

The Acit, Central Circle-1(4), ... vs Shri Ravindra Agrawal, Ahmedabad on 9 November, 2017

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

Before: Shri S. S. Godara, Judicial Member
And Shri Amarjit Singh, Accountant Member

IT(SS)A Nos. 227 & 209/Ahd/2013
Assessment Year 2004-05 & 2010-11

The ACIT, Central Circle 1(4), Room No. 337, 3 r d Floor, Aayk ar Bhavan, Ashram Road, Ahmedabad (Appellant)	Vs	Shri Ravindra Agrawal, 70, Basant Bahar Bungalow-I, Nr. Gala Gymkhana, Bopal, Ahmedabad PAN: ACIPA6398M (Respondent)
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Revenue by: Shri D.P. Gupta, Sr. D.R.
Assessee by: Shri S.N. Soparkar, A.R.

Date of hearing : 07-09-2017
Date of pronouncement : 09-11-2017

/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

These two Revenue's appeals for A.Y. 2004-05 & 2010-11, arise from order of the CIT(A)-I, Ahmedabad dated 22-03-2013, in proceedings under section 143(3) r.w.s. 153A(1)(b) of the Income Tax Act, 1961; in short "the Act". Both the appeals were heard I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 2 ACIT vs. Shri Ravindra Agrawal together therefore both are adjudicated by this common order as under:-

Appeal IT(SS)A No.227/Ahd/2013 Assessment Year 2004-05

2. The revenue has raised following grounds of appeal:-

"1) The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.8,14,00,000/- being unaccounted cash payments, made on the basis of receipts/promissory notes seized from the residence of Sandip B Padsala as Annexure BS-2.

2) On the facts and in the circumstances of the case and in law, the CIT(A) ought to have upheld the order of the A.O., because the assessee and Shri Sandip Padasala have admitted part of Annexure BS-2."

3. In this case, search action u/s. 132 of the act was carried out on 4st March, 2010. Subsequently, the notice u/s. 153A was served upon the assessee on 7th October, 2010. The assessee had filed original return of income on 21st December, 2006 declaring total income at Rs. 7,05,22,205/- and agricultural income of Rs. 7,21,619/-. The return of income was subsequently revised by the assessee on 24th April, 2007 declaring total income of Rs. 7,34,54,175/-. In response to notice u/s. 153A, the assessee has submitted letter dated 31st Jan, 2011 stating that revised return of income filed on 24th April, 2007 be accepted as return filed in response to notice u/s. 153A of the act. In the case of the assessee earlier assessment u/s. 143(3) r.w.s. 153A of the act was passed on 16th August, 2007 and income of the assessee was assessed at Rs. 9,30,07,068/-. Subsequently, the assessed income was reduced to Rs. 9,24,14,766/- after passing of order u/s 154 of the act. After giving effect to the order to the Id. CIT(A), the income of the assessee was I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 3 ACIT vs. Shri Ravindra Agrawal recomputed at Rs. 8,90,92,630/-. Subsequently, after giving effect to the ITAT order the total income recomputed at Rs. 7,34,92,630/-. The notice u/s 143(2) of the act was issued on 31.01.2011. During the course of assessment proceedings, the assessing officer issued show cause notice dated 4th October, 2010 to the assessee relating to the unaccounted transactions with B.Nanji Group. The contents of the show cause notice is reproduced as under as under:-

"Payment of cash to B Nanji Group, during the course of search at the residence of Shri Sandip Padsala, Annexure BS-2 was seized. Pages number 45 to 63 of this annexure contain the receipts pertaining to payment of different amounts by Shri Ravindra Agrawal and family members to various persons of B. Nanji Group. Pages number 45 to 48 contains the receipts for the payment of amount by Shri Ravindra Agrawal and family members to B. Nanji Group through cheques and the purpose for the same is stated to be part payment towards the sale of agricultural land situated at Godhavi under a Memorandum of Understanding dated 04.09.2009. Pages number 49 to 63 contains the receipts of different amounts in cash by the members of B. Nanji Group from Shri Ravindra Agrawal. In response to the explanation to the same, you had submitted that there were transactions in the nature of loans and advance to B. Nanji Group. From the perusal of the ledger account submitted by you ,it can be seen that the amounts and the cheques numbers mentioned on pages number 45 to 48 of annexure BS-2 matches with the details provided by you . From the above discussions, it is clear that the amounts which were given by Shri Ravindra Agrawal through cheques have been duly incorporated by him in his books of accounts while the payments made in cash are being denied by you. From the above discussions it is clear that the transactions were incurred in cash to the tune of Rs.8.14 Cr. You are hereby asked that why the entire cash transactions may be treated as unaccounted payment of cash by you to the members of B. Nanji Group. Why these amounts should not be treated as unaccounted cash in the hand of you and your family members why the entire cash transactions may be treated as unaccounted payment of

cash by him to the members of B. Nanji Group. Why these amounts should not be treated as unaccounted cash in the hand of the assessee and his family members."

In reply to the show cause notice the assessee vide submission dated 12.12.2011 has submitted as under:-

"Payment of cash to B Nanji Group, during the course of search at the residence of Shri Sandip Padsala, Annexure BS-2 was seized. Pages number 45 to 63 of this annexure contains the receipts pertaining to payment of different amounts by Shri Ravindra Agrawal and family members to various persons of B. Nanji Group. Pages number 45 to 48 contains the receipts for the payment of amount by Shri Ravindra Agrawal and family members to B. Nanji Group through cheques and the purpose for the same is stated to be part payment towards the sale of agricultural land situated at Godhavi under a Memorandum of Understanding dated 04.09.2003. Pages number 49 to 63 contains the receipts of different amounts in cash by the members of B. Nanji Group from Shri Ravindra Agrawal. In response to the explanation to the same, you had I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 4 ACIT vs. Shri Ravindra Agrawal submitted that there were transactions in the nature of loans and advances to B. Nanji Group. From the perusal of the ledger account submitted by you, it can be seen that the amounts and the cheques numbers mentioned on pages number 45 to 48 of Annexure BS-2 matches with the details provided by you. From the above discussions, it is clear that the amounts, which were given by Shri Ravindra Agrawal through cheques have been duly incorporated by him in his books of accounts while the payments made in cash are being denied by you. From the above discussions, it is clear that the transactions were incurred in cash to the tune of Rs. 8.14 Crores. You are hereby asked that why the entire cash transactions may be treated as unaccounted payment of cash by you to the members of B. Nanji Group. Why these amounts should not be treated as unaccounted cash in the hands of you and your family members?

Objection / Submission on the aforesaid issue:

"Your goodself show caused me in relation to the papers found and seized at the premises of Sh. Sandip Padsala, the papers are copies of receipts / promissory note, summary of such papers seized at Pg. no. 45 to 63 are as under:

Pg.n o.	Date	Amount	Name of recipients	Remarks/observations
63	24-02-04	4500000	Bhikubhai N. Padsala, Rajesh B Padsala, Sandip B. Padsala	The receipt is signed by recipients, witness is s Sh. Hiten R. Vasant. Rec shows payment towards sa Agricultural land situat Godhavi, vide MOU dated 2003.

62 17-12-03 4900000 Bhikubhai N. The promissory note is signed

Padsala, Rajesh both the 2 recipients, witness is B. Padsala signed by Sh. Sandip Padsala and Sh. Hiten R. Vasant. PN shows payment towards sale of Agricultural land situated at Godhavi, vide MOU dated 04-09- 2003.

61 08-12-03 3000000 Bhikubhai N. The promissory note is signed by Padsala, Rajesh both the 2 recipients, witness is B. Padsala signed by Sh. Sandip Padsala and Sh. Hiten R. Vasant. PN shows payment towards sale of Agricultural land situated at Godhavi, vide MOU dated 04-09- 2003.

60 14-11-03 5000000 Bhikubhai N. The promissory note is signed by Padsala, Rajesh both the 2 recipients, witness is B. Padsala signed by Sh. Sandip Padsala and Sh. Hiten R. Vasant, PN shows payment towards sale of Agricultural land situated at Godhavi, vide MOU dated 04-09- 2003.

I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 5 ACIT vs. Shri Ravindra Agrawal 59 17-09-04 3500000 Bhikubhai N. The promissory note is signed by Padsala, Rajesh both the 2 recipients, witness is B. Padsala signed by Sh. Sandip Padsala.

PN shows payment towards sale of Agricultural land situated at Godhavi, vide MOU dated 04-09- 2003.

58 16-09-03 4000000 Bhikubhai N. The promissory note is signed by Padsala, Rajesh both the 2 recipients, witness is B. Padsala signed by Sh. Sandip Padsala and Sh. Hiten R. Vasant. PN shows payment towards sale of Agricultural land situated at Godhavi, vide MOU dated 04-09-2003.

57	27-01-05	8000000	Bhikubhai N. The receipt is signed by both Padsala, Rajesh the 2 recipients. No witness. B. Padsala Cash receipt.
56	27-10-04	2400000	Bhikubhai N. The receipt is signed by both Padsala, Rajesh the 2 recipients, witness is B. Padsala signed by Sh. Hiten R. Vasant. Cash receipt.
55	03-09-04	4000000	Bhikubhai N. The receipt is signed by both Padsala, Rajesh the 2 recipients, witness is B. Padsala signed by Sh. Sandip Padsala. Cash receipt.
54	16-08-04	4500000	Bhikubhai N. The receipt is signed by the Padsala recipient, witness is signed by Sh. Rajesh B. Padsala. Cash

receipt.

53	29-05-04	7600000	Bhikubhai N. The receipt is signed by both Padsala, Sandip the 2 recipients. No witness. B. Padsala Cash receipt.
52	06-04-04	10200000	Bhikubhai N. The receipt is signed by both Padsala, Rajesh the 2 recipients. No witness. B. Padsala Cash receipt.
51	01-03-04	7000000	Bhikubhai N. The receipt is signed by both Padsala, Rajesh the 2 recipients, witness is B. Padsala signed by Sh. Hiten R. Vasant.

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Cash receipt.

50	06-02-04	10100000	Bhikubhai N. The receipt is signed by both Padsala, Sandip the 2 recipients, witness is B. Padsala signed by Sh. Hiten R. Vasant. Cash receipt.
49	16-01-04	2700000	Bhikubhai N. The receipt is signed by both Padsala, Rajesh the 2 recipients, witness is B. Padsala signed by Sh. Hiten R. Vasant. Cash receipt.
		81400000	Total cash Receipts
48	04-09-03	2400000	Bhikubhai N. The receipt is signed by the Padsala recipient. No witness. The receipt for cheque no. 402679 dated 04-09-03 of Uco Bank. Receipt shows payment towards sale of Agricultural land situated at Godhavi, vide MOU dated 04-09-2003.
47	04-09-03	1400000	Subhadraaben B. The receipt is signed by the Padsala recipient. No witness. The receipt for cheque no. 620895 dated 04-09-03 of Uco Bank. Receipt shows payment towards sale of Agricultural land situated at Godhavi, vide MOU dated 04-09-2003.
46	04-09-03	1600000	Rajesh B. The receipt is signed by the Padsala recipient. No witness. The

receipt for cheque no. 402680 dated 04-09-03 of Uco Bank. Receipt shows payment towards sale of Agricultural land situated at Godhavi, vide MOU dated 04-09-2003.

45	04-09-03	1400000	Sandip Padsala	B. The receipt is signed by the recipient. No witness. The receipt for cheque no. 620880 dated 04-09-03 of Uco Bank. Receipt shows payment towards sale of Agricultural land situated at Godhavi, vide MOU dated 04-09-2003.
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6800000	Total receipts	cheque
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88200000	Total amount
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Your goodself further stated as under in your show cause notice: During the course of search at the residence of Shri Sandip Padsala, Annexure BS-2 was seized. Pages number 45 to 63 of this annexure contain the receipts pertaining to payment of different amounts by Shri Ravindra Agrawal and family members to various persons of B. Nanji Group. Our objection - Your goodself stated that the papers are seized from the residence of Sh. Sandip Padsala, it is prayed that the explanation on these pages given by Sh. Sandip Padsala to your goodself or to the ADIT (Inv), Unit 11(1), Ahmedabad, or to the authorized officer at residence on the date of search may kindly be provided to us.

At the same time, if your goodself has carried out any enquiry or recorded statements of recipients i.e. Sh. Bhikubhai N. Padsala, Smt. Subhadraben B. Padsala, Rajesh B. Padsala, and Sandip B. Padsala may kindly be provided to us. It is further submitted that if your goodself has carried out any enquiry or recorded statements of witnesses i.e. Sh. Hiten R. Vasant, Sh. Rajesh B. Padsala and Sh. Sandip B. Padsala may kindly be provided to us.

It is submitted that as per provisions of section 132(4A) provides that where any books of accounts, other documents, found In the possession or control of any person in the course of a search, it may be presumed -

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true ; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

2. The purpose for the same is stated to be part payment towards the sale of agricultural land situated at Godhavi under a Memorandum of Understanding dated 04.09.2003 Our objection - Your goodself stated that the purpose of payment is stated to be part payment towards the sale of agricultural land situated at Godhavi under a Memorandum of Understanding dated 04.09.2003.

In this regard, it is submitted that when your goodself is saying that the payments are towards sale of agricultural land situated at Godhavi, under a Memorandum of Understanding dated 04.09.2003, kindly provide us:

(i) Copy of Memorandum of Understanding dated 04.09.2003,

(ii) Details of agricultural lands situated at Godhavi, owned by B. Nanji Group.

(iii) Copies of sale deed of agricultural lands in Village: Godhavi, Taluka:

Sanand, District: Ahmedabad, in favor of Sh. Ravindra Agrawal or family members.

3. Why these amounts should not be treated as unaccounted cash in the hand of you and your family members?

Our objection - Your goodself stated that why these amounts should not be treated as unaccounted cash in the hand of you and your family members? In this regard, it is submitted that your goodself has without going to the merits of the case, submission of the assesses, replies by Sh. Ravindra Agrawal in I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 8 ACIT vs. Shri Ravindra Agrawal statements before ADIT (Inv), Unit 11(1), Ahmedabad, where it was clearly stated that:

Sh. Ravindra Agrawal in his statement u/s. 132(4) on 05-03-10 in reply to Q. No. 5 sfafed that in respect of advances given for purchasing of land at Godavi no land has seen executed/transferred in our family, the reply is reproduced hereunder:

Q.5 What is your relation with B. Nanji Group? Have you purchased any land at Godavi and Jagatpur village with that group?

A.5 As such I don't have any direct relationship with B. Nanji & Group. However advances for purchase of land at Godavi to the members of Bhikabhai Padsala were given in individual capacity by all the members of the family (immediate family) around 4-5 years back. The details are contained in books of A/c of respective assessee, in addition investment in share capital as well as unsecured loans which are given to Siddhi Buildcone Pvt. Ltd.

None of the family members are director or involve in any form in day to day affairs of the aforesaid company. As per scanty information the aforesaid company was intending to develop some parcel of land at Godhavi, & Jagatpur, Ahmedabad. In respect of advances given for purchasing of land at Godavi no land has been executed/ transferred in our family. All the relevant details of advances given/ investments in shares, unsecured loan are properly contained in books of accounts maintained by assessee.

(ii) Sh. Ravindra Agrawal in his statement u/s. 132(4) on 09-03-10 in reply to Q. No. 15 stated that the seized papers are related to somebody else files, a separate hearing should be kept for the purpose, the reply is reproduced hereunder:

Q.15 I am showing you Annexure 'BS'-2 dt. 05.03.2010 seized from the residence of Shri. Sandip B. Padsala at 10, Parth Bunglows, Nr. Karnawati Club, Ahmedabad. pg. no. 49 to 63 which shows different receipt of amounts in cash from you to members of B.Nanji group i.e. Bhikubhai N. Padsala, Rajeshbhai B. Padsala and Sandip B. Padsala. Please offer your comment on these pages and please also state in light of these papers why it should not be treated as an additional evidence of you indulging in unaccounted cash transaction.

A.15 I humbly submit that we have gathered in HDFC Bank, Panchwati Branch for the purpose of operation of P.O's of two lockers belonging to me and my family and take inventories of the same. Since we all are working for last 11 hours, I would submit even without going through the evidences shown related to somebody else files, a separate hearing should be kept for the purpose by the respective authority. I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 9 ACIT vs. Shri Ravindra Agrawal

(iii) Sh. Ravindra Agrawal in his statement u/s. 132(4) on 25-06-10 in reply to Q. No. 12 stated that the seized papers, being Xerox copies do not represent transactions with me or my family members, the reply is reproduced hereunder:

Q.12 I am again asking you to state if the transaction shown on pages 45 to 63 have been undertaken by you or not.

A.12 As far as the payment by cheques mentioned on page no. 45 to 48 are concerned as part of my loans and advances transactions. The same have been paid against acknowledgement of the receipt of those payments on the Xerox copies of the cheques as mentioned in my earlier paragraphs. Otherwise the Xerox copies shown to me do not represent transactions with me or my family members which are on pages 45 to 63.

(iv) Similarly, the ADIT (Inv) Unit - 11(1), Ahmedabad, called for vide notice dated 19-04-2010 to furnish transaction entered with the members of B. A/an// Group - the details were furnished vide letter dated 30-04-2010 and it was stated that all the transactions with BhikhubhaiN. Padsala family are for loans / advances given or taken, whereas the transactions with Siddhi Vinayak Buildcon Pvt. Ltd. are for share investment, copy of letter filed with ADIT is furnished. In the said letter, the ADIT called for information with regard to Memorandum of Understanding for sale of land at Godhavi dated 04-09-2003 with B. Nanji group - it was submitted that as on the day more than 6Y2 year were passed, as per my memories, no such MOU was entered.

Under such circumstances, at every stage Sh. Ravindra Agrawal clearly stated that no such transaction has taken place, though your goodself has show-caused on the issue, which is not known to the assessee group, your goodself is proposing huge additions in my hands, whereas the papers are not original (Xerox copies), not having signatures of mine or my family members and your goodself has not provided explanation given by Sh. Sandip Padsala from whom these papers were seized, as per presumption u/s. 132(4A) of the Act, the papers are belonging to him and he has to explain the same. It is further submitted that being the papers are seized from third party, no such purposes, replies, statements and explanations of such party are provided to us, no such lands at Godhavi as mentioned in receipts are owned by me or my family members, therefore I request you to kindly provide all such details, which are material and having impact on the issue, before deciding this issue, so that we can reply your observations, allegation of third party and we also request to provide an opportunity of cross examining Sh. Sandip Padsala & his family members and Sh. Hiten R. Vasant, who signed as witness in some seized papers, as your goodself is relying on Xerox copies, which do not have any sanctity in the eye of law, these copies might be forged, doctored or prepared with ulterior motives, malafide intention, or to misrepresent the facts and/or to mislead someone.

The above objections / submission / representation are made for your kind perusal and the further proceedings on this issue may kindly be taken after providing the above details, informations, statements, explanations and opportunity to cross examine, as your show-cause for such huge addition based on Xerox copies with third party, put me and my family under tremendous strain, trauma resulting in to depressive feelings as both me and my wife are highly diabetic and high blood pressure patients." I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 10 ACIT vs. Shri Ravindra Agrawal The assessing officer has not accepted the explanation of the assessee because of the following reasons:-

"i) The copies of seized documents requested by the assessee were already provided by the ADIT(Inv), Ahmedabad after the post search inquiry at the time of recording the statement of the assessee confronting the seized documents in question and the assessee had furnished the detailed reply to the ADIT.

ii) The copy of MOU dated 04.09.2003 requested by the assessee from the department was not found during the course of search action and it is the agreement between the assessee and B. Nanji Group whose financial affairs were being looked after by Shri Rajesh Padsala so it true that the search party did not find the MOU at both the residential premises. The probability of such MOU is very high that the person who is no more had entered into such MOU. The mutual agreement might have been entered into by both the parties referred Shri Ravindra Agrawal on one side and Late Shri Rajesh Padsala on other side.

iii) Pages no. 45 to 61 of Annexure-BS2 were seized from the residence of Shri Bhikhubhai Padsala, containing the transactions of the group with Shri Ravindra Agrawal during the course of search proceedings. The transactions for which the payments were made by cheques have been owned by both Shri Ravindra Agrawal & the B. Nanji Group while the transactions for which the payments have been made in cash had been denied by both of them. For this issue, statement of Shri Sandeep B Padsala and Shri Bhikhubhai was recorded u/s 131 on 19/12/2011 during the course of assessment proceedings but in that also both of them were stating the same answer that they are not aware of the MOU dated 04.09.2003 executed between Shri Rajesh Padsala and Shri Ravindra Agrawal. Statement of Shri Sandip Padasala was also recorded on the same day for the issue in which he also reiterate the same what he had mentioned during the course of search. As per the provisions of section 29 2 C of the Income tax Act the onus lies on the assessee to explain the document found and seized from his premises.

Therefore Shri Sandip Padsala was categorically asked for the explanation of the Annexure-BS2 page No.45 to 63 as he is bound to explain the receipts and cannot deny, which he squarely failed to discharge.

iv) During the course of proceedings the assessee requested the cross examination of Shri Sandip Padasla. The cross examination was granted by the undersigned for the issue related to cash receipt of Rs.8.14 Cr. The cross examination of Shri Sandip Padasala was held on 24/12/2011. The assessee asked various questions to Shri Sandip Padasala for clarification of all the receipts found from the residence of Shri Sandip Padsala but he reiterate in the same manner in which his statement recorded on 19/12/2011. So there is no fruitful result came out from the cross examination but it was made clear that there were cheque transactions which are duly reflected in the books of accounts of Shri Ravindra Agrawal and Siddhi Vinayak Buildcon Private limited.

v) There are clear indications that Siddhi Vinayak Buildcon Private limited is the special purpose vehicle made for investment in the land. This is a company whose major share holding is with the assessee and his family members i.e. of 74.56% of the total share capital which are verified from the returns of income of Siddhi Vinayak Buildcon Pvt Ltd. The detailed share holding of the directors is furnished as under:

Sr. No Name of the Share Holder % of ownership of equity shares 1 B. Nanji Enterprises Ltd 20.73% 2 Devika Agrawal 18.43% 3 Jaideep Agrawal 18.43% I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 11 ACIT vs. Shri Ravindra Agrawal 4 Ravindra Agrawal 18.85% 5 Savitridevi Agrawal 18.85% Total share holding of 74.56% Ravindra Agrawal & Family Members The directors of this company were Shri Hiten Vasant and Late Shri Rajesh Padasala. So it has clear correlation with the promissory notes and receipts found from the residence of Shri Sandip Padsala, where these directors were either witnesses i.e. Shri Hiten Vasant or being-recipient i.e. Late Shri Rajesh Padasala of the money given by the assessee.

These promissory notes shows Shri Rajesh Padsala/Shri Bhikhubhai Padsala/Shri Sandip Padsala/Smt. Subhadra Padsala are the recipient of promissory notes signed by the witnesses. In this case Shri Hiten Vasant one of the directors of Siddhi Vinayak Buildcon Pvt Ltd had signed as witness to many of these promissory notes which establish the strong nexus that there were transactions related to those promissory notes.

After the death of Shri Rajesh Padsala, Shri Sandip Padsala became the director of the company. From the balance sheet of this company, it can be seen that the assessee and his family members are the major financiers. They had provided the unsecured loans to the tune of Rs.2,15,00,000/- in the AY 2005-06 details of which is as under:

AY 2005-06 Sr. Name of Unsecur Date on Repaid Date of Outstanding loan No person who ed loan which Amount repayment gave the loan given loan and inRs. given relationship with the assessee 1 Devika 150000 12-Jul-04 1000000 23-Jul-04 Agrawal, o Daughter of the assessee 100000 12-Jul-04 100000 19-Aug- 2500000 0 04 2 Jaydeep 850000 12-Jul-04 7000000 23-JU1-04 son of the 100000 19-Aug- 2500000 assessee 0 04 3 Mohinderkura 250000 3-Sep-04 2500000 I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 12 ACIT vs. Shri Ravindra Agrawal 4 Ravindra 500000 12-Jul-04 2000000 23-Jul-04 Agrawal 0 125000 19-Aug-

0 04

100000 3-Sep-04

5250000

5 Reena 500000 12-Jul-04 2000000 23-Jul-04
Agrawal, wife 0
of the
assessee

100000 19-Aug-
0 04

4000000

6 Savitridevi 150000 12-Jul-04 500000 23-Jul-04
Agrawal, 0
mother of the

assessee

125000 19-Aug-
0 04

250000 3-Sep-04

4750000

Total

2,15,00,00

From the above table, it is very clear that assessee had made investment through cheques and which are duly reflected in the books of account but both the individuals denied the cash component on which recipients signed on the revenue stamps. Out of these receipts many receipts had been signed in the witnesses of Shri Hiten Vasant and Shri Sandip Padsala. So, all the receipts have direct correlation with the transactions entered by both the groups (Padsala & Agrawal). It is true that none of the receipts were signed by Shri Ravindra Agrawal but in promissory note it is always obligatory to the recipient who receives the money not the payer...

Promissory note is written, signed, unconditional promise to pay a certain amount of money on demand at a specified time. A written promise to pay money that is often used as a means to borrow funds or take out a loan. So the purpose of the promissory note is always obligatory to the recipient. Definition of promissory note as per dictionary meaning is as under:

"The individual who promises to pay is the maker, and the person to whom payment is promised is called the payee or holder. If signed by the maker, a promissory note is a negotiable instrument. It contains an unconditional promise to pay a certain sum to the order of a specifically named person or to bearer-- that is, to any individual presenting the note. A promissory note can be either payable on demand or at a specific time."

I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 13 ACIT vs. Shri Ravindra Agrawal In this case the assessee and the recipient both are denying the transactions but the undersigned has reasons to believe that these transactions had taken place;

1. Even if the contention of the assessee that there was no such MOU for the land transaction is accepted, it doesn't make any difference as receipts are promissory notes which may be purely financial arrangement in cash and MOU might have been a document to safeguard the interest of the assessee till the money had received back. MOU might have been destroyed after money was either returned back or adjusted as cash component in the land deals on the part of the assessee and the family members who are majority stake holders in Siddhi Vinayak Buildcon Pvt Ltd. This fact get credence from that fact that the promissory notes were made when Padsala family get cash financing from the outsiders.

2. As Siddhi Vinayak Buildcon Pvt Ltd is also buying land where the assessee and his family members are having share holding to the tune of 74.56%. This is also sufficient to believe that there are financial transactions between these. The lands are purchased by the Padsala Group At Village Godhavi through Siddhi Vinayak Buildcon Private Ltd for which the major finance came from Shri Ravindra Agrawal & his family Members.

3. The law in the state of Gujarat, doesn't permit the non-agriculturist/non- farmer to buy the agricultural land. Hence Shri Ravindra Agrawal and Shri Bhikhubhai Padsala bought the lands at Village: Godhavi and Khoraj in the individual's name in which this cash component might have been adjusted.

4. There are total 4 receipts of cheque which is one receipt dated 04.09.2003 seized from the residence of Bhikhubhai N Padsala scanned copy of which is reproduced as under:

RECEIPT No. 1. Date: 04-09-2003 Received with thanks from Shri Ravindrabhai Mangiram Agrawal, a sum of Rupees 24 Lacs (Twenty four Lacs only) by Ceque No. 102679 dt. 04-01-2003 Drawn on UCO Bank, Ellisbridge, Ahmedabad being part payment towards sale of the agricultural lands situated at Godhavi vide Memorandum of Understanding dated 4th September, 2003 Sd/-

Bhikhubhai Nanjibhai Padshala Subject to realization of cheque

5. As both parties have accepted the cheque payment shown in the receipts above which implies there was an existence of Memorandum of th Understanding dated 04 September, 2003 as mentioned in the above cheque receipt.

6. The cash found from the residence of Shri Bhikhubhai N Padsala proves that he receives and gives cash for the land deals which can be verified from his cash flow statement. There might be possibility that MOU was destroyed after financing is over.

From the above argument it is established that there were financial transactions between Ravindra Agrawal Group and Padsala Group. Shri Ravindra Agrawal owns up the transactions to the extent they have been made through cheques though the cash transactions are being denied. In view of the above, the total cash transactions of Rs.8,14,00,000/- are added to the total income of the assessee considering as Unaccounted cash Investment made by the assessee and taxed accordingly." I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 14 ACIT vs. Shri Ravindra Agrawal

4. Aggrieved against the decision of the assessing officer, the assessee preferred appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee by observing as under:-

"4. I have gone through the assessment order and the submissions of the A.R. of the appellant carefully. The AO made addition of Rs. 8,14,00,000/- on the basis of seized copies of receipts from the residence of Shri Bhikubhai Padsala for cash payments by

Shri Ravindra Agrawal and his family members to B. Nanji Group persons. In the search proceedings on B. Nanji Group Pg. no. 45 to 61 of Annexure BS-2 containing the transaction of the group with Shri Ravindra Agrawal were seized from the residence of Shri Bhikubhai Padsala. The cheque transactions are accepted by both Shri Ravindra Agrawal and B. Nanji Group.

4.1 The seized papers have reference of sale of agricultural land situated at Godhavi vide MOU dated 04.09.2003. No MOU dated 4.9.2003 was not found during the search. This has stated by the AO in his letter dated 12/1/2012 filed on 14.3.2013. Though the appellant asked for a copy of such MOU, the same was also not provided to him by the AO. The said MOU was also not found during the search of B. Nanji Group. 4.2 On this issue, during the course of assessment proceedings, the AO recorded statement of Shri Sandip B. Padsala and Shri Bhikhubhai N. Padsala u/s. 131 on 19.12.2011, where they stated that they are not aware of the MOU. The appellant in cross-examination of Shri Sandip Padsala on 24.12.2011 asked questions related to such copies of cash receipts found from his residence, where he stated that as per his knowledge, the transactions of cash have not taken place and so-called MOU dated 04.09.2003 was not executed. The AO on the basis of loan transactions of appellant group with B. Nanji Group and shareholding in Siddhi Vinayak Buildcon Pvt. Ltd. held that such cash transactions though denied by both the groups had taken place and added such cash payments as noted in copies of receipts of Rs. 8,14,00,000/- as unaccounted cash investment of the appellant.

4.3 As per provisions of section 132(4A) and section 292C of the Act, the persons of B. Nanji Group from whose possession such copies of receipts were found and seized have to explain such transactions. In fact the evidence collected during the course of search of a particular person is presumed to belong to him and he has to prove/ explain the contents of the documents/ evidence. In the instant case, it is seen that the MOU dated 4.9.2003 has not been found. The receipts / promissory notes have been recovered from the possession of Bhikhubhai Nanjibhai Padsala. However no addition in respect of the cash received by them has been made by the AO.

4.4 It is also seen that Shri Bhikhubhai Nanjibhai Padsala had filed an application before the Income Tax Settlement Commission Mumbai Bench wherein Shri Bhikhubhai Nanjibhai Padsala had owned up all the unaccounted transactions entered into by the B. Nanji Group. It is seen that the said cash payments allegedly made by the appellant do not figure in the cash flow statement filed by Shri Bhikhubhai Nanjibhai Padsala before the Income Tax Settlement Commission Mumbai Bench. It is to be noted that the AO in the case of the appellant and Shri Bhikhubhai Nanjibhai Padsala are the same. The ACIT Central Circle 1(4), Ahmedabad was asked to state whether these cash payments allegedly made by the appellant had been recorded in the cash flow statement filed by Shri Bhikhubhai Nanjibhai Padsala before the Income Tax Settlement Commission Mumbai Bench. The ACIT Central Circle 1(4), Ahmedabad vide his letter filed on 14.3.2013 has stated

that the cash in respect of the photocopies of receipts recovered from the residence of by Shri Sandeep Padsala during the course of search as mentioned in page nos. 49 to 60 of Annexure BS-2 have not been included in the cash flow I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 15 ACIT vs. Shri Ravindra Agrawal statement filed by Shri Bhikhubhai Nanjibhai Padsala before the Income Tax Settlement Commission Mumbai Bench. The ACIT has also stated that the department has not raised any objection to the fact that these cash receipts have not been included in the cash flow statement filed by Shri Bhikhubhai Nanjibhai Padsala before the Income Tax Settlement Commission Mumbai Bench. It is also be noted that the Income Tax Settlement Commission Mumbai Bench has accepted the cash flow statement filed by Shri Bhikhubhai Nanjibhai Padsala before the Income Tax Settlement Commission Mumbai Bench and has also passed the final order of settlement in the case of Shri Bhikhubhai Nanjibhai Padsala. Thus it becomes obvious that the cash mentioned in the receipts was actually not paid otherwise the same would have been included in the cash flow statement filed by Shri Bhikhubhai Nanjibhai Padsala before the Income Tax Settlement Commission Mumbai Bench. The fact that the department has not objected to the above also clearly indicates that the department also has accepted that the cash has actually not been paid.

4.5 No transaction in Godhavi land has been found to have not taken place so far between the appellant and Shri Bhikhubhai Nanjibhai Padsala. If the so-called MOU had been really executed then the transaction of land would have been completed by now since more than 7 years had elapsed between the time at which the MOU was allegedly executed and the time at which the assessment was completed. Furthermore, the appellant and his family members do not own any land at Godhavi, purchased from B. Nanji Group persons or any other person.

4.6 Such cash receipts are not found recorded in diaries seized from the residence of Sandeep Padsala. The diaries recovered contain the details of all the transactions entered into by Shri Bhikhubhai Nanjibhai Padsala group. This fact also clearly indicates that the cash transaction has not taken place.

4.7 The appellant stated that he was searched by I.T. Department on 29.10.2004, i.e. one year later then the so-called MOU dated 04.09.2003, if the contention of the AO was correct, such MOU would have been found in that search. It is a fact that no such MOU was recovered from the residence of the appellant at that time also. 4.8 The main persons of B. Nanji Group namely Shri Sandip B. Padsala and Shri Bhikhubhai N. Padsala admitted in their statement that such cash transactions have not taken place and so-called MOU dated 04.09.2003 was not executed. 4.9 Nine (9) receipts are witnessed by Shri Hiten Vasant. During the examination on oath Shri Hiten Vasant has denied the fact that transfer of cash had taken place in his presence. He merely signed these receipts in absentia on the request of B. Nanji Group persons. The company Shree Siddhi Vinayak Buildcon Pvt. Ltd. was controlled by B. Nanji Group persons and Shri Hiten Vasant and appellant was not having any knowledge

about its activities as well as investments. When the document relied upon states that it has been witnessed by any person and that person on oath states that the transaction had not taken place in his presence then the authenticity of the document becomes questionable.

4.10 It is also to be appreciated that the document i.e. the original receipts have not been recovered. Only photocopies of the receipts are available. The basic question arises whether the photocopied documents constitute evidence in the case of the appellant.

4.11 It is settled that only photocopies cannot be admitted as evidence. As per the Indian Evidence Act photocopies can be admitted as evidence only if the originals are produced and the photocopies are authenticated after comparison with the original. Mere photocopies cannot be admitted as evidence, it is true that for the purposes of determination of income the A.O. is not bound by strict rules I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 16 ACIT vs. Shri Ravindra Agrawal of evidence, however, the fact that only photocopies have very little evidentiary value cannot be denied.

4.12 In the case of Moosa S. Madha & Azam S. Madha vs. CIT reported in (1973) 89 ITR 65 (SC), the Hon'ble Supreme Court has held that Photostat copies have very little evidentiary value.

4.13 Further the evidentiary value of documents collected during the search of one person and their evidentiary value in respect of the persons whose names are mentioned in the document has been examined by the Hon'ble Supreme Court in the case of CBI vs. V.C. Shukla & Ors. The Supreme Court vide its order dated 02.03.1998 held that the document recovered from the possession of any one person constitutes evidence against him but the same cannot be used as evidence against such other person whose name is mentioned in the document unless that person has also signed such document in the absence of other corroborative evidence. The facts in the instant case are even more remote. In that case the original diaries were recovered whereas in the instant case only photocopies of the receipts have been recovered. Further the MOU referred to in the receipt has not been recovered at all. The photocopies of the receipts do not bear the signature of either the appellant or his family members. The witness to the document states on oath that the transaction did not take place in his presence. Thus, it is clear that these receipts could not be used as evidence against the appellant in the absence of any other evidence to support the same.

4.14 In such a situation when the MOU has not been found during the course of search proceedings and the fact that the mention of the MOU is only in the photocopies of receipts for which the original receipts have not been recovered, the contention of the A.O. that the MOU existed and that all the payments were made as per the MOU does not appear justified.

5. The contention of the appellant appears to be convincing in view of the following facts:

1. The MOU dated 4.9.2003 has not been recovered at all.
2. All the parties have denied the existence of such MOU.
3. Only photocopies of the receipts have been recovered. Such photocopies do not constitute evidence in the absence of the original.
4. The witness to the transaction Shri Hiten Vasant stated that no cash has changed hands in his presence, he signed in absentia on the request of B. Nanji Group persons. Thereby he has essentially denied being witness to the transaction.
5. The main persons of B. Nanji Group stated that such transactions have not taken place and so-called MOU dated 04.09.2003 was not executed.
6. There is no signature of the appellant Shri Ravindra Agrawal or his family members, on any of the receipts / promissory notes which are signed only by B. Nanji Group persons and witnessed by Shri Hiten Vasant.
7. It is seen that the said cash payments allegedly made by the appellant do not figure in the cash flow statement filed by Shri Bhikhubhai Nanjibhai Padsala before the Income Tax Settlement Commission Mumbai Bench.
8. The fact that the department has not objected to the above also clearly indicates that the department also has accepted that the cash has actually not been paid.
9. No addition in respect of the cash received by them has been made by the AO in the case of B. Nanji Group.

4.11 In view of the above, when there is no corroborative evidence, it is clear that it cannot be presumed that such cash transactions had taken place. Moreover since none I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 17 ACIT vs. Shri Ravindra Agrawal of the papers were found from the premises of the appellant there could be no presumption in the case of the appellant. In the absence of evidence to establish that cash as per MOU was paid by Shri Ravindra Agrawal and his family, the addition of Rs.

8,14,00,000/-made by AO is not justified.

The same is deleted."

5. During the course of appellate proceedings before us, ld. departmental representative vehemently contended that the ld. CIT(A) has erred in allowing the appeal of the assessee in spite of the concrete evidences found during the course of search indicating that assessee has given cash amount to the B Nanji group for making investment in the lands. On the other hand, ld. counsel has contended that

as per page 62 para 4.1 of the Id. CIT(A) memorandum dated 4th Sep, 2003 was not found during the course of search. He has further contended that as per para 4 at page 62 of the CIT(A) s' order the documents from page no.45 to 61 of annexure BS-2 containing the transactions of the group with assessee Shri Ravindara Agrawal were seized from the residence of Sh.Bhikubhai Padsala. He referred to the various pages of paper book pertaining to statement of Shri Ravindra Agrawal and the page number 60 of the paper book specially question no. 5 in the statement of the assessee wherein he has replied that he has no direct relation with B. Nanji group. The Ld. Counsel has also referred page no. 86 to 93, page no. 103, and page no. 116 of the statement. He has placed reliance on the judicial pronouncement of Hon'ble Gujarat High Court 387 ITR 529 in the case of PCIT-4 v. Saumya Construction (P) Ltd. He contended that assessing officer has wrongly made addition on the basis of paper found and seized during the course of search from the premises of third party. The Ld. Counsel has also placed reliance I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 18 ACIT vs. Shri Ravindra Agrawal on the judicial pronouncement in the case of Common Cause (A Registered Scociety) v. Union of India 77 taxmann.com 245(SC). On the other hand the Ld. departmental representative has contended that memorandum of understanding was not recovered but the other evidences like promissory notes were found during the course of search which were not disproved by the assessee. He has also contended that the case of Common Cause relied by the ld. counsel belonged to the criminal procedure which is not applicable to the facts of the case of the assessee. He has stated that Promissory Note is a special kind of negotiable instrument and as per law no signature of the assessee on the promissory note is required.

Mr. Soparkar at this stage invites our attention to assessee's Rule 27 petition dated 05-09-2017 pleading therein that the impugned proceedings u/s. 153A in the instant case are liable to be quashed since the incriminating material concerned was not found in his premises but that of a third party (supra). We find no merit in assessee's said petition. A perusal of above rule 27 makes it clear that the same comes into play only when the CIT(A) decides the relevant plea against an assessee and not otherwise. There is no material in the CIT(A)'s order indicating him to have adjudicated this validity issue against the assessee. It rather emerges that assessee's two main grounds did not raise any such legal plea before the CIT(A). The assessee's Rule 27 petition is accordingly rejected.

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6. We have heard both the sides and perused the material on record carefully. There was a search and seizure operation under section 132 at the residential premises of the assessee along with simultaneously searches conducted in the cases of other connected persons of the B.Nanji group . It is an undisputed fact that assessee was covered under group search along with the search action carried out in the case of B.Nanji Group. Consequent thereto, notice was issued under section 153A(1)(a) calling upon the assessee to furnish return of income. During the course of search proceedings the assessee was confronted with seized documents page. no. 45 to 61 of Annexure BS-2 seized from the residence of Sh.Bhikubhai Padsala reflecting cash payments made by Shri Ravindra Agrawal to B. Nanji Group persons as elaborated above in this order. Consequently the AO has made addition of Rs. 8,14,00,000/- as unaccounted cash payment made on the basis of the seized

documents from page no.45 to 61 of annexure BS-2 from. The pages number 45 to 48 are the receipts of payment made by cheques by Shri Ravindra Agrawal to B. Nanji Group towards part payment for the sale of agricultural land situated at Godhavi. The pages number 49 to 63 are the receipts of amounts paid in cash to B. Nanji Group by Shri Ravindra Agrawal. The amounts and the cheques numbers mentioned on pages number 45 to 48 of annexure BS-2 matches with the details provided in the ledger account submitted by the assessee which demonstrate that the amounts which were given by Shri Ravindra Agrawal through cheques have been duly incorporated by him in his books of accounts. It is also noticed that Siddhi I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 20 ACIT vs. Shri Ravindra Agrawal Vinayak Buildcon Private limited is the special purpose vehicle made for investment in the land in which the major share holding was having with the assessee and his family members i.e. of 74.56% of the total share capital. The directors of this company were Shri Hiten Vasant and Late Shri Rajesh Padasala. These facts demonstrate that there was clear correlation with the promissory notes and receipts found from the residence of Shri Sandip Padsala, where these directors were either witnesses i.e. Shri Hiten Vasant or being- recipient i.e. Late Shri Rajesh Padsala of the money given by the assessee. These promissory notes substantiate that Shri Rajesh Padsala/Shri Bhikhubhai Padsala/Shri Sandip Padsala/Smt. Subhadra Padsala were the recipient of promissory notes signed by the witnesses. In this case Shri Hiten Vasant one of the directors of Siddhi Vinayak Buildcon Pvt Ltd had signed as witness to many of these promissory notes which establish the strong nexus that there were transactions related to those promissory notes. The objections of the assessee regarding the genuineness of the cash transactions corroborated with relevant and legitimate materials as elaborated supra in this order are neither apposite nor supported with relevant material. Out of these receipts many receipts had been signed in the witnesses of Shri Hiten Vasant and Shri Sandip Padsala. So, all the receipts have direct correlation with the transactions entered by both the groups (Padsala & Agrawal).All these facts corroborate clearly that assessee had made aforesaid cash payment to the B.Nanji Group .The assessee has failed to disprove these facts with relevant and legitimate materials. The Promissory Note is a Negotiable I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 21 ACIT vs. Shri Ravindra Agrawal Instrument and it is signed by the recipient who receives the money not the payer.

.According to section 4 of the Negotiable Instrument Act,1881 the promissory note is defined as under:-

"promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument."

Negotiable instruments act includes only three types of instruments

1. Promissory note.2. Bill of Exchange.3. Cheque.We observed that the Negotiable Instruments are the most common devices utilized in the business society. These are more readily transferred than ordinary claims or contract rights .Transferee of a Negotiable instrument acquire greater rights.

We observe that authenticity of cash transaction by means of negotiable instruments in the forms of promissory notes cannot be ignored without any legitimate materials. We observed that the Id. CIT(A) has merely deleted the aforesaid additions on presumption basis without disproving the authenticity of the seized materials which clearly corroborate the existence of cash payment by the assessee to the persons of the B. Nanji Group as mentioned supra in this order. We have also noticed that the Id. CIT(A) has observed that Shri Bhikhubhai Nanji Padshala had filed an application before the Income Settlement Commission Mumbai Bench wherein he has owned up all the unaccounted transactions entered into by B Nanji Group. The Id. CIT(A) has further stated that the cash payments made by the assessee were not reflected in the statement filed by Shri B Nanji I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 22 ACIT vs. Shri Ravindra Agrawal Padsala in Income Tax Settlement Commission Mumbai Branch. In this connection we have perused the order of the Settlement Commission dated 1st Nov, 2012 and observed that the findings of the Id. CIT(A) has no merit because the Settlement Commission has elaborated in its findings at para 18 page 49 of the aforesaid order at issue no. 7 under the head assessability of the amount of Rs. 8.82 cores received from Shri Ravindra Agrawal and the same is reproduced as under:-

"18. Issue No. 7 - Assessability of the amount of Rs.8,82,00,000/-received from Shri Ravindra Agarwal:

During the course of search, Xerox copies of receipt aggregating to Rs.8,14,00,000/- for cash(without any serial nos) and Rs.68,00,000/- for cheque payments (carrying serial numbers) were found at the residence of the applicant indicating the receipt of amounts primarily by late Shri Rajesh B.Padsala towards the sale of Godhavi.Lands in the year 2003-04 from Shri Ravindra Agarwal. These receipts referred to the MOU dated 04.09.2003, but the same was not found during the course of search. Shri Ravindra Agarwal was also searched simultaneously on the same day and nothing was found from his residence in respect of the above transactions. It is stated by the A.R. that the applicant and his family members are farmers and Shri Ravindra Agarwal is engaged in various businesses including making investments in lands. The prevailing law in the State of Gujarat requires that the agricultural land could be acquired only by the person who is a farmer in the State of Gujarat. Hence, with a view to make investments in lands, Shri Ravindra Agarwal approached the applicant's deceased son Shri Rajesh Padsala to lend their name for the purpose of acquiring lands for him. He also formed a joint venture company known as Siddhivinayak Buildcon P Ltd (SVBPL). He provided cheque funds both to the family members of the applicant as well as to SBVPL for the above purpose. Till his death, Shri Rajesh Padsala used to look after all the financial matters for himself and other family members, who used to sign the documents as and when demanded. Due to various difficulties faced in the Godhavi Landmark Project including compulsory acquisition of part of the land by the Government for Narmada sub canal, Shri Rajesh Padsala was looking for disposal of these lands by making complete buy back from the members who had made part/full payments for acquiring the plots, but the same was not handed over to them due to the various difficulties faced in the above Project. Shri Rajesh Padsala expired on 4 June, 2005 and till his death, these lands were not

sold. The applicant initiated steps to liquidate these lands in the year 2007 by making negotiations with various land developers. These lands were finally sold during the previous year corresponding to the assessment years 2009-10, 2010-11 and 2011-12 through Shri Sanjay Thakkar and to his group entities. In the written submissions filed on 27.09.2012, the applicant has furnished the details of such receipts at pages 51 & 52.

18.1 The CIT in his Rule-9 report has observed that as the applicant was a party to the MOU, the entire amount received should be taxed and not the brokerage income shown by the applicant from various transactions as he has not mentioned the name of Shri Ravindra Agarwal in the cash flow statement. The CIT has also observed that the applicant never produced the MOD dated 04.09.2003 and hence the nature of transaction I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 23 ACIT vs. Shri Ravindra Agrawal is not clear. The receipts were found from the possession of the applicant and he is bound to explain the same under section 292C of the Act. Neither the applicant has specifically explained how the money so received were applied i.e. whether by way of loans and advances for purchase of land. The A.R. has strongly objected to the Rule-9 report in the above matter. It is stated that all the above transactions have taken place at the hands of late Shri Rajesh Padsala and the other family members do not have complete knowledge of these transactions. The amounts received by way of cheques, as reflected in the seized receipts, have already been shown in the books of the respective family members. The seized receipts itself clearly record that these are advances towards the Godhavi land. The Godhavi land was not sold to Shri Ravindra Agarwal but it was sold to other parties, which is evident from the seized papers also. These receipts clearly reflect that they are in the nature of loan transactions and do not reflect any income of the applicant. It is further stated that the amounts appearing in the Xerox receipts have not been incorporated in the cash flow statement by the applicant and if the same would have been done, it would have increased the availability of funds in the hands of the applicant, without increasing the income and hence the same had been duly ignored for the purpose of the cash flow statement.

18.2 We have carefully considered the above issue with reference to the seized materials and other evidences. It is stated by the CIT(DR) that the above amounts have been added in the assessment order passed in the case of Shri Ravindra Agarwal being unaccounted cash transaction/ investment and the same is being disputed in the Appeal by Shri Ravindra Agarwal. The CIT(DR) could not substantiate the Rule-9 report in the above matter by specifically pointing out the seized materials and the co-relation of the same with the above issue. We have taken due note of the fact that the applicant has not included the above amounts in the cash flow statement, which would have otherwise made a large number of the applicant's investments explainable out of the above source. Hence, no addition is being considered in the hands of the applicant in the above matter. The issue is decided accordingly."

We observed that the Ld.CIT(A) has not taken into consideration the above referred findings reported in the order of the settlement commission in which it was stated by the B.Nanji Group before the settlement commission that Sh.Bikubhai Nanjibhai Padsala and his family members were farmers and Shri Ravindra Agarwal was engaged in various businesses including making investments in lands. The prevailing law in the State of Gujarat requires that the agricultural land could be acquired only by the person who is a farmer in the state of Gujarat. Hence, with a view to make investments in lands, Shri Ravindra Agarwal approached the Sh.Bikubhai Nanjibhai Padsala deceased son Shri Rajesh Padsala to lend their name for the purpose of acquiring lands for him. It is also I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 24 ACIT vs. Shri Ravindra Agrawal explained that these receipts clearly reflect that they are in the nature of loan transactions and do not reflect any income of the Sh.Bikubhai Nanjibhai Padsal, therefore, the amounts appearing in the Xerox receipts have not been incorporated in the cash flow statement by Sh.Bikubhai Nanjibhai Padsala and if the same would have been done, it would have increased the availability of funds in the hands of the Sh.Bikubhai Nanjibhai Padsala, without increasing the income. In this connection we observed that the Ld.CIT(A) has not taken into consideration the fact that B.Nanji Group has approached the settlement commission where they have admitted that the assessee had made investment in the land through them on which they have only earned brokerage, therefore such cash receipt was not offered by them before the settlement commission. After considering the above we observed that the presumptions of the Ld.CIT(A) that the cash mentioned in the receipts was actually not paid otherwise the same would have been included in the cash flow statement filed by Shri Bhikubhai Nanjibhai Padsala before the Income Tax Settlement Commission Mumbai Bench has no merit and it merely demonstrate the assumptions made by the Ld.CIT(A). We have also noticed that Ld. CIT(A) has stated that documents found were photocopies and he has further observed that the basic question arise to constitute the photocopy as evidences. We considered that Ld. CIT(A) has merely made general observation without any relevant material to disprove the genuineness of these documents. In this connection we have noticed that in the case of Vikram Dutt Chaudhary Vs Commissioner of Income Tax(Punjab & Haryana High I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 25 ACIT vs. Shri Ravindra Agrawal Court vide appeal number 25/2015 the Hon'ble High Court held that photocopy of a document will always constitute relevant "material" for the purpose of assessment because the very use of word "material" in sec.143(3) clearly shows that the AO is not bound by the technical rules of evidence and the like and that he may act on material which may not ,strictly speaking ,accepted as evidence in a court of law. We are of the considered opinion that the photocopy of a document if corroborated by the assessee it would be sufficient evidence which may be used in the course of making assessment. Therefore, we are not inclined with the incomplete observation of the Ld. CIT(A).

After considering the above facts and evidences, we are of the considered view that unaccounted cash transactions were corroborated on the basis of receipts / promissory note seized at Pg. no. 45 to 63, summary of which have been given as supra in this order which demonstrate that assessee had made unaccounted cash payment to the persons of the B.Nanji Group as elaborated above in this order. We have further observed that the Ld.CIT(A) has failed to contradict the above stated facts and evidences with relevant material in his findings as demonstrated supra in this order, therefore, we are not inclined with the decision of the Ld. CIT(A). In view of the above facts and legal findings, we set aside the order of the Ld.CIT(A) and allow the appeal of the revenue. In the result, the appeal

of the Revenue is allowed.

IT(SS)A No. 209/Ahd/2013 I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 26
ACIT vs. Shri Ravindra Agrawal

8. The revenue has raised following grounds of appeal:-

"1) The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs.70,99,000/- being unexplained and unaccounted cash found &

seized during the course of search.

2) On the facts and in the circumstances of the case and in law, the CIT(A) ought to have upheld the order of the A.O.

3) It is, therefore, prayed that the order of the CIT (A) be set aside and that of the A.O. be restored to the above extent."

9. In this case, search action u/s. 132 of the act was carried out on 4th March, 2010. The assessee has filed return of income for the year under consideration on 29th October, 2010 declaring total income of Rs. 88,67,080/- and agricultural income of Rs. 9,01,847/-. During the course of assessment proceedings, the assessing officer has issued show cause notice to the assessee regarding unaccounted cash seized of Rs. 9,09,020/- from the residence of Shri Ravindra Agrawal and unaccounted cash of Rs. 70,99,000/- found from the locker no. 98 maintained in the name of Shri Ravindra Agrawal HDFC Bank, Panchvati Branch, Ahmedabad. The assessing officer has stated in the show cause to the assessee that in his statement he claimed that the source of cash found during the course of search was agricultural income of the family, therefore, he was asked to produce the relevant evidences in support of his claim. In response to the same, the assessee has explained vide his statement dated 13th December, 2010 as under:-

"In the aforesaid notice, your goodself stated as under:

1. During the course of search at the residence of Shri Ravindra Agrawal, cash of Rs.

9,09,020/- was found. In addition to the same, cash of Rs. 70,99,000/- was found from locker number 98 maintained in the name of Shri Ravindra Agrawal at HDFC Bank Ltd., Panchwati Branch, Ahmedabad. Further in the statement recorded on 09.03.2010, it was claimed by you that part of the cash found has the source in agricultural income of the family members for which necessary evidences could be produced but no such- I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 27 ACIT vs. Shri Ravindra Agrawal evidences have been produced till date. You are requested to produce the evidence on which you rely in support of your contention.

In this regard, vide notice dated 04-10-2011, served on 10-10-2011, your goodself vide para 1 called for to furnish /explain source of cash with supporting documents / evidences for your kind perusal:

Explanation on Cash found During the course of search at the residence of Shri Ravindra Agrawal, cash of Rs. 9,09,020/- was found. In addition to the same, cash of Rs. 70,99,000/- was found from locker number 98 maintained in the name of Shri Ravindra Agrawal at HDFC Bank Ltd., Panchwati Branch, Ahmedabad.

1.

Cash found The summary of cash found at the time of search from residence and locker are as under-

Premises	Cash found	Cash seized
Residence of Ravindra Agrawal 70, Basant 909020 Bahar Bungalows, Nr. Gala Gymkhana, Bopal, Ahmedabad		0
Locker of Ravindra Agrawal Locker No. 98 with 7099000 HDFC Bank , Panchvati Branch, Ahmedabad,		7099000
TOTAL	8008020	7099000

Explanation furnished for cash found from residence of Rs. 909.020/- Statements recorded at residence: At the time of search on residence on 04/05-03- 2010, the assesses explained to the authorized officer, the sources and acquisition of cash found at residence of Rs. 909,020/- and also explained that cash lying at residence and locker are belonging to family members and family companies, the replies in statements u/s. 132(4) given by Sh. Ravindra Agrawal are reproduced hereunder:

Q.7 How many lockers you have and in which banks? In whose custody the keys are lying with?

A.7 Me and my wife have joined hold the following lockers. 1) Locker in bank of Rajasthan Ltd. in Madvanpura Branch, near Ajmer Pulia, Jaipur. This locker is last opened by 1. T. dept. 2005 and since then the keys are misplaced. Therefore no content in aforesaid locker. 2) Two lockers are maintained in Lord Krishna bank (New HDFC) at C.G.Road, Panchwati, A'bad. The aforesaid locker contains jewellery belonging to family plus cash belonging to family and companies. Since the lockers are operated by me and my wife before leaving for marriage at Daman in hurry the keys have been misplaced, as me and my wife both have B.P. and acute Diabetic patient we are not able to recollect where the keys have been kept during search operation also. We submit that as and when the keys are located the lockers will be operated in presence of 1. T. authority contents will be inventorized than.

Q.8 During the course of search cash of Rs.9,09,020/- was found in residence. Kindly state to which it belongs?

I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 28 ACIT vs. Shri Ravindra Agrawal A.8 Cash belongs to family members. Sufficient cash is available with our family members and with the company as per books of accounts maintained by assessee. The balance/major portion are lying in the lockers.

Q.15 In answer to Q.8 you have told that the cash found in your residence amounting to Rs.9,09,020/- belongs to you and family members. Please state what is the cash balance in your personal and family member's account.

A.15 The cash balance in my name and family members as on date should be approx Rs. 17.50 lakhs to 20 lakhs. In addition to the balance lying at home amounting to Rs.909020/- the balance amount along with the cash belonging to the companies upheld by family is lying at HDFC Bank, C.G. Road, locker in name of myself along with wife since we had one marriage with in family we had deposited major portion of cash belonging to family as well as cash with various companies in the aforesaid bank for safety purpose.

Q.16 As per balance sheet dated 17.02.2010 the approx balance is Rs.22 Lakhs then how you have arrived at the balance at Rs.17.50 to 20 lakhs. Please told whether the A/c for the remaining period is written or not?

A.16 The cash balance as on date is based on my best judgment looking to our family groups behavior the aforesaid figures arrived by me as the books for the balance period from 17.02.2010 are yet to be written and considering the cash expense behavior of family. The aforesaid judgment has been arrived. I assure the cash balance of me and my family members would be to the above extent and the balance amount lying in the lockers as far as the company is controlled by family is concerns. The cash withdrawal can be done by me jointly with my wife. In respect of those companies who are duly authorize for the purpose through board resolution. It is further stated that the cash lying at the locker represents the cash belonging to various companies controlled by the family only.

Q. 17 In answer to Q. 16 above you have stated that you are authorized by the resolution of the board of all the companies in which four above mentioned companies having registered office in Ahmedabad. To withdraw cash on behalf of company along with the other directors of the company. Please explain if any such authority is extended to the director of the company (which evidently are you, wife and your son) by any resolution of the company to keep cash of the company at the residential premises of the directors or lockers controlled and operated by the directors of the company.

A.17 All above mentioned companies are Pvt. Ltd. companies and not the Public Ltd. companies which subjected to corporate governance and the total 100% share capital is controlled by family members only. The necessary enabling resolution as far as cash withdrawal are concerned are available with banks of the respective companies since these companies don't have enough infrastructure both in terms of requisite I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 29 ACIT vs. Shri Ravindra Agrawal man power as well as hardware needed for the purpose of keeping cash in safe custody in order to keep check on cash the money is held in fiduciary capacity for and on behalf of company this fact has already been disclosed in earlier paras also.

Q. 18 From answers provided by you emerges that the cash of company is kept at residence of director in the fiduciary capacity as account of infrastructure short companies. It also emerges that the directors are authorized to withdraw the cash for a proposed resolution has been passed. However it is not clear whether it's specific resolution authorizing the directors to keep cash in the personal custody passed or not. Considering the fact the company is a separate legal entity specific authorization for keeping such cash belonging to company needs to be passed, if such authorization or resolution has passed. You are requested to provide copy of the same.

A.18 The necessary enabling resolution will be submitted in due time.

Q.19 In the answer to above question you have stated that all the companies are closely held companies of your family members and the director of companies are your family members only in such scenario the preparation of an enabling resolution bearing a date which is prior to the preparation of the date of such resolution cannot be rated out. Therefore you are requested to provide the copy of resolution in front of me so that such a possibility can be ruled out.

A.19 The above things will be submitted at the time of personal hearing granted in due course of time also it is emphatically clarified that after preparation of accounts up to date in respect of family members as well as companies. The excess if any, found in lockers shall be declared as income of family members.

3. Explanation furnished for cash found and seized of Rs. 70,99,000/- from locker Statements recorded at Locker: At the time of search on locker no. 98 with HDFC Bank on 09-03-2010, the assesses explained to the authorized officer, the sources and acquisition of cash found at locker of Rs. 70,99,000/- are belonging to family members and family companies, the replies in statements u/s. 132(4) given by Sh. Ravindra Agrawal are reproduced hereunder:

Q.2 During the course of operation of prohibitory order with respect to locker no. 98 maintained in HDFC Bank, Panchwati Br. Ahmedabad cash of Rs. 70,99,000/- in denomination of Rs. 1000 and Rs.500 notes has been found which is inventorized as

Annexure -CF. Please explain who owns this cash. I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 30 ACIT vs. Shri Ravindra Agrawal
A2 Sir, this cash was belongs to myself and my family members as well as the private ltd. companies directly own by the families. Since all these families do not have any adequate infrastructure for safe deposit of money in the office premises of companies at Ahmedabad. The cash belonging to the companies is also kept in this locker as the family was going to out of station at Daman in the marriage with in the family and there was nobody to take care of the money. Hence deposited in locker on and around 11.02.2010. Necessary board resolutions, in this respect passed by various companies are submitted there.

Q.3 When did you leave for the marriage and when did you come back?

A3 As per my memory 12th Feb was Shivratri and 13th Feb was Saturday when it was not possible to operate the lockers, we left for marriage on 14th Feb in morning i.e. Sunday and returned back on 18th Feb evening i.e. 2010.

Q.4 Where do you kept the cash of the companies in the regular course considering your reply that your companies have infrastructure constraint for safe keeping of cash?

A.4 We have got adequate safe custody facility at our residence i.e. 70, Vasant Vihar Bunglows and the cash balances are generally kept at residence.

Q.5 From your answer it is gathered that the cash of the companies are kept at your residence. Whether the entire cash of the companies is kept at the residence?

A.5 Yes, the cash balance is kept both in the lockers and at my residence as we do not have any other facility.

Q.7 During the course of statement recorded U/s 132(4) at the time of search at your residence premises on 04.03.2010/05.03.2010, the evidence for resolution passed by Pvt. Ltd. companies of your family were called for. In response you have stated the same will be submitted in due course at time of next hearing. In the immediate very question you asked which is no. 19 it was specifically asked that the company being closely held company of your family members and director being the family members only the preparation of enabling resolution bearing a date which is prior to the preparation of actual date of such a resolution could not be ruled out. You were given an opportunity to provide a copy of resolution to such a possibility. However the same was not produced. As a result, please explain how the resolution produced by you now is taken as correct and authentic?

A7 As best of my knowledge, this question was asked in late night hour on 5th March 2010 at my residence. Accordingly I have submitted that the relevant copies of

resolution shall be submitted at the time of next personal hearing which is today i.e. 9th March, 2010. As per the back dating of resolution is concerned we submit that the concept of back dating the resolution is irrelevant because even otherwise. It is director's duty to protect the interest of the companies. Including assets with all reasonable care in view of lack of adequate infrastructure facility for safe custody, the cash balance is bear discharged our duties towards our companies in their best interest as per our ability.

I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 31 ACIT vs. Shri Ravindra Agrawal Q.8 As per as the issue of asking the companies question at late night is concerned, you were never restricted from stating if enabling resolution were lying at a place different your residential premises. No such information submission was made by you, in pursuance of which the resolution could be fetched from those premises, if any. You only answered that was given was that it could be produced in next hearing? In view of this production of the resolution dt. 30.06.2009 cannot be accepted to be authentic. Please offer your comments?

A8 As a man of reasonable prudence, I interpreted the question asked as that day in normal course, my reply given in previous question are relied hereupon.

4. Explanation furnished on cash found at residence and at locker on 10-03-2010 On 10-03-2010, position of cash balance belonging to Sh. Ravindra Agrawal and family and companies controlled by family was furnished to ADIT, (Inv), Unit -11(1), Ahmedabad, copy enclosed Exb-1. The position of cash as on 09-03-2010 is as under:

Name of family PAN	Cash in	Cash at	Petty Cash	Total cash	member concern	locker
no. 98 residence of	HDFC Ravindra	Agrawal	ACIPA6398	850000	35936	10000
895936 M Reena	Agrawal	ABXPA438	800000	4902	5000	809902
2K Jaideep	Agrawal	AGMPA52	850000	10640	9000	869640
49D Devika	Agrawal	AGMPA52	1050000	7028	9699	1066727
50C Savitridevi	Agrawal	AGMPA52	0	76712	0	76712
51D SVM Realty	Pvt. Ltd.	AAJCSS52	3549000	0	33699	3582699
47 F SVM Plaza	Trade	AAJCS571	0	750000	368062	1118062
Arena Pvt. Ltd	5L Shree	Radhe	Trade	AAJCS571	0	23802
214764	238566	Plaza Pvt. Ltd.	4M JSR	Hotels Pvt. Ltd.	AABCSJ	700
0	0	8430	8430	1L Total	Cash balance	7099000
909020	658654	8666674	Total	cash found	Rs. 8008020	I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11
Page No 32 ACIT vs. Shri Ravindra Agrawal						

5. Correct position of cash of family members and family companies as per books of accounts as on 04-03-2010 For cash balance available with the family members and family companies, copies of cashbooks are furnished along with , the correct position of cash of family members and family companies as per cashbooks as on 04-03-2010 are as under:

Name of family member/ PAN Cash balance Cashbooks for EXB concern as per books of the period accounts on 04-

03-10

Ravindra Agrawal	ACIPA6398 M	875936	01-04-07 to 04- 2 03-10
Reena Agrawal	ABXPA4382 K	816554	01-04-07 to 04- 3 03-10
Jaideep Agrawal	AGMPA5249 D	869640	01-04-07 to 04- 4 03-10
Devika Agrawal	AGMPA5250 C	897598	01-04-07 to 04- 5 03-10
Savitridevi Agrawal	AGMPA5251 D	76712	01-04-07 to 04- 6 03-10
SVM Realty Pvt. Ltd.	AAJCSS524 7 F	3556649	26-12-05 to 04- 7 03-10
SVM Plaza Trade Arena Pvt. Ltd	AAJCS5715 L	352887	30-12-05 to 04- 8 03-10
Shree Radhe Plaza Pvt. Ltd.	Trade AAJCS5714 M	13566	10-12-05 to 04- 9 03-10
JSR Hotels Pvt. Ltd.	AABCB 7001L	9650	12-07-06 to 04- 10 03-10
	Total	7469192	

6. Excess Cash found Rs. 538.828A Say Rs. 539,0007-

In view of the above, cash of Rs. 80,08,020/- was found, against this the recorded / explained of the family members and family companies are of Rs. 74,69,192/-, therefore, there is excess cash of Rs. 538,828/-, accordingly, the excess of Rs. 539,000/- is offered in income tax return of A. Y. 2010-11 by Sh. Ravindra Agrawal."

The assessing officer has not accepted the explanation of the assessee by stating that during the course of search proceedings tag I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 33 ACIT vs. Shri Ravindra Agrawal of bundles of currency notices were found and seized from the bank locker of the assessee and it was found that the tags were of the various banks mainly co-operative bank in which the assessee was not holding any accounts. The assessing officer has also not accepted the assessee's contention that he had withdrawn the cash from the bank accounts of himself and from the bank account of his family members. In this connection, the assessing officer has verified all these accounts of the assessee and his family members and found that no cash was

withdrawn as mentioned in the tabular chart in the assessment order at page 10 to 13 of the assessment order. The assessing officer has carried out the verification and found that none of the family members or associate concerns of the assessee has withdrawn any cash from the banks. The assessing officer stated the assessee could not substantiate his claim that part of the seized cash belong to his closely held companies. Consequently, the assessing officer had made addition of Rs. 70,99, 0000/- as unaccounted cash found and seized during the course of search from the locker of the assessee.

10. Aggrieved against the order of the assessing officer, the assessee preferred appeal before the Id. CIT(A). Id. CIT(A) has allowed the appeal of the assessee by observing as under:-

"6. I have gone through the assessment order and the submission of the A.R. carefully. In the search proceedings cash of Rs. 70,99,000/- was seized from Bank locker of the appellant, as tags on bundles of currency notes are of various banks, where the appellant, his family members and group companies are not having any bank account. Cash belonging to group companies were also not accepted and cash so found and seized treated as unexplained and unaccounted income of the appellant. 6.1 The appellant stated that cash belongs to him, his wife, his children and companies controlled by his family, in which he is director. The cash of family members are mainly I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 34 ACIT vs. Shri Ravindra Agrawal from agricultural incomes and cash withdrawn from company was kept in locker of HDFC Bank. Since he had to attend the marriage of the son of a family friend on 16-02-2010 at Daman and his family members would be away, hence the cash was kept in locker on

11.02.2010. As evidence for the same the appellant has produced the wedding invitation and for the evidence of having operated the locker he produced certificate of operation of bank locker on 11.02.2010. The locker was thereafter operated by the search party on 09.03.2010.

6.2 The appellant furnished agricultural sale bills, bank statements, cash books, Wealth Tax Returns of family members and Audited Accounts of Group companies to show that there was sufficient cash available with him and that such cash had been kept in locker. Thus it was contended that the cash found from the locker was explained to a large extent. The appellant stated that the cash found in the locker as well as at the residence was explained in the statement given at the time of search u/s 132(4). 6.3 The appellant stated that the discrepancies of tags were only on the 15 bundles amounting to Rs. 7,50,000/-, which are noted in running Panchnama. The Panchnama shows that there are more than one tag on all the bundles, thus, it is not the case that such cash is unexplained, but it is linked with tags and date on tags. The appellant explained that the AO's observation that cash is not withdrawn on the date of tag on bundles is purely on assumption, as the tags on bundles shows that the bundles are prepared by bankers on that specific date and the bundles can be issued at any time after that date. It is further stated that the excess cash of Rs. 5,39,0007- is offered by appellant in income tax return filed. The appellant, his family members and group companies has properly recorded such cash in books of accounts, therefore, the same is fully explained and prayed that the addition may be deleted.

6.4 The contention of the appellant has not been verified by the AO at all. The AO has also not found any defect in the books of accounts of the appellant or his family members of the companies controlled by the appellant. The AO has not been able to identify any entry of cash from agricultural income which has not been properly recorded in the books of the appellant and his family members. Similarly the AO has also not found any defect or discrepancies in the transactions recorded in books of the companies. The books of the companies have been duly audited and the cash balances are reflected in final audited accounts. The AO has accepted agricultural incomes of the appellant and his family members.

6.5 As far as, the question with regarding the tags on bundles is concerned, the assumption of AO that the cash is not withdrawn on the dates on tags on note of bundles is not correct. The procedure followed in actual working of the bank is that the date is stamped on tag when such bundles are prepared and not on the date when that bundle is issued. Similarly, it is not necessary that the bundles issued bear the tag of the bank from which it was issued because many times the banker issues bundles received from other depositors on the same day against payments made without changing the tags and at times after putting another tag. This is clear from running Panchnama where it is seen that there are more than one tag on 15 bundles of notes.

6.6 Further, the appellant and his family members have substantial agricultural income. The agricultural produce is sold in APMC in cash and the customers may pay cash withdrawn from any bank over which the appellant has no control. The cash bundles can have tags of different banks and different dates. The bundles could have been exchanged during business transactions also. In view of the above no adverse inference can be drawn regarding the cash found to the extent it is recorded in the books of accounts and in the wealth tax statements.

I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 35 ACIT vs. Shri Ravindra Agrawal 6.7 Further no enquiry has been made by the A.O. from the banks where tags are found on the notes to ascertain whether the appellant has secreted accounts in those banks or not. Merely because the cash found in the locker bears the tags of different banks and different dates. No inference, in this regard, that the cash was unaccounted can be drawn. If one goes by the date on the tags then it would be seen that many of the bundles bear the date of 2007, 2008 and upto March, 2009. This does not mean that the cash in those bundles represents income of those years. If the AO's contention is accepted then these amounts would not be taxable in this year.

6.8 When the cash on hand as per books is shown in Wealth Tax Returns by appellant and his family members, and the cash belonging to the company is properly recorded and backed with evidences, it is not understood how the same can be treated as unexplained. The evidences in the form of agriculture sale bills, bank statements, cashbooks, wealth tax returns and audited accounts cannot be discarded merely on the basis of the presumption that all the bundles have not been withdrawn from the banks where the appellant and his family members have accounts. It is well established by appellant that his family and companies are having agricultural incomes which have been accepted by the AO. The transactions of the companies are also properly recorded. Thus the appellant had sufficient explained cash which was kept in bank locker. There were minor discrepancies in the total cash found from the locker as well as from the residence of the appellant for which the appellant has

offered Rs. 5,39,000/- in the return of income filed in response to notice u/s. 153A of the I.T. Act.

6.9 The cash found from the residence of the appellant was Rs. 9,09,020/- and that found from the locker of the appellant was Rs. 70,99,000/-. Thus the total cash found in the possession of the appellant was Rs. 80,08,020/-. As against the above, the appellant, his family members and group companies is having explained cash balance as on 04.03.2010 as under:

Name of family member / PAN Cash Cashbooks for the period concern balance as per books of accounts on 04-03-10 Ravindra Agrawal ACIPA6398M 8,75,936 01 -04-07 to 04-03- 10 Reena Agrawal ABXPA4382K 8,16,554 01-04-07 to 04-03-10 Jaideep Agrawal AGMPA5249D 8,69,640 01 -04-07 to 04-03- 10 Devika Agrawal AGMPA5250C 8,97,598 01 -04-07 to 04-03- 10 Savitridevi Agrawal AGMPA5251D 76,712 01 -04-07 to 04-03- 10 SVM Realty Pvt. Ltd. AAJCSS5247F 35,56,649 26-12-05 to 04-03-10 SVM Plaza Trade Arena AAJCS5715L 3,52,887 30-12-05 to 04-03-10 Pvt. Ltd Shree Radhe Trade Plaza AAJCS5714M 13,566 10-12-05 to 04-03-10 Pvt. Ltd.

JSR Hotels Pvt. Ltd.
I.T(SS).A No. 227 & 209/Ahd/2013
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AABCJ7001L
A.Y. 2004-05 & 2010-11

9,650

12-07-06 to 04-03-10
Page No

Total

74,69,192

6.10 Thus it is seen that there is shortage of cash available with the appellant to the extent of Rs. 5,38,828/-. As against the above shortage the appellant has offered a sum of Rs. 5,39,000/- in the income tax return filed. However no such disclosure was made in the statement made u/s 132(4) at the time of search. In fact at the time of search, the disclosure was made was only for jewellery to the extent of Rs. 74,75,000/-. The appellant has sought to modify the disclosure made at the time of filing his return of income. This change of disclosure cannot be allowed as it is clearly an afterthought.

When the disclosure is sought to be modified the onus is on the appellant to prove with evidence as to how the disclosure made earlier was not correct. In the instant case the appellant has not filed any such evidence.

cash found from the locker as well as from the residence of the appellant for which the appellant has offered Rs. 5,39,000/- in the return of income filed in response to notice u/s.153AoftheI.T.Act.

6.9 The cash found from the residence of the appellant was Rs. 9,09,020/- and that found from the locker of the appellant was Rs. 70,99,000/-. Thus the total cash found in the possession of the appellant was Rs. 80,08,020/-. As against the above, the appellant, his family members and group

companies is having explained cash balance as on 04.03.2010 as under:

Name of family member / PAN concern		Cash balance as per books of accounts on 04-03-10	Cashbooks for period 04-03-10
Ravindra Agrawal	ACIPA6398M	8,75,936	01-04-07 to 04-03-10
Reena Agrawal	ABXPA4382K	8,16,554	01 -04-07 to 04-03-10
Jaideep Agrawal	AGMPA5249D	8,69,640	01 -04-07 to 04-03-10
Devika Agrawal	AGMPA5250C	8,97,598	01 -04-07 to 04-03-10
Savitridevi Agrawal	AGMPA5251D	76,712	01-04-07 to 04-03-10
SVM Realty Pvt. Ltd.	AAJCSS5247F	35,56,649	26-12-05 to 04-03-10
SVM Plaza Trade Arena Pvt. Ltd	AAJCS5715L	3,52,887	30- 12-05 to 04-03-10
Shree Radhe Trade Plaza Pvt. Ltd.	AAJCS5714M	13,566	10-12-05 to 04-03-10
JSR Hotels Pvt. Ltd.	AABCJ 700 1L	9,650	12-07-06 to 04-03-10
Total		74,69,192	

6.10 Thus it is seen that there is shortage of cash available with the appellant to the extent of Rs. 5,38,828/-. As against the above shortage the appellant has offered a sum of Rs. 5,39,000/- in the income tax return filed. However no such disclosure was made in the statement made u/s 132(4) at the time of search. The appellant has sought to make I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 37 ACIT vs. Shri Ravindra Agrawal the, disclosure only at the time of filing his return of income. This disclosure cannot be allowed as it is clearly an afterthought. In view of the above the disclosure made at the time of filing of return is not correct and is clearly an afterthought. Thus, the Assessing Officer is directed to treat the amount of Rs.5,39,000/- as undisclosed income though the same has been offered as disclosure in the return of income.

In view of the above, addition made by AO of Rs.70,99,000/- is not justified. The same is deleted."

11. During the course of appellate proceedings before us, ld. departmental representative contended that unexplained cash of Rs. 70,99, 000/- was found and seized from the locker of the assessee. He has vehemently contended that the assessing officer has carried out verification and found that assessee and his family members have not withdrawn any cash from the banks. He has strongly made objection to the findings of the ld. CIT(A) stating that assessee has furnished agricultural sale bill, bank statements, cash books from wealth tax return of family members and audited accounts of

group companies to show that there was sufficient cash available with the assessee and that such cash had been kept in the locker. He has objected to the findings of the Id. CIT(A) as he has not called any remand report or comments from the assessing officer. He has also stated that no copies of the return of income were submitted to the assessing officer. He has vehemently contended that cash book, cash balance was created after the search and it has no authenticity. He has also contended that it was not proved that cash was generated from the agricultural income. On the other hand, Id. counsel has contended that entries made in the cash book were not disproved by the assessing officer. He has also referred to page no. 41, 42, 44, 45 and other pages in which details of cash were explained. The Ld. Counsel has also referred to page no. 103 I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 38 ACIT vs. Shri Ravindra Agrawal regarding submission made before the assessing officer explaining when the locker was operated and page no. 105 and 106 pertaining to cash position regarding monthly cash position in books of Shri Rajendra Agrawal and his family members. He also referred page no. 163-166 of the paper book pertaining to marriage invitation card. He further contended that the transactions found in the cash book were not disputed by the assessing officer and the same were not unexplained.

12. We have heard both the sides and perused the material on record carefully. During the course of search in the case of the assessee cash of Rs. 70,99000/- was seized from the bank locker standing in the name of the assessee. Subsequently, during the course of assessment proceedings, the assessee had stated that the cash kept in the locker was belonging to the other family members and to the companies of the assessee. We observed that the bank locker from where the cash was seized was standing in the name of the assessee. We further observed that the claim of the assessee that part of the cash belonged to the companies are not substantiated with relevant material and no such submission along with relevant supporting materials were made at the time of search action. The claim of the assessee is merely based on probability . We have also placed reliance on the principles laid down by the Hon ble Apex Court in the following cases where in the facts and circumstances the case of assessee is not supported with the concrete and undoubted evidences.

I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 39 ACIT vs. Shri Ravindra Agrawal CIT V. Durga Prasad More (1971) 82ITR 540(sc):-

"Therefore, the question is whether he has satisfactorily proved that case. Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and Tribunals have to judge the evidence before them by applying the test of human probabilities. Human minds may differ as to the reliability of a piece of evidence."

Sumati dayal v.CIT (1995) 80 Taxmann 89 (sc):-

"This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities. In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered

by the appellant in respect of the said amounts has been rejected unreasonably and that the finding that the said amounts are income of the appellant from other sources is not based on evidence."

We observed that the assessee has failed to substantiate the source of the cash found from the locker with concrete evidences. Even it was not proved that the source of cash found was the agricultural income. The assessee failed to substantiate how the cash was generated from agricultural income as the agricultural land of the assessee and his family members were situated in Rajasthan. We observed that the assessee has failed to establish with concrete evidences to demonstrate how the part of the cash found in the bank locker standing in the name of the assessee belonged to the closely held companies of the assessee.

On the identical issues, we have also perused the decision of hon'ble High Court of Allahabad in the case of (2017) 80 taxmann.com 198. In this case, during the course of block assessment proceedings against the assessee for the first time, the assessee has produced a computer printed cash book. However, no I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 40 ACIT vs. Shri Ravindra Agrawal corroborative evidences as to the existence of such books had been found during the course of the search and no evidences that cash was generated by the family member of the assessee was furnished by the assessee. The hon'ble High Court held that no cash book was found during the course of investigation. The cash book was produced in the block assessment proceedings and held that it was not a case of the assessee that cash book produced during search and survey proceedings. Therefore, it was held that assessee could not prove the source of cash found from the locker. The fact of the case of the assessee is identical to the fact of the aforesaid case decided by the hon'ble high court of Allahabad as in the case of the assessee also the assessee could not substantiate with supporting relevant evidences that the cash found from the locker of the assessee belonged to the other family and company of the assessee. Even the assessee has not produced the cash book in support of his claim at the time of search proceedings. We also observed that as per the Indian Evidence Act if the books of accounts are maintained by the assessee to be accepted as evidences it is required that such books of account should be maintained regularly in the course of business. Further, the books of account should be supported by day to day vouchers. However, in the case of the assessee no cash book was found during the course of search and no supporting evidences were maintained as evidence of cash transactions. However, We have noticed that out of total cash of Rs.70,99,000/ found and seized from the bank locker standing in the name of the assessee cash of Rs.8,50,000/- was claimed to be shown in the books of I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 41 ACIT vs. Shri Ravindra Agrawal account assessee (Sh.Ravindra Agarwal). In this respect , we observed that the assessing officer has not specifically controverted the availability of the aforesaid cash position as shown in the books of the assessee. Therefore, in the interest of justice we are of the considered view that the claim to the extent of aforesaid cash position is to be allowed. After considering the above stated facts and circumstances we are of the considered view that the findings of the Id. CIT(A) are merely based on assumption basis and it has failed to substantiate with cogent relevant evidences to demonstrate that ownership and source of the cash kept in the bank locker standing in the name of the assessee are pertained to the different family members and closely held companies of the assessee. In view of above, we considered that the findings of the Ld.CIT(A) to make distribution of possession and ownership of seized cash from the

bank locker of the assessee to the family members and the companies are not appropriate, therefore, we are not inclined with the assumption of the CIT(A). After considering the above facts and findings we are of the considered view that the cash found and seized from the locker standing in the name of the assessee are belonged to the assessee and the claim of the assessee over its distribution and ownership to the other family member and companies is afterthought and not substantiated with relevant evidences. Therefore, we set aside the decision of the Ld. CIT(A) and sustain the addition to the extent of Rs.62,49,000/(Rs.70,99,000-8,50,000). Therefore, the appeal of the Revenue is partly allowed.

I.T(SS).A No. 227 & 209/Ahd/2013 A.Y. 2004-05 & 2010-11 Page No 42 ACIT vs. Shri Ravindra Agrawal

13. In the combined result, the Appeal IT(SS)A No.227/Ahd/2013 of the revenue is allowed and the Appeal IT(SS)A No. 209/Ahd/2013 is partly allowed.

Order pronounced in the open court on 09-11-2017

Sd/-
(S.S. GODARA)

JUDICIAL MEMBER

Ahmedabad : Dated 09/11/2017

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

/ Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/ ,

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