act without appreciating the fact that the incriminating documents extracted from the mobile phone of Shri Naresh Agarwal during the course of search proceedings which clearly

mentioned the name of the assessee in short S.N. and N for Shri Naresh Agarwal which showed that the assessee has advanced the loan and earned interest thereon.

- (iii) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,04,39,999/- made on account of unexplained investment u/s. 69B of the I. T. Act without appreciating the fact that the assessee failed to furnish the requisite documentary evidences before the AO and the Ld. CIT(A) has not remanded the issue to the AO either u/s. 250(4) of the Act or as per the provisions of Rule 46A of the Income Tax Rules, 1962.*
- (iv) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.5,30,000/- made by the Assessing Officer u/s. 69C of the I. T. Act without appreciating the fact that the incriminating documents extracted from the mobile phone of the assessee during the course of search proceedings in the case of the assessee clearly show that the assessee has purchased furniture in cash.*
- (v) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.3,00,000/- u/s. 69A of the Act on account of unexplained money based on the image retrieved from the mobile of the assessee which was found & seized during the search proceedings, without appreciating the fact that the image pertained to closed packet which was from Raviraj Diamond, C/o Vijay Jain and the figures were mentioned on the packet.*
- (vi) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.34,56,00,000/- made on account of unexplained money u/s. 69A of the I.T. Act, without appreciating the fact that the incriminating documents found and seized from the office premises of Kuberji Corporate House, Begumpura, Surat clearly show that the land measuring and rate of land and total consideration of the land was mentioned on the seized document and that the assessee failed to furnish explanation to the same.*
- (vii) In addition and in alternate to grounds No. 1 to 6, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting all the additions made by the Assessing Officer, without appreciating the fact that the incriminating documents based on which additions were made, were found and seized from the mobile phone of the assessee during the course of search proceedings at his residence and the assessee has failed to furnish details/evidences to explain the entries found therein, and hence the AO was empowered to make presumption that the documents belongs to the assessee and contents therein are true and correct as per the provisions of Section 292C of the I.T. Act.*

(viii) In addition and in alternate to grounds No. 1 to 7, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the additions made by the Assessing Officer ignoring the principles of "Human Probability Test" i.e. preponderance of probabilities which is applicable for Income Tax proceedings.

(ix) It is, therefore, prayed that the order the Ld. CIT(A)-4, Surat may be set aside and that of the AO may be restored to the above extent.

(x) The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal."

2. Brief facts leading to making of various additions are that in the search action, various incriminating material was found from the residence of assessee. The assessee filed his return of income for the A.Y. 2020-21 on 30/03/2021 declaring Nil income. The case of assessee was selected for scrutiny. A search action under Section 132 was carried out on Kuberji Group, Surat on 06/02/2020. The assessee is one of the partner in Kuberji Group, thus, the assessee was also covered in the search action. During the search action, various documents of incriminating nature was found and seized. Incriminating documents were also found in the form of digital images in the I-phone of assessee. The case of assessee was centralized under Section 127 of the Act. Assessment was completed under Section 143(3) of the Act on 30/03/2022. The Assessing Officer made total seven additions which includes five additions under Section 69A and one addition under Section 69B and other 69C of the Act on account of either unexplained income or investment or expenditure. On the basis of various images recovered from digital devices/images

downloaded from I-phone or digital device. The Assessing Officer made following total addition of Rs. 52.95 crores;

Addition on account of unexplained income U/s 69A	Rs. 24,70,787
Addition on account of unexplained income U/s 69A	13,30,00,000
Addition on account of unexplained income U/s 69A	3,72,40,000
Addition on unexplained investment U/s 69B	1,04,39,999
Addition on unexplained expenditure U/s 69C	5,30,000
Addition on unexplained income U/s 69A	3,00,000
Addition on account of unexplained income U/s 69A	34,56,00,000

3. On appeal before the Id. CIT(A), the Id. CIT(A) deleted all the additions by taking view that the additions are not based on corroborative or independent evidence. And that the jewellery is already shown in the wealth tax return and / or disclosed before settlement commission. Aggrieved by the order of Id. CIT(A), the revenue has filed present appeal before this Tribunal.
4. Ground No. 1 of the appeal relates to deleting the addition of Rs. 24,70,787/- which includes unexplained income of Rs. 20,43,500/- and undisclosed interest of Rs. 4,27,287/-. The Id. CIT-DR for the revenue submits that during the search action, I-phone was found in the residential premises of assessee. In the said mobile, the search party found certain image which contains the figure of amount and interest thereon. During the search action, the Assessing Officer extracted the image on page No. 3 of assessment order. On the basis of noting on such image, the Assessing Officer was of the view that from the image it is clear that it contains the transaction related to loan and advances in cash which is not recorded in the books of assessee and the same is

unaccounted. The assessee has also earned interest of Rs. 4,27,237/- which is clearly written on such image. The Assessing Officer issued show cause notice to explain the seized material and why addition of Rs. 20,70,787/- as unexplained money and unaccounted interest be not made. The assessee in response to such show cause notice submitted that there is no details of lender or who is recipient, the assessee simply denied the transaction. The Assessing officer on the basis of seized material, made addition of principal amount as well as interest earned by assessee. The seized mater was recoded from the possession of assessee and as per presumption under Section 292C of the Act, such evidence is admissible against the person in whose possession, such evidence was found.

5. On the other hand, the Id. AR of the assessee submits that besides challenging the admissibility of digital image, the assessee explained that it was a dump document. The impugned image contained only some calculation wherein some amount of Rs. 20,43,500/- is mentioned, an amount of Rs. 4.00 lacs has been reduced then Rs. 5.00 lacs is reduced for two times and lastly Rs. 5.60 lacs has been reduced and resultantly figure of Rs. 83,500/- and amount of Rs. 4,27,287/- has been added as interest. There is no working period or rate thereof. No narration about nature of transaction, no name of person is mentioned, it does not signify whether amount was received or give. It does not contain the name and signature of assessee or any other person. The Id. CIT(A) on appreciation

of submission of assessee, deleted both the additions. No evidence in the search action was found against such loan or advance to any third party. Mere entry on the loose papers cannot be the basis of addition, unless the same is not supported by corroborative evidences. To support such submissions, the Id. AR of the assessee relied on the following case laws:

- Common Cause Vs UOI (2017) 394 ITR 220 (SC),
 - Sunil Kumar Sharma Vs DCIT (2022) 448 ITR 485 (Kar),
 - Nishant Construction Pvt. Ltd. Vs ACIT ITA No. 1502/Ahd/2015,
 - PCIT Vs Nishant Construction Pvt. Ltd. (2001) 101 taxmann.com 180 (SC) and 101 taxmann.com 179 (Guj),
 - CIT Vs Maulik Kumar K. Shah (2008) 307 ITR 137 (Guj),
 - CIT Vs Ravi Kumar (2007) 294 ITR 78 (P&H),
 - Smt. Harmohinder Kaur Vs DCIT (2021) 187 ITD 289 (Asr Trib) and
 - DCIT Vs Tulsibhai Mavjibhai Shankar (2010) 4 ITR (T) 670 (Ahd).
6. We have considered the rival submissions of both the parties and gone through the orders of lower authorities carefully. We have also deliberated on various case laws relied by the assessee. We find that the Assessing Officer made addition of Rs. 20,43,500/- as unexplained money and unexplained interest income of Rs. 4,27,237/- on the basis of image found in I-Phone of assessee by taking view that on such amount, the assessee earned interest. We find that before the Assessing Officer as well as Id. CIT(A), the assessee explained that there is no corroborative material to prove that the assessee made advance of such amount or earned interest. Neither it contained the name and signature of assessee nor it is mentioned whether this amount was received or paid. We find

that the Id. CIT(A) on considering the submission of assessee held that the Assessing officer is silent as to whom these advances were made and from whom such interest was received. The Assessing Officer while making addition, simply relied on the image of loose paper (image in the mobile phone of assessee). The Assessing officer has not brought any direct evidence on record that assessee has lent this amount to any person. There is no incriminating paper found from the WhatsApp image to specify whether it is loan taken or given as no name of person is mentioned on the said paper. The paper/image is not signed by assessee nor in his handwriting, thus, in absence of incriminating evidence, it cannot be held that the assessee has given the said loan out of his unexplained source. The Id. CIT(A) noted that there is no likelihood that some estimate of interest has been worked out taking a particular amount and particular rate of interest, such working does not prove that transaction of advance has been materialized unless there is further evidence to prove that such amount of loan has been taken or given on a particular date. No such evidence was found in the search. The assessee is not engaged in the business of money lending, therefore, working found on paper cannot be treated as sacrosanct evidence. On the basis of such findings, the Id. CIT(A) deleted both the additions.

7. We have independently examined the facts of the case. We find that the Assessing Officer has not recorded in the assessment order whether such image/photo was received by assessee in WhatsApp image or it was sent.

The source of image was not investigated by Assessing Officer. Assessing Officer nowhere mentioned whether such image was confronted to the assessee during the search action or his statement was recorded for such image. Thus, in absence of any corroborative evidence, we do not find any justification for making such addition. Hon'ble Supreme Court in Common Cause Vs Union of India (2017) 394 ITR 220 SC also held that loose sheets of papers are wholly irrelevant as evidence being not admissible under section 34, so as to constitute evidence with respect to transaction mentioned therein being of no evidentiary value. Thus, we affirm the order of Id. CIT(A) on our aforesaid additional observation.

8. Ground No. 2 of the appeal relates to deleting the addition of Rs. 17.02 crores which consists of Rs. 13.30 crores as unexplained money and Rs. 3.72 crores as unexplained interest. The Id. CIT-DR for the revenue submits that during the search action, a photo containing certain details were found in the digital device of Naresh Agarwal. The Assessing Officer during the assessment, asked the assessee to explain the contents of such writing on the digital evidence. The Assessing Officer on the basis of noting on such image was of the view that the name of assessee is written in coded form as 'S.N' with figure of 13.30 and rate of interest at 2%. The Assessing Officer decoded such writing and came to the conclusion that the assessee has given such amount @ interest rate of 2% and earned total interest of Rs. 3.72 crore for 10½ months @ 2% per month and 3.5 months @ 2%. The assessee in response to show

cause notice, simply denied and contended that such image is nothing but a dump document. The Assessing Officer made addition of Rs. 13.30 crores and as unexplained income and unexplained interest of Rs. 3.72 crores on the basis of clear evidence found in the form of digital image/data. Such digital image is admissible as per Section 292C of the Act being admissible evidence against the assessee. The Id. CIT-DR for the revenue submits that the Id. CIT(A) deleted the addition by accepting the explanation of assessee though the assessee failed to bring any cogent evidence against such writing/photo found in the digital image during search action.

9. On the other hand, the Id. AR of the assessee submits that during the search action, an image was retrieved from digital device found in the premises of third party Naresh Agarwal. On the basis of such image found from third party, the Assessing Officer alleged that the amount of Rs. 13.30 written in the said image is Rs. 13.30 crores on which interest @ 2% per month was worked out to be Rs. 3.72 crores. The Assessing Officer on such view, issued show cause notice to assessee. The assessee besides objection to the admissibility of evidence, submits that such image was not found from his premises or from his possession nor from his mobile. Such image was found from third party namely Naresh Agarwal and no presumption either under Section 132(4A) or Section 292C of the Act can be drawn against the assessee. No statement of such party was recorded against assessee. The assessee has not undertaken

any such transaction. Such image does not contain signature of assessee. Similarly, no date of details whether interest was payable by assessee or received by assessee is mentioned. Similarly no detail of nature of particular amount on which interest has been worked out. The Id.CIT(A) on appreciation of facts, deleted the entire addition by appreciating the fact that such image was found in the mobile phone of Naresh Agarwal. Naresh Agarwal was never confronted with the image. Search team has not examined Naresh Agarwal during the assessee about WhatsApp image in question. To support his submissions, the Id AR for the assessee relied on the same case laws as relied against ground No.1.

10. We have considered the submissions of both the parties and have gone through the orders of lower authorities carefully. The Assessing Officer made addition on the basis of images of loose paper/photo found in the mobile phone of Naresh Agarwal. The Assessing Officer scanned the copy of image in para 7 at page 9 of assessment order. On loose paper ward "S.N" and "N" is mentioned. Such word were considered the short form of name of assessee (Shanker Nebhumal Uttamchandani). The figure 13.30 was taken as Rs. 13.30 crores and the interest figure written in full figure of Rs. 3,72,400/- was taken at Rs. 3.72 crores and added as unexplained expenditure money in the hands of assessee. As recorded above, before the Id. CIT(A), the assessee challenged the addition on factual as well as on legal basis. It was also submitted that the images were found in the mobile phone of Naresh Agarwal, who never

confronted with such images either in search action or in post search proceedings. Besides date, years is not mentioned whether amount was taken or given is not clear. Further, there is no basis of taking 13.30 as Rs. 13.30 crores when interest is written in full figure and that there was not corroborative evidence to support such addition. We find that the Id. CIT(A) on considering such submission noted that the images were found from the mobile phone of Naresh Agarwal. There is no direct evidence brought on record by Assessing Officer, whether the money was lent to any specific person. Admittedly, on the incriminating material which is image, does not specify whether loan is taken or given, no name is mentioned on the said paper about receiving or giving the loan. The Id. CIT(A) further held that paper is not signed by assessee nor his handwriting, hence in absence of any corroborative evidence, it cannot be held that the assessee has given said loan out of his unexplained source. During the search action, no evidence of giving or taking loan to any third party was found at the residence of assessee. The assessee is not in the business of money lending. The working found on the paper cannot be treated as sacrosanct evidence for treating the same as unexplained money. The Assessing Officer has not collected any evidence or supporting material that the assessee advanced Rs. 13.30 crores and earned interest of Rs. 3.72 crores and held that such addition cannot be sustained.

11. We have independently examined the facts of the case being a search case. In sum and substance, the Assessing officer on the basis of images recovered from the mobile phone of Naresh Agarwal assumed that the assessee advanced Rs. 13.30 crores and earned interest of Rs. 3.72 crores. The figure of principal amount and interest amount in no way can be correlate with each other. Unless and until such principal amount was lent for years together. Alleged interest figure of Rs. 3.72 crores is more than 30% of alleged principal amount which is beyond imagination. Moreover, the Assessing Officer added five zeros against the figure of 13.30 and added only two zero against the interest which is again without any rational. Thus, we do not find any justification for making such addition in crores without any independent or corroborative material on record. At least such figure or incriminating material should have been confronted with Naresh Agarwal to explain it in a better way. There is no material on record to suggest that such figure was confronted with Naresh Agarwal nor addition is based on his statement. Thus, with the aforesaid additional observation, we affirm the order of Id. CIT(A). In the result, ground No. 2 of appeal is dismissed.
12. Ground No. 3 of the appeal relates to deleting the addition of Rs. 1.04 crore under Section 69B of the Act. The Id. CIT-DR for the revenue supported the order of Assessing officer. The Id. CIT-DR for the revenue submits that during the search action, jewellery and other valuable articles were found, which was valued and inventorised as Annexure JF.

As per valuation report, jewellery of Rs. 1.79 crore and silver article of RS. 13.39 lacs were found. The search party by following the instruction of CBDT dated 11/05/1994 seized the jewellery of Rs. 94.39 lacs only. Further on operating locker, some other jewellery in locker No. 15 and 16 were found, value of such jewellery were Rs. 1.04 crore. During the assessment, the assessee was asked to substantiate the jewellery found in the search action. The assessee in its reply, merely submitted that the jewellery belongs to various lady members of their family. Since the explanation of assessee was not convincing, the Assessing Officer added the jewellery found in locker which was out of explanation as per CBDT Circular dated 11/05/1994. The Assessing Officer made addition of jewellery found in the lockers as well as proportionate jewellery found at residence aggregating of Rs. 1.04 crore. The Id. CIT(A) deleted the addition by accepting the explanation furnished by assessee.

13. On the other hand, the Id. AR of the assessee submits that the Assessing Officer made addition without appreciating the fact. During the course of search, total jewellery of Rs. 94,39,999/- was found which was wrongly totaled by Assessing Officer of Rs. 1.04 crores. Such jewellery belongs to family members of assessee out of which jewellery of Rs. 39,89,988 of Kamlaben Shankerlal Uttamchandani, Rs. 13,40,439/- of Kashikaben Lokesh Uttamchandani and Rs. 41,09,572/- of Bhartiben Hiren Uttamchandani aggregating of Rs. 94,39,999/-. Further jewellery from female members were also found in the locker with ICICI bank. In

locker No. 15, jewellery of Kamlaben Shankerlal Uttamchandani of Rs. 3,35,139/- and of Bhartiben Hiren Uttamchandani of Rs. 1,48,207/-, thus aggregating value of Rs. 4,83,346/- (locker No. 15) and in locker No. 16, jewellery of Kashikaben Lokesh Uttamchandani of Rs. 5,41,538/- was found. Thus, aggregate value of jewellery in both the lockers were of Rs. 10,24,884/-. The Id AR for the assessee submits that he has already filed copy of Panchnama of jewelry and the valuation thereof. The inventory of such jewellery were made in the name of female members, however, the additions were made in the name of assessee. The case of family members were also reopened under Section 153C of the Act for the block period and under Section 147 for Bhartiben Hiren Uttamchandani was pending before the same Assessing Officer and the assessee may prepare to give explanation for those cases of female family members of respective assessment proceedings. The Assessing Officer totally ignored such fact. The Id. AR of the assessee further submits that all the jewellery were shown in the wealth tax return of respective female family members and were disclosed before the Settlement Commission. All the details were furnished before the lower authorities. The Id. CIT(A) on appreciation of fact that total jewellery of family members and the diamonds found in the search were less than the declaration in the wealth tax return and before the Settlement Commission. Moreover, entire jewellery items were identified as belonging to three female members/ladies of the assessee during the search itself, therefore, the

Id. CIT(A) appreciated the facts and allowed relied to the assessee. The Id AR for the assessee submits that he has filed copy of the chart showing the details of the jewelry as per Wealth Tax return and the statement of jewelry shown before Income Tax Settlement Commission (ITSC) at page No. 2 to 46 of paper book (PB).

14. We have considered the rival submissions of both the parties and have gone through the orders of the lower authorities carefully. The Assessing Officer made addition of Rs. 1.04 crores on account of jewellery by taking a view that during the search action, a jewellery worth Rs. 1.79 crores which includes gold article of Rs. 1.65 crore and silver and other valuable articles of Rs. 13,39,500/-. The jewellery valued at Rs. 1.04 crore was seized which were not in accordance with CBDT Circular No. 1916 dated 11/05/1994. The Assessing Officer despite recording that the assessee claimed jewellery articles belonging to three female members of assessee added by taking a view that such jewellery articles valued of Rs. 1.04 crore remained unexplained. We find that before the Id. CIT(A), the assessee explained the fact and details. The detailed submission of assessee is recoded in para 8.2 of order of Id. CIT(A). The assessee furnished following bifurcation and details of jewellery found and seized from the residence and lockers as follows:

Detail of Jewellery found and seized from Residence & Locker

Particulars	Kamlaben Uttamchandani		Kashika Uttamchandani		Bhartiben Uttamchandani	
	Gms	Cts	Gms	Cts	Gms	Cts
	Residence					
- Gold Jewellery (Not seized)	1321.53	-	106.94	-	262.88	-
- Gold & Diamond Jewellery (Seized)	649.53	120.73	271.14	108.81	444.45	108.72
Locker						
- Locker no. 15	2179.121	79.37	-	-	556.234	87.39
- Locker no. 16	-	-	1267.43	27.55	-	-
Total	4150.181	200.1	1645.51	136.36	1263.564	196.11

Note:-

1. From the residence, total jewellery found was Rs. 1,65,97,268/- out of which Rs. 61,57,268/- was not seized.
2. From the lockers, total jewellery found was Rs. 2,46,98,053/- out of which Rs. 10,24,884/- was seized.
3. In locker no. 15, jewellery weighing 15.692 gms and 2.44 cts belonging to Bhartiben has been seized.
4. In locker no. 15, jewellery weighing 70.721 gms and 1.77 cts belonging to Kamlaben has been seized.
5. In locker no. 16, jewellery weighing 142.79 gms and 0.30 cts belonging to Kashika has been seized.

15. We find that the Id. CIT(A) noted that Panchnama of jewellery and its valuation contained the name of three female members of the assessee which includes Kamlaben Shankerlal Uttamchandani, Kashikaben Lokesh Uttamchandani and Bhartiben Hiren Uttamchandani. Such Panchnama were prepared on 08/02/2020 and 29/02/2020. In the valuation, item wise valuation is in the name of three lady members. The Id. CIT(A) further noted that all three ladies members were assessed to wealth tax till A.Y. 2012-13 and subsequently the assessee has disclosed the investment in jewellery in the name of two ladies members namely Kashikaben Lokesh Uttamchandani and Bhartiben Hiren Uttamchandani before the Settlement Commission as her income. The Id. CIT(A) also

recorded the declaration of assessee before Settlement Commission in the following manner:

Sr. No.	Name of the person	Reflected in	Shown in W.T. return of A. Y. 12-13		Found during search	
			Gold (Gms)	Diamond (Cts.)	Gold (Gms)	Diamond (Cts.)
1	Kamlaben Shankerlal Uttamchandani	W.T.	4265.00	180.46	4150.181	200.100
2	Kashikaben Lokesh Uttamchandani	W.T.	1516.18	44.75	1645.510	136.36
		S.C.	471.90	58.95		
3	Bhartiben Hiren Uttamchandani	W.T. S.C.	1988.08	103.7	1263.56	196.11
			1691.66	244.79		
			313.90	28.26		
			2005.56	273.05		
Grand Total (1+2+3)			8258.64	557.21	7059.255	532.57

16. On the basis of aforesaid details, the Id. CIT(A) held that from the facts it is clear that the total jewellery found belonging to all three lady members is 7059.255 grams and diamonds of 532.57 carat. As per declaration made before the Settlement Commission, the gold is 8258.64 grams and diamond of 557.21 carat, thus the total jewellery of gold and diamond found during the course of search was less than the declared jewellery in the wealth tax return as well as before the Settlement Commission. Thus, the entire jewellery found were not in excess than declared in the wealth tax return and before the Settlement Commission. All three lady members were separately assessed to tax. The Assessing Officer made addition of Rs. 1,04,39,999/-, actually it should be of Rs. 1,04,64,883/- i.e. Rs. 94,39,999 + 4,83,346 + 5,41,538/- made on account of unexplained investment. The assessee has also filed a chart

containing jewellery found from residence and lockers in search action under Section 132 of the Act vis a vis jewellery as per wealth tax returns of female members of family and further jewellery as declared before the Settlement Commission in A.Y. 2016-17. Jewellery found is less than and covered by the jewellery as per wealth tax returns and as declared before the Settlement Commission. The Id. CIT(A) on the basis of aforesaid findings, deleted the entire addition.

17. We have independently examined the facts qua the issue in hand. We find that the Assessing Officer made addition ignoring the fact that Panchnama contained the name of all lady members of the family. All three female members were assessed to tax as well as to wealth tax. The Assessing Officer simply made the addition by allowing relief as per CBDT Circular No. 1916 of 1994. We find that the entire jewellery consisting of gold and diamond were shown in the Wealth tax Return and was declared before the Income Tax Settlement Commission. We find that the order of Id. CIT(A) is based on proper appreciation of facts. No contrary fact to take other view is brought to our notice, therefore, we affirm the order of Id. CIT(A) with our additional observation. In the result, this ground of appeal is dismissed.

18. Ground No. 4 of the appeal relates to deleting the addition of Rs. 5.30 lacs under Section 69C of the Act. The Id. CIT-DR for the revenue supported the order of Assessing officer. The Id. CIT-DR for the revenue submits that the Assessing Officer made addition on the basis of image

found from the digital device of assessee which contained the transaction related to furniture and amount of Rs. 5,31,000/- was clearly mentioned therein. The Id. CIT(A) deleted the addition by accepting the explanation of assessee.

19. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that there is no corroborative evidence to support that the assessee made any unexplained expenditure. Such digital image was not confronted while taking statement of assessee. The Assessing Officer grossly erred in making addition on the basis of assumption. There is no detail of seller or buyer or the owner of the said furniture.

20. We have considered the submissions of both the parties and perused the record. We find that the Assessing Officer made addition on the basis of details of figures found in the digital device of assessee during the course of search action. The Assessing Officer reproduced the details of such writing on page No. 19 of assessment order and made addition of Rs. 5.31 lacs on account of unexplained expenditure on furniture. We find that before the Id. CIT(A), the assessee made similar submission as made before us. We find that the Id. CIT(A) on appreciation of writing on the digital image found that there is not detail of seller or buyer in the image. No corroborative evidence was found with regard to existence of furniture in the residential or official premises of assessee. There are no details of payment made in cash or cheque whether furniture was really purchased

or not is not clear on the image. The Assessing Officer made addition merely on the basis of WhatsApp image without ascertaining whether such furniture was purchased or not, so such addition cannot be sustained. We find that the Assessing Officer has not brought any corroborative evidence to support the addition. Such digital image was not confronted with the assessee or with any other family members. Thus, we do not find any justification of making addition merely on the basis of details found in the digital device particularly in absence whether such image was sent or received by the assessee. Thus, we affirm the order of Id. CIT(A). In the result, this ground of appeal is dismissed.

21. Ground No. 5 relates to deleting the addition of Rs. 3.00 lacs under Section 69A of the Act on account of unexplained money. The Id. CIT-DR for the revenue supported the order of Assessing Officer. The Id. CIT-DR for the revenue submits that the Assessing Officer made addition on the basis of details/image found in the digital device of assessee. Image of which is reproduced by Assessing Officer on page No. 22 of assessment order. On such image, the name of sender is written as Raviraj Diamond C/o-Vijay Jain. Apart from the said packet, 300 has been written in the circle. Such amount is written in the coded form which was rightly decoded as Rs. 3.00 lacs. The evidence was found in the course of search action from the possession of assessee and in absence of satisfactory explanation, the Assessing Officer rightly treated the figure of 300 as Rs. 3.00 lacs as unexplained money.

22. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that on the image, name of Vijay Jain and mobile number is mentioned. The Assessing Officer neither summoned Vijay Jain nor recorded his statement despite the fact that his telephone number was also mentioned. The addition was made on presumption basis without any corroborative evidence. The Id. CIT(A) appreciated the facts and allowed relief to the assessee.
23. We have considered the rival submissions of both the parties and perused the orders of lower authorities carefully. We find that the Assessing Officer made addition on the basis of image of a closed packer found from the digital device of assessee which contained the writing "Raviraj Diamond C/-o Vijay Jain". Such fact also contained the figure of 300. The Assessing Officer considered the figure as Rs. 3.00 lacs and accordingly made addition of Rs. 3.00 lacs on account of unexplained expenditure money. The Id. CIT(A) deleted the entire addition by taking a view that said packet contained the name of 'Vijay Jain' and his mobile number as 9374715835. The Assessing officer neither summoned Vijay Jain nor recorded his statement to ascertain the exact details about the said packet (Image). The Id. CIT(A) held that the addition of Rs. 3.00 lacs is made solely on presumption basis. In fact, this packet was received or not is not clear as it contains the name and address and not to the name and address. The Id. CIT(A) held that merely on the basis of figure mentioned on the image of packet cannot be basis for making addition

by adding three zeros to the figure and deleted the addition. We find that the addition is based on assumption without verification of fact. We find that the Assessing Officer has not made any independent investigation or verification whether mobile number written is correct or not. No such effort, if made, is recorded in the assessment order, thus we do not find any reason to interfere with the finding of Id. CIT(A) which we affirm. In the result, this ground of appeal is dismissed.

24. Ground No. 6 of the appeal relates to deleting addition of Rs. 34.56 crores on account of unexplained money under Section 69A of the Act. The Id. CIT-DR for the revenue supported the order of Assessing Officer. The Id. CIT-DR for the revenue submits that during the search action in the office of assessee at Kuberji Corporate House, page No. 4 of Annexure-A4 was found and seized. The Assessing Officer scanned the copy of such page on page No. 25 of assessment order. As per recording on such page, there were some transactions of land. The area of land is mentioned at 5629 square meter alongwith area in square yard i.e. 6733 square yard. The rate of land is also written at 51335/- per vaar. The total consideration of land is written at Rs. 34,56,00,000/- (Rs. 34.56 crores) and during the assessment, on show cause, the assessee simply took a plea that it is a dump document. Document was found from the possession of assessee during the search action and is admissible evidence as per Section 292C of the Act and burden lies on the assessee to rebut the same by showing positive evidence. The Id. CIT(A) deleted

the addition by simply accepting the explanation of assessee. The documents contained the chronological details of transaction of land. The facts emerging out of document clearly demonstrate that this paper is not a dump document. The assessee failed to discharge his onus to refute the facts from the documents. The transaction reflected in the document was rightly treated as transaction made outside the books of account as unaccounted and was rightly added to the total income of assessee. The Id. CIT-DR prayed to restore the addition made by the Assessing Officer by reversing the finding of Id. CIT(A).

25. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that the impugned page found during the search was a dump document. It does not contain any detail of any land. The Assessing Officer failed to appreciate that when basic detail is where the said land is situated is not identified, there was no basis for making such addition. The addition is without any evidence. There is no corroborative statement of any person regarding alleged transaction. In fact, the said page may contain rough working which does not contained the name of signature of assessee nor any detail of land. The assessee has fully discharged his burden that said rough noting are dump document and have no meaning. No asset has been identified which could be linked with the transaction. The addition of Rs. 34.56 crores is baseless. Such document is not in the handwriting of assessee or his family members. No such land was ever purchased or sold by

assessee. The Id. CIT(A) appreciated the facts, deleted the entire addition. The Id AR for the assessee submits that he relies on all case laws which is relied for Ground No.1.

26. We have considered the rival submissions of both the parties and perused the orders of lower authorities carefully. We find that the Assessing Officer made addition of Rs. 34.56 crores on the basis of page No. 4 of Annexure A4 found and seized from the office premises of Kuberji Corporate house, Surat. The Assessing Officer presumed that the area of land is mentioned in square meter as well as in square yard and rate of land is also mentioned specifically. On the basis of such working/calculation, the Assessing Officer made addition of Rs. 34.56 crores. We find that before the Id. CIT(A), the assessee while challenging the addition vehemently submitted that the name of person or details thereof or the details of land like survey number, block number, plot number etc. are not mentioned on the said paper. Such paper is not in the handwriting of assessee or his family members as no corroborative evidence was brought on record by Assessing Officer. No such land was ever purchased or sold by assessee. We find that the Id. CIT(A) on considering the submission of assessee held that the Assessing Officer while making addition solely relied on loose paper found in the course of search action. There is no direct evidence found or brought on record that the assessee has ever purchased or sold any land. The Id. CIT(A) specifically noted that in para 11.3 of assessment order, the Assessing

Officer accepted that no asset relating to transaction in question is identified by Assessing Officer or by DDIT which could be linked with the transaction/noting during the enquiry conducted. The Id. CIT(A) held that the Assessing Officer merely relied on presumption that noting mentioned on the same page relating to other land in Kuberji group, thus, this land is related to assessee. There is no corroborative evidence, the same is merely based on presumption. There is no detail from whom such land was purchased or to whom such consideration was paid. No such fact is brought on record. If such land is sold to whom the land is sold and from whom the sale consideration is received is not brought on record. There is no reference or location or situation of land, all facts are totally absent in the assessment order. The Id. CIT(A) held that loose paper found in the search is not in the handwriting of assessee so it cannot be made a basis for addition. The addition could be made when there is some corroborative evidence brought on record. There is no corroborative evidence to prove that the assessee received payment or receipt of any amount on the transaction. The Id. CIT(A) held that such loose paper is nothing but a dump document which cannot be relied solely for making huge addition.

27. On independent examination of facts, we find that neither the Assessing Officer has brought any corroborative evidence nor further investigated the fact nor referred any corroborative evidence if collected during the search action by the Investigation Wing. Thus, in view of the above facts

and circumstances, we do not find any infirmity in the order of Id. CIT(A) which we affirm. In the result, this ground of appeal is dismissed.

28. Grounds No. 7 and 8 of the appeal are raised in alternative way.

Considering the fact that we have dismissed all the grounds of appeal on detail discussion, therefore, we do not find any merit in the alternative grounds of appeal, therefore, even otherwise no substantive submissions were made on such grounds of appeal, therefore, such grounds of appeal are also dismissed.

29. In the result, this appeal of revenue is dismissed.

Order announced in open court on 28th February, 2024.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 28/02/2024

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat

