

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“RAJKOT” BENCH, RAJKOT**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR**

आयकर अपील सं./I.T.A. No. 750/Rjt/2014  
(निर्धारण वर्ष / Assessment Year : 2011-12)

<b>ACIT,</b> Cir-2(1), Aayakar Bhavan, 3 <sup>rd</sup> Floor, Race Course Ring Road, Rajkot-1	<b>बनाम/ Vs.</b>	<b>M/s. Cast &amp; Blower Co. Pvt. Ltd.,</b> Ajit Estate, Near K. S. Diesel, 80 Feet Road, Aji Vasahat, Rajkot
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCC3707E</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Smt. Usha N. Shrote, Sr.D.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri D. M. Rindani, A.R.

सुनवाई की तारीख / Date of Hearing	18/07/2018
घोषणा की तारीख /Date of Pronouncement	04/10/2018

**आदेश/ORDER**

**PER PRADIP KUMAR KEDIA - AM:**

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax-III, Rajkot ('CIT(A)' in short), dated 09.10.2014 arising in the assessment order dated 06.03.2014 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2011-12.

2. The Revenue in its appeal has impugned the action of the CIT(A) in deleting the addition of Rs.1,71,25,000/- made by the AO towards alleged unexplained on-money in cash employed in a land

transaction detected as a result of survey proceedings under s.133A of the Act.

3. Briefly stated, the assessee company is engaged in manufacturing of water pumps under the brand 'TRISHUL'. A survey operation under s.133A of the Act was carried out at the business premises of the assessee company on 19.10.2010. In the course of survey proceedings, a Satakhat (agreement to sale) on a stamp paper no.3997 of Rs.50/- was found pertaining to an agricultural land admeasuring 5 acres and 34 gunthas at Village Khokhadad for a sale consideration assigned at Rs.2,57,00,000/-. The aforesaid Satakhat was found to be duly signed by the sellers (Shri Valabhai Rupabhai and Shri Amrabhai Rupabhai) but remained unsigned on behalf of the assessee. The copy of Form No.6, Form No.7/12 and Form No.8A of agricultural land were also found. It was also noticed from the back of the Satakhat that a manual noting of certain entries of various amounts and dates were mentioned. The manual notings so found on Satakhat was reproduced by the AO in the assessment order. As per the aforesaid jottings of various entries, it was observed by the AO that the assessee has made certain payments in cash on various dates to the intending sellers aggregating to Rs.1,71,25,000/- in cash. The AO further took note of the information elicited by the Director of assessee company in a statement recorded under s.133A of the Act in the course of survey proceedings. As per the statement, the assessee attested the fact that the sale price of the land in question was agreed at Rs.2,57,00,000/- out of which Rs.1,71,25,000/- was paid on various dates in various installments aggregating to Rs.171.25 Lakhs in cash. It was also seen from the statement of Mr. Dineshbhai Pedhadia, Director of the Company that the assessee wanted to purchase the land for the factory of the company but however, as the land in question was the agricultural land, the document could not be made in the name

of the company and therefore, it was decided to purchase the land in the name of son of the Director (Yaswant Dineshbhai Pedhadia) for which Rs.1,71,25,000/- was paid as on-money in cash in part consideration of land purchase till the date of survey. The AO thus noticed that the Director of the company duly accepted and declared the assessee company's unaccounted income to the extent of impugned on-money of Rs.171.25 Lakhs. Based on the documents impounded in the course of survey together with affirmative statement of the Director providing information on such documents, the AO refused to accept the contention on behalf of the assessee in the course of assessment proceedings that no such dealing as mentioned in the documents impounded were actually carried out. The AO also alleged that despite ample opportunity, the assessee had failed to reply on the nature and source of such transactions which further vindicates the stand of Revenue towards on-money involved. The AO accordingly invoked the presumption available to the Revenue against the assessee in terms of Section 292C of the Act which enables the Revenue to presume that the documents found in the course of the survey belong to the person in possession and the contents thereof are true. In the circumstances broadly narrated above, the AO proceeded to make an addition of Rs.1,71,25,000/- towards unexplained money under s.69A r.w.s. 292C of the Act.

4. Aggrieved by the order of the AO, the assessee preferred appeal before the CIT(A).

5. Before the CIT(A), a detailed written representation was filed on behalf of the assessee which has been reproduced by the CIT(A) in its appellate order in para nos. 2.4 & 2.5 of its order. The CIT(A) also admitted additional evidences by way of sworn affidavits filed by the Director, Shri Dineshbhai Pedhadia as reproduced in para 2.6 of its

order whereby it was stated that statement in the course of survey proceedings was taken under pressure and forcefully a disclosure in the guise of alleged cash payments to the sellers of the agricultural land was taken. The CIT(A) also admitted the evidences in the form of sworn affidavits of impugned sellers (Shri Valabhai Rupabhai and Shri Amrabhai Rupabhai) of the agricultural land as per Satakhat and forwarded the same to the AO for its comment. The CIT(A) however observed that the AO has failed to provide any response to the sworn affidavits of the Director of the Company and intending sellers of the land filed by way of additional evidences. The CIT(A) accordingly concluded that the impugned Satakhat found during the course of survey action in the business premises of the assessee company is a piece of dumb document which cannot be acted upon as an evidence for the purposes of making additions. The relevant operative para of the order of the CIT(A) is reproduced hereunder:

*“2.10 I have considered carefully, the submissions made by the authorized representative on various dates, the satakhat in question, the sworn affidavits filed by Shri Yashwant D. Pedhadia (intended buyer), Shri Dineshbhai N. Pedhadia (Director of the company and the father of Shri Yashwant D. Pedhadia), Shri Valabhai Rupabhai and Shri Amrabhai Rupabhai (intended seller of the land) and the assessment order passed by the assessing officer. I have also gone through the statement of Shri Dineshbhai Pedhadia, the director of the company, recorded on the day of survey. On a careful examination of these documents, following facts emerge:*

- *that there was a survey action in the business premises of the appellant company on 19/10/2010.*
- *that a satakhat dated 03/07/2010 has been found during survey action, according to which, the intended sellers Shri Valabhai Rupabhai and Shri Amrabhai Rupabhai were suppose to sell agricultural land admeasuring 5 acres and 34 gunthas in revenue survey number 221/5 of revenue village Khokhaddad for a total sale consideration of Rs. 2,57,00,000/- to the intended buyer Shri Yashwant D. Pedhadia, son of Shri Dineshbhai N. Pedhadia, the director of the appellant company.*
- *that on the reverse of page 3 of the satakhat found, certain jottings were made, which are as under:*

03/07	Rs.21,25,000/-
31/07	Rs.50,00,000/-
29/08	Rs.50,00,000/-
04/10	<u>Rs.50,00,000/-</u>
Total	Rs.1,50,00,000/-

- *that Shri Dineshbhai Pedhadia, the director of the company, when confronted with the above jottings, has initially accepted that he has paid Rs.1,71,25,000/- to the intended sellers Shri Valabhai Rupabhai and Shri Amrabhai Rupabhai in cash.*
- *that immediately after survey action on 19/10/2010, the appellant company M/s. Cast & Blower Co. (Guj.) Pvt. Ltd. in its letter dated 22/10/2010 filed before the Addl. CIT, Range-2, Rajkot has categorically said that the impugned satakhat found during survey action belongs to a third party that the company has nothing to do with it. Also, it is stated that the alleged purchaser Shri Yashwant D. Pedhadia has not signed the said satakhat. Therefore, the appellant company submitted that the satakhat in question is not valid.*
- *that Shri Yashwant D. Pedhadia, in his sworn affidavit dated 22/10/2010 filed before the assessing officer has stated that the said satakhat do not belong to the appellant company and the said company has nothing to do with it. He further said, that although, the impugned satakhat has been signed by the intended sellers Shri Valabhai Rupabhai and Shri Amrabhai Rupabhai, he has not signed on the said satakhat. Therefore, the transaction was never materialized and the satakhat found is invalid. He further alleged that the authorized officers have forcefully obtained the disclosure from his father Shri Dineshbhai Pedhadia, which is illegal, invalid and against the rule of natural justice.*
- *that Shri Dhiren H. Lotia, advocate and the authorized representative vide his letter dated 24/03/2011 to the CIT-2, Rajkot has submitted that the intended transaction as per the satakhat has not been materialized as Shri Yashwant D. Pedhadia has not signed on the said satakhat. He further submitted that the said land has been sold to some other party, which is evident from the copy of conveyance deed enclosed.*
- *that Shri Dhiren H. Lotia, advocate and the authorized representative vide his letter dated 6/12/2013 addressed to ACIT, Circle-2, Rajkot has once again reiterated that the satakhat found during the course of survey action was never materialized as there was no signature of the purchaser Shri Yashwant D. Pedhadia. He also submitted the copy of*

*conveyance deed of the lands sold to some other party along with copies of 7/12, 8A and 6A.*

- *that the appellant company vide its letter dated 30/01/2014 has also made an application to the Addl. CIT, Range-2, Rajkot seeking directions to the assessing officer u/s. 144A of the IT Act, 1961.*
- *that Shri Dineshbhai Pedhadia has also filed a sworn affidavit dated 26/06/2014 before me during the course of appellate proceedings, alleging that the disclosure has been taken forcefully from him during survey action and therefore, he is retracting from the said statement. He further stated that he has not paid a single rupee to the intended sellers Shri Valabhai Rupabhai and Shri Amrabhai Rupabhai as per satakhat. He also submitted that neither he nor his son has put any signature on the satakhat found. As per the affidavit, the Pedhadias have not entered into any transactions with the intended sellers as per the satakhat.*
- *that the intended sellers Shri Valabhai Rupabhai and Shri Amrabhai Rupabhai as per the satakhat found on the day of survey action have also filed sworn affidavit dated 28/06/2014 before me, stating that the transaction as per satakhat has not been materialized due to paucity of the funds with Pedhadias. It is further stated that the Pedhadias have not signed the satakhat found during survey action, therefore, it is submitted that the agricultural land in question has been sold to some other party vide a registered sale deed dated 04/01/2011 for a sale consideration of Rs. 27,54,000/-. Shri Valabhai Rupabhai and Shri Amrabhai Rupabhai in the letter filed before the assessing officer on 05/09/2014 have once again reiterated and reconfirmed the same facts as were stated before me.*

*2.11 All the above facts, when examined carefully, leads to the conclusion that the impugned satakhat found during the course of survey action in the business premises of the appellant company is nothing but, a dumb document, which cannot be acted upon as an evidence. Firstly, the appellant company is not a party to the alleged transaction as per the satakhat found on the day of survey. Secondly, the intended buyer of the land as per satakhat found, Shri Yashwant D. Pedhadia has never signed the document. Thirdly, the intended sellers of the land in question as per satakhat, Shri Valabhai Rupabhai and Shri Amrabhai Rupabhai has sold the same land to the other party vide registered sale deed dated 04/01/2011 for a consideration of Rs. 27,54,000/-, the copy of the same is available on record. Fourthly, the intended sellers has stated that neither they have received any money, nor they have repaid the same, since the transaction intended or proposed as per the impugned satakhat has*

*never materialized. Fifthly, Shri Dineshbhai N. Pedhadia, director of the company has retracted from his earlier statement that he paid the money to the intended sellers. Sixthly, the officer has failed to bring out any material evidence to show that Pedhadia have actually paid the money to the intended sellers and again received back the same, when the transaction did not materialized. Seventhly, the assessing officer could not prove that the jottings made on the reverse of page 3 of satakhat found are made by Pedhadias. Eighthly, Shri Valabhai Rupabhai and Shri Amrabhai Rupabhai in the letter filed before the assessing officer on 05/09/2014 have once again reiterated and reconfirmed the same facts as were stated before me, that the impugned transaction was never materialized and no money was paid by the Pedhadias.*

*2.12 The assessing officer, in the intervening period of about 40 months, from the date of survey action to the date of assessment order has done nothing to gather any material evidence to show that the appellant company has paid any alleged cash in this transaction. He could have easily examined the bank accounts of the appellant company, its directors, and the intended sellers so as to see whether there are any cash withdrawals or cash deposits in such accounts on the corresponding dates mentioned in the satakhat found in order to establish the money trail. Neither he has examined the intended sellers as per the satakhat, Shri Valabhai Rupabhai and Shri Amrabhai Rupabhai, nor he made any discreet enquiries to come to a logical conclusion. In other words, the assessing officer has not discharged the burden of proving the concealment of income in the form of any alleged cash payments by the appellant in any manner. There is no shred of any evidence available on record to suggest that the appellant company has indulged in any cash payments, which are not accounted for in the books of accounts maintained. Even assuming, without accepting for a while, when Shri Yashwant D. Pedhadia is the intended buyer as per the satakhat found, (although the said document was never signed by him), it is not known as to how the appellant company came into the picture. Although, section 292C raises a presumption that the assets, books of accounts, documents, money bullion, jewellery etc. found during the survey or search action belongs to the person in whose premises, such action is undertaken, but the same is not of much help to the assessing officer as the impugned satakhat found was a unexecuted document as the intended purchaser, Shri Yashwant D. Pedhadia did not append his signature anywhere on the said document. The action of the assessing officer in making addition in the hands of the appellant company by taking recourse to section 292C of the IT Act, 1961 is not in accordance with law. Moreover, relying on an unexecuted satakhat, to which the appellant company was not at all a party to the purported transaction, the action of the assessing officer in making the addition of Rs. 1,71,25,000/- in the hands of the appellant company, based on certain jottings made by an unknown person in the said satakhat appears to be totally unjustified.*

*2.13 The Courts have consistently held that without any corresponding independent evidence, no additions can be made based on mere statements recorded during course of survey action. As correctly relied upon by the authorized representative, the Apex Court in the case of S. Khadar Khan & Sons (2013) 352 ITR 480 (SC) has laid down the judicial principle on the issue in question, that the statements recorded during survey action has no evidentiary value, unless, the same is backed up by an independent and corroborative evidence. Therefore, it is argued by the authorized representative that the statement of Shri Dineshbhai Pedhadia, the director of the company recorded during survey action has no evidentiary value and any admission made in such statement, cannot, by itself, be made the basis for addition. He also relied on various other judgments to buttress the point that in order to make an addition on the basis of surrender during search or survey, it is sine qua non that there should be some other material to co-relate the undisclosed income with such statement. Also, in an earlier judgment in the case of P.V. Kalyansundaram (2007) 294 ITR 49 (SC), the Hon'ble Supreme Court has also laid down the same judicial principle, that the additions cannot be made, merely based on jottings on loose sheets, when no other corroborative evidence is brought out on record by the revenue. Hon'ble Supreme Court in the case of Shri K. P. Verghese (1981) AIR 1922, 1982 SCR (1) 629 has held, that the burden of proving an understatement or concealment of income is on the revenue, which may be discharged by establishing facts and circumstances from which a reasonable inference can be drawn that the assessee has not correctly declared or disclosed the consideration received by him and there is understatement or concealment of the consideration in respect of the transfer. Without laying his hands on any actionable evidence to establish the money trail, only, by hammering on the statement of Shri Dinesh N. Pedhadia, the director of the company given during the course of survey action, which he retracted immediately thereafter, I am of the view that the addition made by the assessing officer to the tune of Rs.1,71,25,000/- on account of unexplained money u/s.69A of the IT Act, 1961 in the hands of the appellant company, which is not at all a party to the transaction, is not justified, both on facts and in law. Thus, the addition made at Rs.1,71,25,000/- on account of unexplained money u/s.69A of the IT act, 1961 stands deleted. This ground of appeal is allowed.”*

Accordingly, the CIT(A) reversed the action of the AO on this score and deleted the addition of Rs.1,71,25,000/- made on this account.

6. Aggrieved, the Revenue has preferred appeal before the Tribunal.



7. The learned DR for the Revenue relied upon the order of the AO and contended that there is no justification in the action of the CIT(A) for reversal of additions made on the basis of cogent evidences found in the course of survey. The learned DR for the Revenue in furtherance submitted that the proposed agreement to sale (satakhat) found from business premises of the assessee company together with Form No.6, Form No.7/12 and Form No.8A concerning agricultural land in question found and impounded clearly reveals that agricultural land was intended to be sold by the sellers to the assessee at an aggregate consideration of Rs.2.57 Crores against which the sellers have admitted having received Rs.21.25 Lakhs as earnest money and Rs.1,50,00,000/- in three installments on various dates (dt.31/7 – Rs.50 Lakhs, dt.29/8 – Rs.50 Lakhs & dt.4/10 – Rs.50 Lakhs) as per manual jotting-cum-acknowledgement. The learned DR emphasized that the aggregate amount of Rs.1,71,25,000/- was paid by the assessee company for which handwritten admission receipts were found at the back of page no.3 of the Satakhat. The learned DR reasoned that the name of the son of the Director was mentioned in the document since the assessee as a corporate entity is prohibited in law from acquisition of agricultural land in the State of Gujarat. Therefore, for all intended purpose, the *de facto* ownership on transaction was with the assessee company and the signature or otherwise by the intending purchasers is of no consequence as the document signed by sellers was found in the custody of the purchasers. Thus, the intending sellers could not resile from the terms of such satakhat. The learned DR next submitted that the Director of the company in the course of survey also clarified the factual position when confronted on the documents found in connection with the purchase of agricultural land in the course of survey. In support of assessment order, the learned DR submitted that the Director of the assessee company has conveniently filed unsupportable affidavits to

denounce the statement as a desperate attempt to cast aspersion on tangible evidences. The affidavits are nothing but are self-serving documents. The learned DR vehemently canvassed that the ample opportunities were provided in the course of assessment proceedings which were deliberately dodged by the assessee. Nonetheless, the CIT(A) has wrongly admitted fresh evidences in the form of affidavit and wrongly appreciated the facts and circumstances and thus drew wrongful interference. The learned DR thus submitted that in view of the overwhelming factual position pointing out involvement of assessee in undisclosed cash transactions, there was no justification for CIT(A) to dislodge the action of the AO. The learned DR contended that the CIT(A) proceeded on irrelevant considerations such as the intending purchasers has not signed the documents or the land has been ultimately sold to other party vide registered sale deed dated 04.01.2011 for a consideration of Rs.27.54 Lakhs etc. The learned DR thus submitted that in view of the provisions of Section 292C of the Act enacted for such situations, a statutory presumption is raised against the assessee which has not been successfully rebutted. It was thus pleaded that the action of the AO requires to be restored and the action of the CIT(A) requires to be set aside and cancelled.

8. The learned AR for the assessee, on the other hand, heavily relied upon the order of the CIT(A) and submitted that the order of the CIT(A) is founded upon the objective analysis of factual matrix and the law involved. Therefore, such order of the CIT(A) does not warrant any interference. Delineating further, the learned AR submitted that the CIT(A) has rightly observed the salient feature such as the assessee company is not a party to the alleged transaction as per the satakhat found on the date of survey; the intending buyer of the land did not sign the satakhat; the agricultural land was ultimately sold to some other party and therefore, satakhat was not acted upon;

the intending sellers have affirmed on oath that they have not received any money nor have repaid any sum to the assessee as the transaction did not materialize. The learned AR also pointed out that the Director of the company has promptly retracted from his statement given earlier in the course of survey. The retracted statement thus cannot bind the maker of admission. Thus, no inference towards payments of money to the intended seller can be drawn. The learned AR also strived to submit that the AO has not brought any material on record to actually show the involvement of cash transactions, save and except, the jottings in the satakhat which never materialized. The learned AR paddled that in the light of categorical assertions made by the intending sellers before the CIT(A) and AO at the time of appellate proceedings, the CIT(A) has rightly concluded that recourse to Section 292C of the Act is not available to AO and satakhat remaining unsigned by assessee cannot be used against the assessee. The learned AR also exhorted that the order of the AO also requires to be assailed on the ground that the AO has merely questioned the alleged unexplained money received back after cancellation of deed, which is not assessable under s.69A of the Act. In a stoic defense, the learned AR thus submitted that the order of the CIT(A) is on sound footing and no interference therewith is called for.

9. We have carefully considered the rival submissions and the orders of the authorities below. The material and documents relied upon by the assessee at the time of hearing were also perused. In the instant case, certain additions have been carried out by the AO based on Satakhat (agreement to sale) found in possession of the assessee together with other incidental documents viz., copy of Form No.6, Form No.7/12 and Form No.8A concerning proposed purchase of agricultural land at Village Khokhaddad, Gujarat in the course of survey proceedings. As stated, certain manual jottings were also

found on the back side of page no.3 of the Satakhat which has been reproduced as such by the AO at page no.2 of the assessment order. The aforesaid documents so detected were confronted to the Director of the assessee in the course of the survey proceedings. On being quizzed, the aforesaid Director acquiescenced having given Rs.1,71,25,000/- to the proposed sellers of the land (Shri Valabhai Rupabhai & Shri Amrabhai Rupabhai) at the first instance, on the dates as mentioned in the noting. The said sum was stated to be paid as on-money in cash. It was also clarified in the statement that the land was proposed to be purchased for the factory premises of the company. As per the averments made by the Director in this statement, the documents for purchase could not made in the name of the company since the land under purchase was an agricultural land, therefore, it was decided by the assessee company to purchase the land in the name of son (Mr. Yashwant Dineshbhai Pedhadia). In the impugned statement recorded in pursuance of the survey proceedings, the Director also categorically conceded the aforesaid sum of on-money in cash as assessee company's unaccounted income. In this background, the transactions was found to be consummated and consequently the additions were made in the hands of the assessee. While doing so, the AO also referred to upon the judgment of Hon'ble Gujarat High Court in the case of Hiren Vasantlal Shah vs. ACIT 19 taxmann.com 241 (Guj).

9.1 In the first appeal, on reconsideration of facts and circumstances and having regard to affidavits of the proposed sellers and that of Director of assessee company, the CIT(A) however found merit in the case of the assessee that the documents found and impounded from the premises of the assessee in relation to the purchase of the agricultural land is nothing but are unworthy dumb documents which cannot be

acted upon as an evidence. The CIT(A) accordingly deleted the additions so made by the AO.

9.2 To begin with, we take notice of the undisputed fact that the documents for purchase of land together with incidental documents showing right, title and interest of the proposed sellers were found in the possession of the assessee company. The agreement to sale was found to be prepared between the proposed sellers and the son of the Director of the assessee company. When confronted, the key Director of the company clarified in its statement about the purport of making the document in the name of the son of the Director and observed that this was done owing to the in-capacity of the assessee company to purchase agricultural land in the name of the corporate entity. We also take notice of another important fact that the Satakhat was admittedly signed on behalf of the proposed sellers (although unsigned from assessee) and thus, inevitably, were accountable to such agreement. Notably, the agreement was found in the custody of the proposed buyer (assessee company) and thus privity of the agreement could not have been disputed. Thus, absence of any formal signature on behalf of the buyer in the Satakhat agreement found in its custody is not detrimental to assessee company *per se*.

9.3 Significantly, as submitted on behalf of the assessee and noted by CIT(A), the land in question was ultimately sold to other party (vide registered sale deed dated 04.01.2011) for a sale consideration pegged at Rs.27,54,000/-. As per affidavits of proposed sellers and assessee, the sole reason provided for transaction mentioned in Satakhat not sailing through is financial distress dawned on the assessee company. These circumstances have been viewed in favour of the assessee and against the AO by the CIT(A). At this juncture, we pause to observe that the CIT(A) has apparently failed to take notice of

the ostensible point that difference in the sale consideration assigned in Satakhat and sale agreement is unprecedented which gives unflinching inference towards an air of unreality in the explanation towards whole affair. Admittedly, the proposed sale to the assessee company was to be made at a agreed consideration of Rs.2,57,00,000/- whereas the actual sale agreement albeit to some other parties was made at a paltry consideration of Rs.27,54,000/- only. Clearly, the dramatic reduction in consideration is incomprehensible and inexplicable. The CIT(A), in our view, has ignored this distraughting aspect and proceeded on a wholly wrong footing altogether. The moot question is not as to whether agreement to sale was implemented or not. The real question is whether prior to the actual sale, any proposed sale was existing and whether any unaccounted cash was involved in such transaction. The sale consideration agreed in the proposed agreement to sale with assessee nowhere been disputed. The colossal gap in sale consideration sets the entire cast apart. The substantial variance between the proposed sale consideration and the actual sale consideration thus clearly underscores the irrefutable inference of involvement of unaccounted money in cash as found in the manual notings (date wise) duly acknowledged as received on behalf of sellers.

9.4 This view further finds support from the sworn affidavit of the intending sellers dated 24.06.2014 filed belatedly before the CIT(A) in the course of appellate proceedings. It will be apposite to reproduce the contents of impugned affidavit of Shri Valabhai Rupabhai:

**AFFIDAVIT**

*We, undersigned, Mr. Valabhai Rupabhai, Hindu, adult, agriculturist and Shri Amrabhai Rupabhai, Hindu, adult, agriculturist, residing at village Khokhaddad Dist. Rajkot. We both brothers do hereby solemnly affirm that we are holding agricultural land at Khokhaddad area 5 acre 35 gunthas at revenue survey no. 221/5. We had agreed to sell the said land to Mr. Yashwant Pedhadiya for Rs. 2,57,00,000/-*

*at the rate of Rs. 44,00,000/- per acre. We had made an unregistered agreement (satakhat) for sale, being familiar to each other it was signed by us and our family members and sent to purchasers for signing purpose. In the said document, we had decided the terms of payment as under:*

*Rs.21,25,000/- Dt. 03-07-2009*

*Rs.50,00,000/- Dt. 31-07-2009*

*Rs.50,00,000/- Dt. 29-08-2009*

*Rs.50,00,000/- Dt. 04-10-2009*

*Rs. 1,50,00,000/- and it was decided to make the said payment  
by 05-02-2010*

*Sd/- (Valabhai and Amrabhai)*

*However, due to unfavorable circumstances and financial crisis, he did not make payment to us. He also did not sign the aforesaid agreement to sale (satakhat). Thereafter, we had sold the said Sand to another party. We hereby solemnly declare on oath the fact and truth that we have not received a single amount from Shri Yashwant Pedhadiya. We had sold the above land on 10-01-2011 as we were in need of financial resources. Hence, we have not made any financial transaction with Shri Yashwant Pedhadiya and we have not received any amount as per the agreed terms. We had sent the said satakhat after signing on account of familiarity with them. We hereby solemnly declare on oath that the above contents are true.*

*Date: 24-06-2014*

*Palce: Khokhaddad*

1. \_\_\_\_\_ *Sd/-* \_\_\_\_\_  
(Shri Valabhai Rupabhai)

2. \_\_\_\_\_ *Sd/-* \_\_\_\_\_  
(Shri Amrabhai Rupabhai)

As per the affidavit, the intending sellers admitted holding the impugned agricultural land. The intending sellers further admitted on oath to have agreed to sale the land to the intending purchasers for Rs.2,57,00,000/- @ Rs.44 Lakhs per acre. The intending sellers also

confirmed having made an unregistered agreement for sale (Satakhat) on the ground that they were familiar with the assessee and thus sent the agreement to the purchasers for signing purposes. The intending sellers however have only controverted the facts of actual payment given to them on dates and sought to depose on oath that the parties to the agreement mutually decided to exchange the payment by 05.02.2010. The intending purchasers have cited unfavourable circumstances and financial crisis on the part of assessee for not receiving any payment from the assessee. To reiterate, the preparation of Satakhat, signature thereon, manual jotting was thus not denied by the intending seller. The financial transactions with the assessee as mentioned in manual jotting were however denied by the intending sellers. In this context, we have cognizance of the pertinent fact that the jottings of entries recorded on the back side of page no.3 of the Satakhat clearly asserts and vouches the acknowledgement on behalf of the intending sellers that the on-money of Rs.1,71,25,000/- was actually received from the intending purchasers. The jottings of entries actually represented receipts of on-money by the intending sellers. A customary question would naturally arise as to how the proposed sale consideration of Rs.257.00 Lakhs turned into Rs.27.54 Lakhs for the same asset. There is supreme silence in this regard and thus severally impairs the credibility of the stand of the parties. The affidavit of the intending sellers is apparently vague, nondescript and unintelligible on crucial prints. It owes an explanation as to why the land worth of Rs.2,57,00,000/- would be sold at Rs.27,54,000/- to other person. This does indicate foul play. Needless to say, the financial crisis of the assessee would not deplete value of the land *per se* as sold to a new buyer. As observed, the intending sellers have neither rebutted the value assigned to the proposed land deal nor have rebutted the jottings made on the backside of the agreement. They



have only denied the performance of transaction as per deed and manual jotting.

9.5 Adverting further, it is also noticed that the intending sellers while making a self-serving affidavit have not offered themselves for cross examination. Simultaneously, it is also seen that several opportunities were granted at the assessment stage and it is not known as to what prevented the assessee to bring such facts mentioned in the affidavit on the record of the AO for further enquiry, if any. This conduct is not compatible with the claim of the intending sellers that they were familiar with the assessee company. Thus, in totality, it is self-evident that the aforesaid affidavit of the intending sellers is superficial and symbolic and does not carry any rational probative value and thus cannot be taken as worthy of reliance.

9.6 At this stage, we also take notice that the CIT(A) has also relied upon a sworn affidavit of the intending purchaser as named in the agreement Shri Yashwant Dineshbhai Pedhadia to accept the allegation of forceful disclosure by the survey team. It will also be apposite to reproduce the contents of such affidavit:

AFFIDAVIT

*I, the undersigned, Yashvant D. Pedhadiya, adult, Hindu, residing at 10, Bhaktinagar Society, Rajkot solemnly affirm that a survey proceedings u/s. 133A were carried out at premises of M/s. Cast a Blower Co. (Guj) Pvt, Ltd. on 19.10.2010. During the course of search one document i.e. "Satakhat" was found and impounded by the authorized officer. On the basis of the said "Satakhat", the authorized officers pressured the Director of M/s. Cast & glower Co. (Guj) Pvt. Ltd. to disclose Rs. 1.50 crores. However, the said "Satakhat" is not belonging to M/s. Cast & Blower Co. (Guj) Pvt. Ltd. and the said company got no concern with it. The "Satakhat" pertains to an agriculture land admeasuring 5 acres and 34 guntha at village, Khokhaddad for a value of Rs.2,57,00,000/-. The "Satakhat" is executed by the seller and mentioned that*

*Rs.1,50,00,000/- has been received in three equal instalment and signed the document. Due to unavoidable circumstances, I have not made any payment and nor signed the "Satakhat". Hence the said document is valid. Even though, the authorized officers have forcibly obtained the disclosure from the Director of M/s. Cast & Blower Co. (Guj) Pvt. Ltd. which is illegal, invalid and against the rule of natural justice^ The aforesaid company has got no concern with the "Satakhat". Under the circumstances it is requested to treat the said "Satakhat" as null and void.*

*The above information is true to the best of my knowledge.*

*Palce: Rajkot*

*Date: 22-10-2010*

*(Yashvant D. Pedhadiya)*

A perusal of the aforesaid affidavit also confirms that Satakhat was executed and signed by the sellers and as per the Satakhat, who also mentioned that a sum of Rs.1,50,00,000/- has been received by them from the intending purchasers in three equal installments. A bare reading of the affidavit shows that the deponent of the affidavit has only made an assertion to the effect that he has not made any payments due to 'unavoidable circumstances' and nor signed the Satakhat. Clearly the averments made towards vague and generic narrative of unavoidable circumstances for non payment are totally unbelievable when the Satakhat and other documents pertaining to land are read in conjunction with the receipts of money acknowledged by the intending sellers (as per the manual jottings made on the backside of the Satakhat) and the information yielded by the Director of the Company in the course of survey proceedings. Ordinarily, when a person is quizzed by a quasi-judicial authority performing public duty on a document found in its possession, a normal presumption would be that the person would truthfully share the information to his special knowledge to the authority. The burden is on the deponent to disprove the position taken earlier. The allegation of coercion or duress is a serious allegation and requires to be proved by some direct or circumstantial evidence. Except for bald assertion making such

allegations, we do not find any justifiable reason for such act. The allegation of forceful disclosure in the instant case is empty and shallow with an intent to dilute the confession on the face of speaking documents supporting the existence of undisclosed transactions. The facts and circumstances clearly belie the assertions in affidavits of the intending sellers as well as that son of the Director.

9.7 Similar is the position as transpired from the affidavit of key Director Mr. Dinesh N. Pedhadia. The contents of affidavit is reproduced for ready reference:

AFFIDAVIT

*I undersigned Shri Dinesh N Pedhadia Director of Cast & Blower Company (Gujarat) Pvt. Ltd. Hindu adult, do hereby solemnly affirm that during the survey proceeding I have given a statement before the Authorized Officer that I have paid money for purchase of Agricultural Land and land for Factory Building purpose. And paid a cash amount of Rs.1,50,00,000/- Shri Valabhai Rupabhai and Shri Amrabhai Rupabhai. Sir I tell on oath due to financial crises I have not paid money to both Agriculturists. Myself or Shri Yashwant Pedhadiya has not paid any rupees to him. They both has prepared a Satakhat and sent in our office for signature and also due amount collect as per Satakhat. But we respectfully regret them and not put a signature or not made any transaction with him. Afterwards they people sold total Agriculture land to another party. We are not known them because we are not interested to purchase a land. So rate mentioned in statement any Authorized Officer is totally wrong because they threatened me for raid will be took place at your place. And they took a signature on statement. Neither any incriminating document found nor any excess stock found from the premises. So they want forcefully took the disclosure against the unaccounted cash payment to both Agriculturist. It is totally wrong, I have appeared before the Hon'ble Commissioner of Income Tax - II, Rajkot and immediately filed a retraction letter and filed an Affidavit of Shri Yashwant D Pedhadia. The above information is true and correct as per my belief.*

*Palce: Rajkot*

*Date: 24-06-2014*

*Sign: \_\_\_\_\_*

*(Shri Dinesh N Pedhadia)*

9.8 As pointed out on behalf of the Revenue, the assessee has conveniently avoided the proceedings before the AO and refrained to produce the parties before AO whose affidavits were relied upon in the course of the appellate proceedings. This notwithstanding, the affidavit of the intending sellers and intending purchasers speaks in chorus that the agreement to sale was executed and signed by the intending sellers indeed and the value assigned for purchase was Rs.2.57Crores. The only reason cited for transaction not sailing through is financial crisis. Except for the bald averment, no demonstrable evidence has been placed on record to show how the financial capacity suddenly eroded after the negotiation and preparation of the agreement. From the sequence of events, it clearly transpires that the real worth of land as mentioned agreement to sale was squeezed to provide exit to the assessee. The circumstances seals the narrative against the assessee and assures that the assessee did give an amount of Rs.1,71,25,000/- towards part consideration as on-money for creating its interest in the property.

9.9 The CIT(A) in our view, has acted perfunctorily in acceding to the farfetched explanations and in placing blind reliance on self-serving and ineffacious affidavits of the parties who have neither attended before the AO nor offered themselves for cross examination. The CIT(A) has not made any enquiry himself nor is the enquiry by the AO is on record. The retraction by the Director of the company of his inculpatory statement given in survey towards the factum of on-money payment is clearly an afterthought and an act of despair. Nothing actually turns on this owing to cogent evidence on record. While it is true that a stringent rule of proof as to the existence of threat, duress or inducement need not always be applied and only some amount of corroboration is looked upon as evolved by a rule of prudence, we however find no justifiable reason to give primacy to a

bald and unjustifiable allegations of duress. The retraction of a statement can possibly be taken as successful on showing as to how the tell-tale evidences found in the premises of the assessee are insipid and have not been acted upon. The refuge of retraction thus fails in the instant case.

9.10 To delve further, we are unable to comprehend the observations of the CIT(A) that the AO has failed to bring out any material evidence towards actual payment of money to the intending sellers and received it back again when the transaction did not materialize. It is only elementary that the transaction of on-money in cash is between the two parties would be done secretly. Typically, flows of cash are unearthed by the chain of circumstances. There can possibly be no direct manner to gather the proof the cash transactions. The preponderance of probabilities thus leans against the assessee when the facts and circumstances are seen in natural perspective.

9.11 The manual receipt and the entries therein embodies objective details of receipts aggregating to Rs.171.25 Lakhs in various installments in conformity with the substantial agreement value as per Satakhat. The agreement to sale may not finally have been acted upon and sailed through but the tacit involvement of assessee as per the agreement to sale cannot be discarded. On the face of such striking chain of events, the contents of Satakhat stands corroborated and rendered unflinching. Thus, when the document i.e. Satakhat is read as a whole in the circumstances existing, we find that presumption of unaccounted transactions in the deal as recorded in the manual jottings is clearly discernable and has a sound basis. The retraction made by the Director subsequent to survey and affidavit placed before the CIT(A) is clearly opposed to what is obvious and thus ostensibly unreliable and devoid of any value. The

burden placed on assessee while making allegations of duress is not discharged at all. The retraction is thus liable to be rejected.

9.12 As observed earlier, the justification advanced on behalf of the assessee that the transaction at Rs.2.57Crores initially agreed was dropped due to financial crisis as shallow and judicially unpalatable. The intending sellers have signed the agreement to sale for which the advance received against the proposed agreement is also found part of the agreement to sale itself. Thus, it is difficult to accept an abstract plea that an agreement of such magnitude would be prepared and signed without due diligence on this basic point of availability of money. The explanation offered on behalf of the assessee is totally incomprehensible and disconcerting when surrounding circumstances existing in the case are tested on the touchstone of preponderance of probabilities. The corroboration of the agreement to sale with the handwritten receipt and the facts mentioned in the respective affidavits in material particulars are quite compelling. The substantive difference in the value assigned to the land in the final sale deed (with third party) and proposed sale deed (with the assessee) speaks volume about the existence of on-money transaction in the deal.

9.13 We are thus of the considered opinion that the burden of proving presence of undisclosed cash transaction stands discharged by the Revenue with sufficient reliability. On the other hand, the assessee has failed to discharge the onus placed upon it for non-existence of cash transactions unmasked in the light of tangible evidences found in a surprise survey action under s.133A of the Act. The agreement to sale and the receipts of cash payment was found from the possession of the assessee company and is entitled to great weight due to its substantial corroboration as noted in the preceding paras. We are of

the opinion that once it is concluded on facts that the contents of the document found are relevant and true which establishes the existence of unaccounted cash transactions, non-detection of physical cash *per se* would not be a handicap to invoke the provisions concerning assessment of unexplained and unaccounted assets and/or income.

9.14 We now turn to the another plea taken before us on behalf of assessee. The learned AR for the assessee in the course of hearing *inter alia* pointed out that the AO has invoked the provisions of Section 69A of the Act on the ground of said amount received back. It was contended as a corollary that the amount is thus deemed to be paid earlier and the refund thereof does not constitute income anyways. We find that the plea raised on behalf of the assessee is tenuous and technical in nature. When the factum of the existence of unaccounted cash transactions is galore, the assessment of such unexplained cash transactions cannot be brushed aside.

9.15 While concluding, we also notice that the assessee has relied upon the decisions of the Hon'ble Gujarat High Court in the case of CIT vs. Dhirajlal Durlabhbai Patel HUF Tax Appeal No. 579 of 2009 judgment dated 28.06.2010 and host of other decisions. A perusal of the decisions cited on behalf of the assessee, it is seen that all these decisions were rendered on their own facts and are clearly distinguishable. The Hon'ble High Court in the case before it *inter alia* noted that the agreement was recovered from the business premises of the 'third party' who were brokers in the land transaction and not from the assessee. In this context, the Hon'ble Gujarat High Court endorsed the factual findings of the Tribunal that agreement was never acted upon and was never signed by any party to the agreement. It was found that except for a totally unsigned agreement, there is no other corroborative evidence to establish the transaction. It is in these

facts, the Hon'ble Gujarat High Court answered the issue against the Revenue and in favour of the assessee. As noted earlier, speaking facts narrated in the agreement to sale coupled with handwritten jottings found at the time of survey and other circumstances leaves no room to disbelieve the existence of cash transactions. In our considered view, the assessee failed to rebut the contents of the handwritten jottings and Satakhat satisfactorily and thus, failed to discharge the onus which lay upon it to prove what is apparent as per the documents impounded is not real. The presumption available under s.292C available to the Revenue operates against the assessee. Therefore, we set aside and cancel the order of the CIT(A) and restore the addition made by the AO.

10. In the result, the appeal of the Revenue is allowed.

**This Order pronounced in Open Court on 04/10/2018**

Sd/-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER  
Ahmedabad: Dated 04/10/2018

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

True Copy

*S. K. SINHA*

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar  
ITAT, Rajkot