आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD
(through web-based video conferencing platform)

BEFORESHRI RAJPAL YADAV, VICE PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

Sr. No.	ITA.No. &Asstt.Years	Name of appellant	Name of Respondent
1.	299/Ahd/2019 Asstt.Year 2015-16	Shri Pravinchandra R. Patel, 52, Sarvodaya Society Nizapura, Vadodara. PAN ACPPP 2695 F	DCIT, Cent.Cir.2 Vadodara.
2.	392/Ahd/2019 Asstt.Year 2015-16	DCIT, Cent.Cir.2 Vadodara.	Shri Pravinchandra R. Patel, 52, Sarvodaya Society Nizapura, Vadodara. PAN ACPPP 2695 F
3.	ITSS(A)No.43/Ahd /2019 Asstt.Year 2014-15	Shri Pravinchandra R. Patel, 52, Sarvodaya Society Nizapura, Vadodara. PAN ACPPP 2695 F	DCIT, Cent.Cir.2
4-8.	ITSS(A)No.69, 71 to 74 /Ahd/2019 Asstt.Year 2009-10 and 2011-12 to 2014-15	DCIT, Cent.Cir.2	Shri Pravinchandra R. Patel, 52, Sarvodaya Society Nizapura, Vadodara. PAN ACPPP 2695 F
9.	IT(SS)A.No.68/Ahd/2019 Asstt.Year 2015-16	DCIT, Cent.Cir.2, Vadodara	Smt.Ansuyaben P. Patel 52, Sarvodaya Society Nizapura, Vadodara PAN : AKGPP 6931 R
10-12	179/Ahd/2019 Asstt.Year 2015-16 IT(SS)A.No.28& 32/Ahd/2019 Asstt.Year 2014-15& 2013-14	Smt.Ansuyaben P. Patel 52, Sarvodaya Society Nizapura, Vadodara PAN : AKGPP 6931 R	DCIT, Cent.Cir.2, Vadodara

13-14	IT(SS)A.No.31 & 27/Ahd/2019 Asstt.Year 2012-13 and 2013-14	Smt.Ansuyaben P. Patel 52, Sarvodaya Society Nizapura, Vadodara PAN : AKGPP 6931 R	DCIT, Cent.Cir.2, Vadodara
15-16.	ITSS(A)No.41 to 42/Ahd/2019 Asstt.Year 2012-13 and 2013-14	Shri Pravinchandra R. Patel, 52, Sarvodaya Society Nizapura, Vadodara. PAN ACPPP 2695 F	DCIT, Cent.Cir.2
17-19	ITA No.135, 136, and 137/Ahd/2019 Asst.Year 2012-13, 2013-14, 2014-15	Neotech Education Foundation 18, Saptgiri Complex Opp: Gateway hotel Akota, Vadodara PAN : AADCB 8141 P	DCIT, Cent.Cir.2 Vadodara.
20-21	ITA No.194 & 195/ Ahd/2019 Asst.Year 2014-15, 2015-16,	DCIT, Cent.Cir.2 Vadodara.	Neotech Education Foundation 18, Saptgiri Complex Opp: Gateway hotel Akota, Vadodara PAN : AADCB 8141 P

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/**(Respondent)

Assessee by :	Shri K.P. Singh, AR
Revenue by :	Shri R.R. Makwana, Sr.DR & Shri VinodTanwani, CIT-DR Shri VijaykumarJaiswal, CIT-DR

सुनवाई की तारीख/**Date of Hearing : 21/12/2021**
घोषणा की तारीख /**Date of Pronouncement: 13/01/2022**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER

These are three sets of appeals involving three different assessee viz. Shri Pravinchandra R. Patel, Smt.Ansuyaben P. Patel, and Neotech Educational Foundation. In all these cases, the assessee and the Revenue are in cross-appeals against respective orders of the ld.CIT(A), Vadodara passed for the assessment

years mentioned in the cause-title. Since issues in these appeals arose out of search carried out in the Sigma Group of cases and consequent searches at the residential premises of assessee-directors, are inter-connected, we have heard all these appeals together and proceed to dispose of them by way of this consolidated order.

2. First we take ITA No.135/Ahd/2019 in the case of Neotech Education Foundation for the Asstt.Years 2012-13. In this appeal, the assessee has raised the following grounds:

> *"1.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A), has erred in confirming the re-opening of the assessment u/s 147/148 of the Act and thereby not holding the order u/s 143(3) r.w.s. 147 of the Act as bad in law. (Para 35.2 on page 120 of the Ld. CIT(A)'s order).*
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> *2.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A) has erred in confirming the addition of Rs.1,98,00,000/- on substantive basis as unexplained investment u/s 69B of the Act and also erred in holding and directing the Id. AO that the said amount be taxed on protective basis the hands of Shri Pravinchandra Patel and also in the hands of all the directors of the appellant as their joint and several liabilities. (Para 36.4 on page 122/123/124 of the Ld. CIT(A)'s order).*
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> *3.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A) has erred in confirming the addition of Rs.37,12,000/- (actually 39,12,000 due to apparent mistake) as unexplained expenditure u/s 69C of the Act. (Para 37.4 on page 126 of the Ld. CIT(A)'s order).*
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> *4.0 Without prejudice to the specific grounds of appeal taken above and those taken in appeals for AY 2013-14 and AY 2014-15, on the facts and circumstances of the case and in law, the LdCIT(A) has erred in not allowing telescoping / offsetting of the alleged unexplained expenses / investment against the items treated as incomes as well as against disclosures made by the individuals in the Promoter Group. (Para 20.6 on page 103 of the Ld. CIT(A)'s order)."*

3. The first issue raised by the assessee is that learned CIT(A) erred in holding the reopening under section 147 of the Act as valid.

4. At the outset, the learned AR for the assessee at the time of hearing submitted that he has been instructed by the appellant not to press this ground of appeal. Hence, the ground of appeal raised by the assessee is dismissed being not pressed.

5. The 2nd issue raised by the assessee is that the learned CIT (A) erred in confirming the addition made by the AO for Rs.1.98 crores on account of unexplained investment made in the land.

6. At the outset we note that the issue on the hand is interconnected with issue raised by the assessee in ground 2 and 3 for A.Y. 2013-14 and issue raised by the Revenue in ground 1 for A.Y. 2014-15 and 2015-16. However, the appeal of the revenue for A.Y. 2015-16 has been dismissed being low tax effect. Therefore we proceed to decide to adjudicate the issue in the year under considerationjointly with the issue raised by the assessee in A.Y. 2013-14 and by the Revenue in in A.Y. 2014-15. The relevant ground of appeal of the assessee for the AY 2013-14 and Revenue for the A.Y. 2014-15 reads as under:

7. Assessee's grounds of appeal in ITA No. 136/AHD/2019 for the A.Y. 2013-14. The ground no.1 and 2 read as under:

> *"1.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A), has erred in confirming the re-opening of the assessment u/s 147/148 of the Act and thereby not holding the order u/s 143(3) r.w.s. 147 of the Act as bad in law. (Para 39.1 on Pg 127 referring to Para 35.2 on page 120 of the Ld. CIT(A)'s order).*
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> *2.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A) has erred in confirming the addition of Rs.1,00,00,000/- on substantive basis as unexplained investment u/s 69B of the Act and also erred in holding and directing the Id. AO that the said amount be taxed on protective basis the hands of Shri Pravinchandra Patel and also in the hands of all the directors of the appellant as their joint and several liabilities. (Para 39.2 and 39.3 on page 127/128 of the Ld. CIT(A)'s order)."*

8. Revenue's ground of appeal in ITA No. 194/AHD/2019 for A.Y. 2014-15

> **Ground No.1**
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> *"On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.1,35,00,OOQ/-on account of unexplained investment u/s 69B of the I. T. Act, when the seized document itself proves that the assessee had made investment of Rs.1,35,00,000/- (altogether Rs.5,68,00,000/- for different years) in the purchase of land for A.Y.2014-15."*

9. The facts in brief are that the assessee in the present case is an educational institution registered under section 25 of the companies Act 1956. The assessee company was incorporated as on 24th November 2011 with the object of imparting education. Subsequently the assessee, acquired 3 pieces of land vide registered sale deed dated 12th January 2012 for the construction of building for the purpose of the education. The educational activities of the assessee were commenced from the July 2013 corresponding to assessment year 2014-15.

10. There was a search and seizure operation under section 132 of the Act dated 13th November 2014 carried in case of the directors of the assessee company. Parallelly, there was survey operation under section 133A of the Act carried at the premises of the assessee.As result of survey, there was an email found from the computer of 1 of the director of the assessee company namely Shri Manish Shah which was written to another director namely Shri Praveen Patel. In the said email, there were among other documents, two-piece of papers bearing No. 157 and 158 of annexure A1 were found. These documents were containing the details of the payment made by the assessee for the purchase of lands. Page No. 157 was containing the details of the cash payment made by the assessee against the purchase of land which was duly signed by the recipient as well as the director of the company namely Shri Praveen Patel. The breakup of the cash payment stands as under:

1.	November/December 2011	Rs. 1,98,00,000/-
2.	November/December 2012	Rs. 1,00,00,000/-
3.	November/December 2013	Rs. 1,35,00,000/-
4.	November/December 2014	Rs. 1,35,00,000/-
5.	November/December 2015	Rs. 50,00,000/-

11. From the above details it was revealed that the cash payment was made by the assessee before and after the registration of the land i.e. 12th January 2012. Likewise, the scheduled for the cash payment was also falling prior to the date of survey as well as subsequent date of survey i.e. 13th November 2014. In other words prior to the date of survey, the cash payment of Rs. 1.98, 1 and 1.35 crores was appearing in the payment schedule. Likewise, the page No. 158 was containing the details of the cheque payment made by the assessee against the purchase of land which was duly signed by the recipient as well as the director of the company namely Shri Praveen Patel. The breakup of the cheque payment stands as under:

205	*50 + 40*	*40*	*40*	*35*
	12/1/12 15/5/12	*18/7/13*	*18/7/14*	*18/7/15*
106	*22 + 21*	*21*	*21*	*21*
	12/1/12 15/5/12	*15/7/13*	*18/7/14*	*18/7/15*

120	*24 + 24*	*24*	*24*	*24*	
	12/1/12 18/5/12	*15/7/13*	*18/7/14*	*18/7/15*	
51	*11 + 12*	*10*	*11*	*7*	*(document pending)*

12. From the above details it was revealed that the cheque payment was made by the assessee at the time registration of the land property i.e. 12-1-2012 and after the registration of the land. Likewise, the scheduled for the cheque payment was also falling prior to the date of survey as well as subsequent to the date of survey. In other words prior to the date of survey, the cheque payment of Rs. 3.51 crores was appearing in the payment schedule. All the details of cheque payment were matching with the registered documents, books of accounts and bank statement.

13. However, the AO during the assessment proceedings found that the cash payment made by the assessee were not recorded in the books of accounts. As per the AO, all the cheque payments were matching. Therefore, the AO was of the view that the cash payment recorded on the seized documents bearing page No. 157was also genuine and represents the payment made by the assessee against the purchase of land which was not recorded in the books of accounts. Consequently, the AO was of the opinion that the cash payment represents the unaccounted investment of the assessee under section 69B of the Act. Accordingly, the AO issued a show cause notice to the assessee for affording the opportunity of being heard to the assessee for its explanation.

14. The assessee in response to such show cause notice contended that its commercial activity started from July 2013. Therefore question of any source of income during the period of incorporation and commencement of activity does not arise. Further the impugned loose paper does not contain name of the assessee or any information about land being purchased. Hence, there cannot be any conclusion that the amount was paid by the assesse. Furthermore the directors disclosed the income of Rs. 3.21 crore owned to have made cash payment against the purchase of land to the tune of Rs.2.98 crores being Rs. 1.98 crores in Nov/Dec 2011 and Rs. 1 crores in Nov/Dec 2012 only against which the signature of the directors as well as

the recipient were appearing till the date of survey and same were also crossed. With respect to the balance of amount, there was no payment in cash was made which is evident from the fact that there was no signature either of the director or of the recipient and same is also not crossed in the seized document. Moreover, the payment of Rs.2.98 crores has already been disclosed by the directors in their individual capacity. Accordingly, the assessee contended that there cannot be any further addition to the total income on account of such cash payment as alleged by the AO. However, the AO was disagreed with the contention of the assessee on the reasoning that the payments made through the banking channel were matching with the records of the assessee. Therefore, he was of the view that the cash payment appearing in the year under consideration represents the unaccounted investment of the assessee. Merely, there was no signature against the other cash payment except the cash payment of Rs.2.98 crores, cannot be a ground to reach to the conclusion that there was no cash payment made by the assessee. Moreover, it is a prevalent practice with respect to the cash transactions to keep the records of such transaction without the signatures and in short form until and unless the transactions are settled. Once, the cash transactions are settled, these records are scrapped. The contention of the assessee that business activity was not started hence there was not any source of income is not accepted for the reason that land was purchased by the assessee and the incriminating document related to the purchase of land which also signed by the director and vendor. The on-money payment is be to be added in hand of assessee because the amount paid for the land belong to the assessee. Thus the AO treated the amount of cash payment of Rs. 5.68 crores paid in Nov/Dec 2011 to Nov/Dec 2014 as unexplained investment of the assessee under section 69B of the Act which was added to the total income in different assessment years as detailed below:

"A.Y.2012-13	*Rs.1,98,00,000/-*
A.Y.2013-14	*Rs,.1,00,00,000/-*
A.Y.2014-15	*Rs.1,35,00,000/-*
A.Y.2015-16	*Rs.1,35,00,000/-*
Total	*Rs.5,68,00,000/-*"

15. Aggrieved assessee preferred an appeal to the learned CIT (A).

16. The assessee before the learned CIT (A) reiterated the submissions as made before the AO during the assessment proceedings. The assessee further contended that it is activities were commenced with effect from July 2013. Therefore, there cannot be any question of having any unaccounted income in its hands which could have deployed in the impugned land. Whatever amount of cash payment made was from the accounts of the directors which was duly disclosed by them in their personal capacity. As such, an amount of Rs.2.98 crores was paid in cash by the directors which was duly admitted by them. Beyond this, there was no cash payment made to the vendors of the land. Moreover, the payment in cash made by the directors was crossed and signed as evident from the seized documents. In other words, there was no cross on the cash payment except for the payment of ₹ 2.98 crores which was duly disclosed by the directors in their individual hands. Thus the cash entries which were not crossed and signed evidence that no payment in cash against such entries was made. It was also submitted that there is neither the name of the assessee nor the details of the impugned land is appearing on page 157 of the seized documents. Thus, there cannot be established any link of the cash entries appearing therein that these entries belong to the assessee or related with the land purchased by the assessee. The AO has not made any cross verification from the seller of the lands to find out the fact whether there was any element of cash in the transaction of the purchase of the impugned land.

17. The provisions of section 132 (4A) of the Act does not deal with the presumption of income rather it provides the presumption with respect to the ownership of the assets found during the search. Further it provides the presumption about the contents of the books of accounts and documents, signature, handwriting and execution of the documents. The necessities for the presumption of income are contained under the provisions of section 68 to 69D of the Act. Thus the presumption provided under section 132 (4A) of the Act does not affix any liability on the assessee with respect to the income. In other words, the provisions of section 132 (4A) of the Act cannot be used to hold any item as income in terms of the

provisions of section 68 to 69D of the Act. As such, it is the onus of the revenue to bring out the necessary evidence to hold that the assessee has made investments in the impugned land which is unexplained under the provisions of section 69B of the Act. Likewise, the contents of the email having attachments of page 157 and 158 were found from the personal laptop of the director who has also admitted to disclose a sum of Rs.2.98 crores along with other directors on account of cash income. Thus, under the provisions of section 132 (4A) of the Act it is presumed that these seized documents belong to the director and therefore the same can be explained by the director and not by the assessee company. Furthermore, the presumption under section 132 (4A) of the Act is of rebuttable presumption and therefore it cannot partake the character of conclusive evidence. The assessee also contended that the seized document is not conclusive evidence that there was the cash payment made against the purchase of land until and unless the corroborative evidences are brought on record about such cash payment. Furthermore, the details of cheque and cash payment are recorded on different page number which cannot be interlinked with each other to draw an inference that cash payment were actually made outside the books of accounts as the cheque payments were duly recorded in the books of accounts. It was also submitted that the assessee initially was willing to buy four pieces of law bearing numbers to 39, 244/1, 245/A and 245/B from the vendor who is based in Australia. For this purpose, and advertisement was also published in the newspaper namely DivyaBhaskar to invite the objections from the parties having any interest either directly or indirectly in such plots. But the later on the assessee purchased only 3 pieces of plots only leaving the plot bearing No. 245/B. Thus it was very much probable that the cash transaction over and above of Rs.2.98 crores was recorded in relation to such plot which was not purchased by the assessee. This fact can also be established from another seized document bearing No. 33 containing the details of the cash transactions wherein the payment to the vendor in cash was shown for an amount of Rs.2.98 crores only. Thus the cash entries of Rs.2.98 crores as appearing on page 157 of the seized document is also corroborated with the document seized bearing No. 33. However other entry on the page 157 not corroborated from any other material seized or brought on by the AO.

The above submissions of the assessee were filed on different dates and the remand report was also called by the learned CIT (A) on different dates from the AO.

18. However, the sum and the substance of the remand report furnished by the AO on different dates is summarized as under:

i. The AO in his remand report submitted that the email dated 22nd July 2014 containing the seized documents was impounded from the director, namely Shri Manish Shah of the assessee company. The director is not a different person to the assessee company. Therefore there is a presumption under section 132(4A) of the Act that the documents belong to the assessee and its contents are true.

ii. The directors of the assessee company have admitted in the course of search to have purchased the land for the construction of the campus which is also evident from the seized document bearing page No. 158. The land was purchased from Shri Shashikant Patel. The signature of Shashikant Patel was very much appearing on the seized document bearing page No. 158. Similarly the seized document bearing page No. 157 of annexure A1 was containing the schedule for the cash payment which was also signed by Shri Shashikant Patel, the vendor of the land and the director of the assessee company Shri Praveen Patel. Thus, the documents seized in the course of survey belongs to the company and not with the directors in his individual capacity.

iii. The contention of the assessee that the cash entries appearing on page 157 of annexure A1 may relate to the land the bearing No. 245/B which was not materialized, is afterthought and misleading. The contents of the seized documents on page 158 with respect to the payment schedule is similar with the contents of on page 157 of annexure A1. Thus, it cannot be said that the cash entries relates to the plot bearing No. 245/B which was not materialized. Further the directors of the assessee have admitted to have made the payment of ₹ 2.98 crores as shown on page 157 of the seized documents for the purchase of plots and thus it is transpired that

all the remaining entries of cash payment relate to the same plot of land which were purchased by the assessee.

19. The learned CIT (A) after considering the submission confirmed the addition for the AYs 2012-13 and 2013-14. But the ld. CIT-A deleted the addition made by the AO for the AYs 2014-15 and 2015-16. The relevant finding of the ld. CIT-A is summarized as under:

20. The loose paper bearing page No. 157 and 158 of annexure A-1 is a valid piece of evidence as it contains the detail of payment in cash in relation to land purchased by the assessee which has been signed by director of the assessee company as well as the vendor. Further, the papers were found from the computer of the director, Shri Manish Shah which was installed at the premises of assessee. Therefore, the presumption is that the document belongs to assessee which a valid piece of evidence. Likewise, it was not denied in the statement of Shri Manish Shah recorded under section 132(4) of the Act that the impugned document does not belong to the assessee and cash was not paid in relation to the purchase of land by the assessee.

21. First, two payment of Rs. 1.98 crore and 1 crore is duly signed and crossed and also admitted to have been paid over and above documented price. Similarly, the contention of the assessee that cash of Rs. 2.98 crores was paid out of undisclosed income of the directorsof Rs. 3.21 crores is not accepted for the reason that there was no evidence that the disclosure was made against unaccounted investment. The return was filed by the directors and their relatives under section 139(4) disclosing brokerage income and not against the disclosure of unaccounted/ additional income. The ld. CIT-A further found that such cash payment is also corroborating from another seized documents bearing page 33 of A-3. Accordingly, the ld. CIT-A confirmed the addition of Rs. 1.98 crores and 1 crores for A.Y. 2012-13 and 2013-14. The learned CIT(A) also added the same amount in the hands of Director Shri Parvinchandra Patel on protective basis and also same addition was made on protective basis in the hands of all the director jointly. However, the

addition of Rs. 1.35 crores each in A.Y. 2014-15 and 15-16 was deleted by the ld. CIT (A)on the reasoning that these payments were not crossed or singed by either by the director or by the vender. There is also no corroborating material found as like first two payment of Rs. 1.98 and 1 crore respectively. Therefore, the learned CIT (A) deleted the same. Being aggrieved by the order of the learned CIT (A), both the assessee and Revenue are in appeal before us.

22. The learned ARbefore us filed a paper book running from pages 1 to 80 and reiterated the contentions made before the Authorities below.

23. The learned DR before us vehemently supported the stand of the authorities below by reiterating the findings contained in the respective orders which we have already adverted to in the preceding paragraph. Therefore we are not repeating the same for the sake of brevity.

24. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the AO found that the assessee has made cash payment against the purchase of land amounting to ₹ 5.68 crores in different assessment years. The view of the AO was based on the seized document found during the survey proceedings. Thus, the addition was made by the AO in different assessment years as discussed above. On appeal, the learned CIT (A) was pleased to confirm the addition of Rs. 1.98 crores and 1 crores for the AYs 2012-13 and 2013-14 and deleted the addition made by the AO for the AYs 2014-15 and 2015-16 for Rs. 1.35 crores for both the AYs on the reasoning as discussed in the preceding paragraph.

25. Now, first we take up the issue of the investment made by the assessee in the purchase of land as discussed above for the assessment year 2012-13 and 2013-14 for the amount of Rs.1.98 crores and 1 crores respectively. From the preceding discussion, there remains no issue to the fact that there was cash payment made by the assessee for the purchase of impugned land amounting to Rs.1.98 crores and 1 crores. The assessee qua to such cash payment contended that the commercial activities were commenced in the month of July 2013 and therefore there is no

possibility for the company to have any unaccounted income. Whatever investments/payments were made in cash, was representing the unaccounted income of the directors.Therefore, the directors in their individual returns have offered the income for Rs.3.21 crores in different assessment years. The breakup of the disclosures made by the assessee stand as under:

Name of the assessee	*Amount of disclosure (Rs.)*
Shri Pravinchandra R Patel	*49,00,000*
Smt. Ansuyaben P Patel	*10,00,000*
Shri Preet P Patel	*1,92,41,600*
Shri Manish B Patel	*70,00,000*
Total /s	*3,21,41,600*

16.7 For the break-up of the claimed disclosure assessment year wise is as under:

Name of assessee	*AY 2013-14*	*AY 2014-15*	*AY 2015-16*	*Total*
Shri Pravinchandra R. Patel	*-*	*3,000,000*	*1,900,000*	*4,900,000*
Smt.Anauyaben P. Patel	*-*	*1,000,000*	*-*	*1,000,000*
Shri Manish B Shah	*-*	*-*	*-*	*7,000,000*
Shri Dipali M Shah	*-*	*-*	*-*	*-*
Shri Preet P Patel	*4,400,000*	*5,841,600*	*9,000,000*	*9,241,600*
Total /s (Rs.)	*4,400,000*	*9,841,600*	*10,900,000*	*32,141,600*

26. We also find that during the survey at the premises of assessee, another paper bearing page number 35 of annexure A-3 was found where it was noted that till 28th February 2014 the assessee has received fund amounting to Rs.3,97,37,485/- in cash from director namely Shri Pravinchandra Patel. Such cash was treated as unexplained investment in the hand of Shri Pravinchnadra Patel. Thus, from this it can be transpired that the cash was received by the assessee from director which would have been utilized for the payment of Rs. 2.98 crores against purchase of land. This presumption also gets strength from the fact that assessee was not having any source of income until July 2013. Further the assessee time and again contended that the cash was paid out of cash received from the directors and directors have offered the cash income in their individual returns. Therefore

considering the fact in totality we are of the view that amount of Rs. 1.98 crore and 1 crore paid in the A.Y. 2012-13 and 2013-14 are made out of the cash received from directors. Hence the source of investment in the hand of the assesse to the tune of Rs. 2.98 crore gets explained and no addition can be made in hand of the assessee as it is not the income of the assesse. If at all any addition of cash income is required to be made, that can be made in the individual capacity of the director. Indeed the addition of cash investment for Rs 3,97,37,485/- has been made in hand of Shri Pravinchandra Patel and therefore, no addition in the present case is warranted. Thus the ground of appeal of the assessee for A.Y. 2012-13 and 2013-14 allowed.

27. Now we proceed to adjudicate the issue of addition of Rs. 1.35 crores made in AY 2014-15 which was delete by the learned CIT(A). On perusal of the seized document, we note that there was no signature either of the party was appearing against such amount like the first two payment made to the vendor. Accordingly, we are of the view that there was no such payment made by the assessee as alleged by the AO. The learned CIT-A has given detailed finding based on reasons and deleted the addition made by the AO. It is also important to note that there was also not any other piece of document found during the search and survey proceedings at the premise of the directors and the assessee suggesting that the payment of ▪ 1.35 crore was made by the assessee to the vendor. In view of the above, we do not find any infirmity in the order of the learned CIT-A. Hence, the ground of appeal of the revenue is dismissed.

28. In view of the above assessee ground of appeal for A.Ys. 2012-13 and 2013-14 is allowed whereas Revenue ground of appeal for A.Y. 2014-15 is dismissed.

29. Next issue raised by the assessee in ground no. 3 and 4 is that the learned CIT(A) erred in confirming the addition of Rs. 39,12,000/- being unexplained expenses on basis of seized paper bearing page 33 of annexure A-3.

30. At the outset we note that the issue on the hand is interconnected with issue raised by the assessee in ground 1 to 5 of its appeal for the A.Y. 2014-15. Therefore

we proceed to adjudicate the issue in the year under consideration jointly with the issue raised by the assessee in A.Y. 2014-15. The relevant ground of appeal of the assessee for the A.Y. 2014-15 reads as under:

> *"1.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A) has erred in confirming the addition of Rs.59,45,153/-as unexplained expenditure u/s 69C of the Act. (Para 21.4 on page 105 of the Ld. CIT(A)'s order).*
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> *2.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A) has erred in confirming the addition of Rs.50,14,8000- as unaccounted cash receipts (Para 22.1 on page 106 of the Ld. CIT(A)'s order).*
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> *3.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A) has erred in confirming the addition of Rs. 16,83,500/- as share application money received but not accounted in books. (Para 23.5 on page 109 of the Ld. CIT(A)'s order).*
>
> *4.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A) has erred in confirming the addition of Rs.53,06,500/- as unexplained receipts and unaccounted expenses. (Para 24.2 on page 110 of the Ld. CIT(A)'s order).*
>
> *5.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A) has erred in confirming the addition of Rs. 2,05,11,300/- as undisclosed and unexplained income. (Para 25.6 on page 113 of the Ld. CIT(A)'s order).*

31. There was found a piece of paper bearing page no. 33 of annexure A-3 from the premises of the cabin of the Director namely Shri Manish B Shah. This paper was containing various types of recording in six different compartment. Out of them some were recorded in the books of account and some were not recorded in the books of accounts of the assessee which were treated by the AO detailed as under:

C. No	**Heading**	**Total amount (Rs.)**	**Addition (Rs.)**	**Treated as**
1	Never show in books of account	3,81,12,000	83,12,000	unaccounted expenses
2	Account not closed till date	93,52,385	59,45,153/-	unaccounted expenses
3	As per new Diary	50,14,800	50,14,800	unaccounted receipt
4	(Blank)	3,41,32,693	98,80,193	unaccounted receipt
5	Amount paid by GVG	NA	2,85,22,600	unexplained loan and interest
6	(Blank)	53,06,500	53,06,500	unaccounted expenses

The AO purposed to make addition of above amount recorded on page 33 of Annexure A-3 in two different Assessment Year. i.e. A.Y. 2012-13 for compartment number 1 and remaining in A.Y. 2014-15.

32. The assessee in response to such notice submitted that it came into existence dated 24th of November 2011 whereas the land was acquired dated 12th January 2012 for the construction of its campus for providing education. Likewise its activities i.e. providing education were commenced from July 2013. Thus, it becomes evident that it did not had any source of income till financial year 2013-14 i.e. A.Y. 2014-15 which could have been utilized for incurring the impugned expenses. Accordingly, in the absence of any source of money in the hands of the assessee, it was not possible for it to incur any expense in cash and that too without recording the same in the books of accounts. The seized document bearing page number 33 of Annexure A-3 is a dumb document which not containing its name (assessee) neither signed by any authorized person nor dated. Therefore, the same is not reliable document as there was not any corroborative material found during search and survey proceeding with respect to impugned page no-33.It was purposed to treat compartment No. 1 ,2 and 6 as expenses and compartment number 3, 4 and 5 as receipt whereas no such specification is written on impugned paper. Further, it was purposed to consider compartment number 1 in A.Y. 2012-13 and remaining in A.Y. 2014-15. Thus, the purposed addition in 2 different assessment year on account of different footing is purely based on surmise and conjecture.

33. Furthermore, if at all the impugned expenses have been incurred in connection with the levelling of the land and construction of campus owned by the assessee, these expenses must have been incurred by the directors as there was no source of income in the hands of the assessee till July 2013 which was also admitted by them in their individual capacity.

34. There was no corroborative evidences/materials brought on record by the AO suggesting that the impugned expenses were incurred or cash was received. As such, there cannot be any addition merely based on a piece of paper found during the survey until and unless some corroborative evidence are brought on record. May be this paper was maintained for budgeting purposes. Therefore whatever the transaction actually took place were accounted in the books and remaining transactions which did not take place were not accounted.

34.1 However the AO rejected the submission of the assessee by observing as under:

34.1.1 1st compartment, there were appearing certain transactions of cash payment including the cash payment of Rs. 2.98 crores towards the purchase of land which has already been accepted by the assessee that such amount represents the payment to the vendor of the land and treated separately.

34.1.2 Besides the above, there were certain entries of cash payment aggregating to Rs.83,12,000/- which were not recorded in the books of accounts. Mostly, such payment was representing the expenses in connection with the development of the land which was purchased by the assessee vide agreement dated 12th January 2012. The assessee in connection with the purchase of the land has made cash payment of Rs.2.98 crores which was admitted by the directors. Therefore, the contention of the assessee that it had no source of income in the year under consideration cannot be given any cognizance.

34.1.3 The expenses recorded in the 1st compartment of seized document were in the nature of preliminary land development which was possible to incur only after the acquisition of the land which was acquired on 12th January 2012. Therefore, the contention of the assessee that there was no evidence indicating that the impugned expenses were incurred in the A.Y. 2012-13 is not tenable. It is for the reason that these land levelling expenses were possibly be incurred right after the acquisition of the land. Thus, the expenses were incurred in the A.Y. 2012-13. Furthermore, the assessee has not brought anything on record suggesting that these expenses were incurred in any other financial year.

34.1.4 The assessee, being an artificial juridical person, its activities have to be governed/controlled by the individuals who are the directors of the company. Since, the land was purchased and developed by the assessee, therefore amount of cash payment without recording in the books of accounts cannot be treated as income in the hands of the directors. Accordingly, the cash expenses are treated as unexplained expenditure under the provisions of section 69C of the Act.

2nd Compartment

34.1.5 This compartment was shown under the heading "accounts not closed till date". There were appearing names of various parties beginning from serial Nos. 24 to 46 and the serial number 47 was for the salary before 3rd August 2012 and up to 30th June 2013. Against each serial number, the name of the party and corresponding amount was appearing. The name of the parties appearing in the seized document were compared with the books of accounts of the assessee. On such comparison, many names and the amount appearing on the seized document were matching with the books of accounts maintained by the assessee recorded as sundry creditor except certain names and the amounts aggregating to Rs. 59,45,153/-. Thus the remaining entry in this compartment number were not accounted in books which were payable to sundry creditor against expenses incurred. Furthermore, the assessee has not filed supporting evidences. Thus the AO treated the amount of Rs. 59,45,153/- as unexplained expenditure under section 69C of the Act and added the same to the total income of the assessee.

3rd Compartment

34.1.5 This compartment was shown under the heading "AS PER NEW DIARY". There were certain entries showing the different amount against different page Nos. of the alleged diary which were treated as unaccounted receipt of the assessee. Accordingly the same i.e. Rs. 50,14,800/- was added to the total income of the assessee in absence of necessary submission and explanation.

4th Compartment

34.1.6 There were certain entries against the serial numbers 49 to 52 of seized document bearing page No. 33 of annexure A3. Under this compartment, certain amount was recorded against different nomenclatural such as petty cash, share capital /application, unsecured loan in the name of the directors aggregating to ₹ 3,41,32,693/- only. On verification it was found that certain entries such as Rs. 1,79,51,000/- as share capital of Pravinbhai, Rs. 7,95,000 as share capital of

Ansuyaben, Rs. 4 Lacs as unsecure Pravinbhai were recorded in the books of accounts maintained by the assessee. However the remaining entries aggregating to Rs. 1,49,86,693/-, were not matching with the records maintained by the assessee. Therefore the AO treated the same as unaccounted receipt of the assessee. Out of such unaccounted receipt, an amount of ₹ 53,06,500/- written at S. No. 51 paid by Preet via MQ was separately treated along with the 6 compartment. Thus, the balance amount of Rs. 96,80,193/- was treated as unaccounted receipt in the absence of necessary explanation by the assessee and added to the total income of the assessee.

5th Compartment

34.1.7 This compartment was shown below the serial numbers 49 to 52 of seized document bearing page No. 33 of annexure A3. Under this compartment, there were entries of loan received from GhanshayamVGandhi and repayment of the same along with the interest by the directors/from the receipt of management quota. These entries, were not recorded in the books of accounts of the assessee. Therefore the same treated as unexplained cash credit of Rs. 2,85,22,606/- and added to the total income of the assessee.

6th Compartment

34.1.8 In the 6th compartment it is found that the assessee has incurred various expenses in cash out of the fee received by it under management quota as recorded in 4th compartment at serial No. 51. The amount of expenses of ₹ 53,06,500/- was exactly matching with the management quota as recorded in 4th compartment actual No. 51. The impugned expenses were not recorded in the books of accounts. Accordingly the same was treated as unexplained expenditure under section 69C of the Act and added to the total income of the assessee.

35. In view of the above, the AO has made the addition based on seized paper bearing page No. 33 of Annexure A3 in assessment years 2012-13 for the amount

recorded in compartment 1 of Rs. 83,12,000/- and remaining in A.Y. 2014-15 as discussed above.

36. Aggrieved assessee preferred an appeal to the learned CIT (A).

37. The assessee before the learned CIT(A) has made various submissions with respect to different kinds of additions which have been compartmentalized in the manner as discussed above. However, the assessee has also made general submissions which were applicable to all the additions made by the AO. These general submissions stand as under:

i. The assessee is a private limited company and registered under section 25 under the companies Act 1956 as not for profit organization. Whatever transactions carried out by it for the payment and receipt were duly recorded in the books of accounts which were audited by the qualified chartered accountant. None of the transactions has been carried out by the assessee in cash and that too without recording in the books of accounts.

ii. The seized document bearing No. 33 was found from the possession of Shri Manish B Shah. The purpose of preparing such document was only known to him i.e. Shri Manish be Shah. It is very much possible that Shri Manish B Shah might have prepared such document for budgetary purposes. As such, Shri Manish B Shah can only explain the purpose for which such transactions were recorded in the seized documents. Since the document was found from the possession of Shri Manish B Shah, then the presumption provided under section 132(4A) of the Act postulates that such document belongs to Shri Manish B Shah. Accordingly, no inference can be drawn against the assessee based on such document. If any addition is required to be made based on such document, the same can be made in the hands of Shri Manish B Shah. The assessee also contended that based on the impugned seized document, an addition of ▪ 72 Lacs and 7.9 Lacs has already been made in the hands of Manish B Shah for

the assessment year 2014-15 in the assessment framed under section 153A of the Act.

iii. There was no name of the assessee appearing on such seized document. Likewise, there were various figures recorded therein which the AO has treated some as receipt of the assessee and some as payment without any proper justification. For example, there was mention a head as "new diary" where certain amounts were recorded against the page number but the AO treated such amount as unaccounted receipt of the assessee though nothing was recorded under such head suggesting that it represents the unaccounted receipt. Furthermore, there was no date appearing on such seized document and therefore it was not possible to ascertain the year to which these transactions were pertaining to. But, the AO has made the additions in different assessment years i.e. A.Y. 2012-13 and 2014-15 without any justification. Thus the action of the AO for making the addition based on the seized document bearing No. 33 of annexure A-3 is based on the surmise and conjecture without having any corroborative materials.

iv. In the absence of any specific date recorded in the seized document, it is difficult to connect the entries shown therein to a particular financial year whereas the provisions of section 69C refers to any financial year in which the assessee has incurred the expenditure but failed to explain the source of the expenditure. As such in the given facts and circumstances it is not possible to connect the entries recorded in the seized documents to a particular financial year. Thus, in such facts and circumstances, the provisions of section 69C of the Act cannot be invoked.

v. The presumption provided under section 132(4A) of the Act refers to the books of accounts inter-alia, found during the course of search that these belongs to the assessee and the contents of such books of accounts are true. It does not deal with respect to the loose paper found during the course of search. Accordingly, there cannot be any inference against the assessee based on such loose paper.

38. The assessee without prejudice to the above, also made compartment wise submissions as discussed above which are elaborated as under:

I. Compartment No. 1, unexplained expenditure of ₹ 83.12 Lacs in the assessment year 2012-13.

There were certain entries of expenditure in cash appearing at serial No. 2, 22 and 23 representing the amount of ₹ 15 Lacs, 17.50 Lacs and 11.50 Lacs which were duly recorded in the books of accounts. Therefore, no addition is warranted.

II. Compartment No. 2, unexplained expenditure of ₹ 59,45,153in the assessment year 2014-15.

The cash entries reflected in such compartment which were not recorded in the regular books of accounts, does not suggest that these entries reflect the unexplained expenditure from the unrecorded source.

III. Compartment No. 3, unaccounted receipts of ₹ 50,14,800 in the assessment year 2014-15.

Under this compartment, the addition was made for the cash entries shown under the head "new diary" which contains different page numbers against the amounts. None of the amount is ascertainable whether it represents the receipt or the expenditures. Furthermore, there is not appearing any date therein. Therefore, no addition is warranted with respect to such entries found in the seized document.

IV. Compartment No. 4, unaccounted share application and cash receipt from the directors for ₹ 96,80,193in the assessment year 2014-15.

The assessee with respect to the addition of ₹ 1,58,300.00 and 4 Lacs submitted that addition has already been made in the hands of the director namely Shri Praveen R. Patel and therefore no further addition can be made in the hands of the assessee. Likewise, there was increased in the share capital of Rs. 66,86,500/- in the financial year ending as on 31 March 2014. Therefore, to this extent, no addition is warranted.

V. Compartment No. 5, unaccounted receipts and unexplained expenditure from management quota of Rs. 53,06,500 in the assessment year 2014-15.

The assessee submitted that a sum of Rs.7.9 Lacs out of the above addition of Rs.53,06,500/- has already been made in the hands of Shri Manish B Shah in the assessment year 2014-15. Therefore no such addition can be made in the hands of the assessee. The assessee repeated the contention made by it in the general arguments which have been elaborated in the preceding paragraph.

VI. Compartment No. 6, addition for the loan received from and its repayment to Shri Ghanshyam V. Ghandi for Rs. 2,85,22,600/- in the assessment year 2014-15.

There were appearing certain entries of the loan taken and repaid along with the interest to Shri GVG on the seized document bearing No. 33. However, the AO has selected view of the entries after ignoring certain other entries and reached to an amount of Rs.2.85 crores without any cogent reasons. However, the assessee worked out the breakup of Rs. 2.85 crores as detailed under:

Alleged amount taken in cash from GVG but considered as income	*Rs.1,89,00,000*
Total of interest considered aspaid in cash, the sources of which being unexplained	*Rs.16,11,300*
Alleged repayment done by Manishbhai	*Rs.68,00,000*
Alleged paid by Hemant	*Rs.5,22,300/-*
Alleged paid by Preet	*Rs.6,89,000*
Total	*Rs.2,85,22,600*

39. The assessee with respect to the amount of interest of Rs. 16,11,300/- submitted that it has been shown as interest to be paid to Shri GVG. Thus it is implied that no interest payment has been done by the assessee. The assessee, further contended that the amount of interest of Rs. 5,22,300/- and 6,89,000/- has been added two times which is against the provisions of law. The assessee with respect to the cash entry of Rs.68 Lacs submitted that the same has already been added to the total income of Shri Manish B. Shah in the assessment year 2014-15.

40. The assessee without prejudice to the above further contended that the actual amount of loan from Shri GVG stands at ₹ 10 Lacs which was duly recorded in the books of accounts and same was squared up in the year under consideration. Thus, it was contended by the assessee that there cannot be any addition to the total income of the assessee.

41. Without prejudice to the above i.e. general and compartment wise contention, the assessee submitted that seized document contain various noting which has been described as unaccounted expenses and unaccounted receipt by the AO. Therefore expenses and income cannot be added to income of the assessee separately. As such only profit element as per telescoping should be taxed. The assesse accordingly submitted the working of the telescoping and prayed only an amount of Rs. 8,40,140/- can be added as per sheet bearing page no. 33 of A-3.

41.1 The ld. CIT-A after considering the submission of the assessee rejected the alternate plea for telescoping without assigning specific reason and adjudicate the compartment wise addition individually which are summarized in following paragraph.

42. The learned CIT(A) with respect to the addition made by the AO under the 1st compartment found that the assessee has incurred an expense of Rs.15 Lacs which represents the deposit made with AICTE for diploma courses dated 3 June 2014 which was duly recorded in the books of accounts. Likewise, the learned CIT(A) found that the assessee has taken loans of Rs.17.5 Lacs and 11.5 Lacs from Shri Ghanshyam Patel/ Shri Jivabhai Patel collectively and Shri Hemant Patel which were recorded in the books of accounts. Thus the learned CIT(A) deleted the addition of Rs.45 lacs (amount should be Rs. 44 Lacs but inadvertently mentioned Rs. 45 lacs inCIT-A order) in aggregate and confirmed the balance amount of Rs.37.12 Lacs (right amount is of Rs. 39.12).

43. With respect to the addition made by the AO under the 2nd compartment 'ACCOUNTS NOT CLOSED TILL DATE, the learned CIT(A) found that there is a

presumption under section 292C of the Act in favour of the revenue which is a rebuttable presumption. But the assessee has not brought anything on record suggesting that the amount shown as payable does not correspond to the expenses incurred by it. Thus, the learned CIT(A) confirmed the addition made by the AO for Rs. 59,45,153/-. Likewise, the learned CIT(A) also found that the assessee has not brought anything on record suggesting that the impugned addition have been made in the hands of Shri Manish Shah. Furthermore, part of the entries reflected under this compartment were matching the books of accounts of the assessee which evidences that the seized document is not a dumb document. Thus, the learned CIT(A) confirmed the addition made by the AO for Rs. 59,45,153/-.

44. With respect to the addition made by the AO under the 3rd compartment ' 48 AS PER NEW DIARY', the learned CIT(A) found that the assessee has not explained the entries reflected therein. Accordingly the learned CIT(A) confirmed the addition of Rs.50,14,800/- as the assessee failed to discharge its onus under the provisions of section 292C of the Act.

45. With respect to the addition made by the AO under the 4th compartment for Rs.96,80,193/-, the learned CIT(A) found that these additions were made on the entries recorded in seized paper:

- Petty cash Shaileshbhai by PRP Rs. 1,58,300/-
- Petty cash Shaileshbhai by Preet Rs. 7,51,893/-
- Share application Rs. 4,00,000/-
- Share issued to Preet Patel Rs. 83,70,000/-

46. The learned CIT(A) found that the amount of petty cash for Rs. 1,58,300 and share application of Rs. 4 Lacs has been added in hand of Shri Parvin R Patel. Hence no further addition is required. The Assessee claimed that the amount of petty cash of Rs. 7,51,893/- also owned by Shri Pravin R Patel. Hence,the same should be deleted subject to verification. With regard to the amount of Rs. 83.70 Lacs being shares issued to Shri Preet Patel, the learned CIT(A) found that during the year new shares for Rs. 66,86,500 were allotted to Shri Preet Patel which were duly recorded

in the books. Therefore, addition for the balance amount to the extent of Rs. 16,83,500/- (83,70,000 – 66,86,500) was confirmed.

47. With respect to the addition made by the AO under 5th compartment for Rs. 2,85,22,600/ being loan taken and repaid along with interest to GVG. The learned CIT(A) found that this compartment contain unaccounted loan for Rs. 1.89 crorewhich has been accepted and repaid along with interest of Rs. 16,11,300/- from unaccounted source. Thus the learned CIT(A) held that only the principal amount of loan and interest thereon can be added. Accordingly, the ld. CIT-A confirmed the addition to the tune of Rs. 2,05,11,300/- only.

48. With respect to the addition made by the AO under 6th compartment for Rs. 53,06,500/-being unaccounted receipt and its expenses, the learned CIT(A) found that it represents the unaccounted receipt as noted in compartment no.4 at S. No. 51 'PAID BY PREET VIA MQ". However the AO not made the addition of this amount in compartment 4 as aggregate amount of expenses noted in compartment 6 are exactly of the same value. Hence only one addition either being unaccounted receipt or expenses has been made. During appellate proceeding, the assessee failed to justify why addition should not be sustained. Thus, the addition was confirmed by the learned CIT(A).

49. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us. The assessee is in appeal against the direction of the addition for Rs. 39.12 Lacs and Rs. 3,84,61,253/- for the AY under consideration and for the AY 2014-15.

50. The learned AR before us filed a paper book from pages 1 to 284 and filed written submissions running from pages 1 to 15 which are available on record. The learned AR for the assessee before us reiterated the submissions as made before the authorities below. The learned AR further, among other arguments, contended that the income based on seized document bearing page 33 can be worked out on the

principles of telescopic. It is for the reason that page 33 contains both the receipts and the expenses which were not recorded in the books of accounts.

51. On the contrary, the learned DR before us vehemently supported the stand of the authorities below by reiterating the findings contained in the respective orders which we have already adverted to in the preceding paragraph. Therefore we are not repeating the same for the sake of brevity.

52. We have heard the rival contentions of both the parties and perused the materials available on record. The facts of the case have already been elaborated in the preceding paragraph which are not in dispute. Therefore, for the sake of brevity and convenience, we are not inclined to repeat the same. From the preceding discussion, the following issues require consideration and adjudication.

i. Whether the document bearing page number 33 seized during the search proceedings is a dumb document.
ii. Whether the provisions of section 69C can be invoked in a situation where the particular assessment year is not a certain.
iii. Whether the document found during the search proceedings belongs to the assessee or Manish B Shah, the director of the company.
iv. Whether the benefit of telescoping can be extended to the assessee in the given facts and circumstances.

53. We proceed to adjudicate the question No. 4 as discussed above so as to see whether the concept of telescoping can be applied in the given facts and circumstances. Admittedly, the seized document bearing page No. 33 contains various financial transactions. This document has been divided in 6 compartments by the Revenue. Three of the compartments out of 6 were treated as the receipts and the remaining 3 compartments were treated as the payments. The authorities below have added each compartment separately as being unaccounted receipt and unexplained expenses after providing adjustment of amount already recorded in the books of accounts and added separately in hands of directors. To our mind the approach adopted by the authorities below is not justifiable for the reason that it is

settled position of law that the material seized or found in a proceeding cannot be read in isolation rather the same should be read as whole. The authority below at one hand treated the alleged cash expenses as income of the assessee on reasoning that the assessee failed to explain the source of money to incur such expenses. On the other hand the authorities below also treated some of the item noted in the same seized paper as unaccounted receipt of the assessee. To our understanding once revenue itself admitted that the assessee has some unaccounted income then it is justifiable to presume that the assessee should have incurred impugned unaccounted expenses out of the unaccounted income. Hence no addition should have been made against expenses separately otherwise same will lead to double addition which is prohibited under the provision of the law.

54. Now the question arises can entire unaccounted receipt should be added or only the profit element after adjusting the expenses against such unaccounted receipt should be added as income in the hands of the assessee. In this connection, we find that there are plethora of judgment by various competent court that in case of any unaccounted business receipt found in the hand of the assessee then only the amount of profit element in such business receipt should be brought to tax as the tax is not liable on gross income. Indeed the tax is liable on the net profit after providing the adjustment of business expenditure incurred to earn such business receipt. The courts have taken various basis to tax the profit embedded in the gross receipt such as estimation of profit in absence of detail of expenditure, peak credit theory and telescoping.

55. Now coming to the present case, admittedly, the commercial activities of the assessee were commenced in the year under consideration i.e. July 2013. Post commencement of the activities of the assessee, there is a possibility for the assessee to have generated the unaccounted income which was possible to utilize for unaccounted expenses as appearing on page 33 of the seized document in different compartments. Undeniably, both the receipts and the expenses have been incorporated on the same seized document. Therefore, we are of the view that the seized document has to be read as a whole not in isolation in this regard we also

find support and guidance from order coordinate bench of Pune ITAT in case of Dhanvarsha Builders & Developer (P.) Ltd vs. DCIT reported in 102 ITD 375, the relevant finding is extracted below:

> *So far as the argument of the assessee that the impugned papers not only showed the receipts but also the expenditure and, therefore, the document should be read as a whole and deduction for the expenditure incurred should be given to the assessee while computing undisclosed income was concerned, the seizeddocument should be read as a whole if it has to be relied upon. It cannot be read only to the extent it is advantageous to the revenue and not read when it becomes disadvantageous to the revenue. It is an accepted principle of interpretation of documents that they should be read as a whole, as persons of common prudence will read them. They cannot be read in bits and parts to suit the convenience of one party or the other. Therefore, the expenditure would also have to be read on proper appreciation of the document.*

56. In view of the above, we find that the net results of the receipts and expenses should only be considered for the purpose of the additions. As such the individual receipts and the expenses cannot be subject matter of the addition independently. There is also no ambiguity to the fact that whatever amount of the unaccounted expenses have been incurred have been sourced out of unaccounted receipts recorded in the same seized document.

57. At this juncture, it is equally important to deal with the situation that what would be the position if the receipts have been utilized by the assessee for the capital expenditures or the revenue expenses have been incurred out of the capital receipts. In either of the case, the transactions were not recorded in the books of accounts. As regards the receipts, the additions cannot be made under the provisions of section 68 of the Act. It is for the reason that the provisions of section 68 of the Act are applicable with respect to the transactions recorded in the books of accounts. As regards the expenses in the given facts and circumstances, the provisions of section 69C of the Act cannot be applicable as the source of the expenses is emanating from the same seized document. In other words, one of the precondition for attracting the provisions of section 69C of the Act is that the assessee failed to justify the source of the expenses. However in the given case, the source of the expenses is not in dispute. Accordingly, we are of the view that only option available work out the income from the unrecorded transactions in the given facts and circumstances is to apply the concept of telescoping. It is for the reason

that all the transactions were the business transactions whether it was on capital account or revenue account. If the assessee has incurred an expense on account of capital expenditure which was not recorded in the books of accounts, the same would have been eligible for deduction in the form of depreciation. As such, none of the expenses was incurred by the assessee which was not eligible for deduction. Accordingly, we are of the view that the income should be determined keeping the principles of telescoping. The assessee has worked out the income of Rs.8,40,140.00 based on the principles of telescoping which has been reproduced in the order of the learned CIT-A. No defect of whatsoever was pointed out by the authorities below in the working furnished by the assessee. Accordingly, we hold that the addition of Rs.8,40,140.00 is sustained out of the total addition made by the authorities below of Rs. 39.12 Lacs and Rs. 3,84,61,253 respectively in the assessment year 2012-13 and 2014-15.

58. Without prejudice to the above, we note that the 1st addition of Rs. 83,12,000/-. was made by the AO which was reduced by the learned CIT(A) to the tune of Rs. 39,12,000/- in the assessment year 2012-13 on account of unexplained expenditure. There is no dispute to the fact that the land was acquired by the assessee dated 12th January 2012 and its commercial activities were commenced from July 2013. In other words, there was no activity carried out by the assessee in the year under consideration. Thus the question arises can there be any addition for the unexplained expenditure incurred by the assessee on account of undisclosed income. In the present case, there cannot be any possibility for the assessee for having any unaccounted income in its hands for the year under consideration. It is for the reason that the assessee has not done any commercial activity suggesting that the assessee has earned income which was not disclosed in the books of accounts. If any addition was at all liable to be made, the same could have been done in the hands of the directors of the company. It is for the reason that there were directors who were found to have invested money on behalf of the assessee out of their undisclosed income. Thus, it can be inferred that the directors of the company have incurred the expenses on behalf of the company. As such, the

assessee cannot be made subject to addition on account of unexplained expenditure of Rs. 39,12,000/- in the year under consideration.

59. As we have adjudicated the issue raised by the assessee after applying the concept of telescoping, we refrain ourselves from adjudicating the other questions recorded hereinabove for the purpose of the decision. Thus the ground of appeal of the assessee is partly allowed.

59.1 In the result appeal of the assessee is partly allowed.

60. Coming to ITA No. 136/Ahd/2019 and appeal by the assessee for A.Y. 2013-14. In this appeal, the assessee has raised the following grounds:

> *"1.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A), has erred in confirming the re-opening of the assessment u/s 147/148 of the Act and thereby not holding the order u/s 143(3) r.w.s. 147 of the Act as bad in law. (Para 39.1 on Pg 127 referring to Para 35.2 on page 120 of the Ld. CIT(A)'s order).*
>
> *2.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A) has erred in confirming the addition of Rs.1,00,00,000/- on substantive basis as unexplained investment u/s 69B of the Act and also erred in holding and directing the Id. AO that the said amount be taxed on protective basis the hands of Shri Pravinchandra Patel and also in the hands of all the directors of the appellant as their joint and several liabilities. (.Para 39.2 and 39.3 on page 127/128 of the Ld. CIT(A)'s order).*
>
> *3.0 Without prejudice to the specific grounds of appeal taken above and those taken in appeals for AY 2012-13 and AY 2014-15, on the facts and circumstances of the case and in law, the Ld CIT(A) has erred in not allowing telescoping / offsetting of the alleged unexplained expenses / investment against the items treated as incomes as well as against disclosures made by the individuals in the Promoter Group. (Para 20.6 on page 103 of the Ld. CIT(A)'s order)."*

61. The first issue raised by the assessee is that learned CIT(A) erred in holding the reopening under section 147 of the Act as valid.

62. At the outset, the learned AR for the assessee at the time of hearing submitted before us that the he has been instructed by the appellant not to press this ground of appeal. Hence, the ground of appeal raised by the assessee is dismissed as being not pressed.

63. The next issue raised by the assessee in ground Nos. 2 & 3 of its appeal is that learned CIT(A) erred in confirming the addition made by the AO for Rs. 1 crores on account of unexplained investment made in the land.

64. At the outset we note that the issue raised by the assessee has been decided along with the appeal bearing No. ITA No. 135/Ahd/2019 for AY 2012-13. The appeal was allowed in favourof the assessee. For, the detailed discussion, please refer the paragraph Nos. 24 to 28 of this order. Hence the ground of appeal of the assessee is allowed.

65. In the result appeal of the assessee partly allowed.

66. Coming to next assessee's appeal in ITA No. 137/Ahd/2019 for the Asstt.Year 2014-15, the following grounds are raised.

> *"1.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A) has erred in confirming the addition of Rs.59,45,153/-as unexplained expenditure u/s 69C of the Act. (Para 21.4 on page 105 of the Ld. CIT(A)'s order).*
>
> *2.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A) has erred in confirming the addition of Rs.50,14,8007- as unaccounted cash receipts (Para 22.1 on page 106 of the Ld. CIT(A)'s order).*
>
> *3.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A) has erred in confirming the addition of Rs. 16,83,500/- as share application money received but not accounted in books. (Para 23.5 on page 109 of the Ld. CIT(A)'s order).*
>
> *4.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A) has erred in confirming the addition of Rs.53,06,500/- as unexplained receipts and unaccounted expenses. (Para 24.2 on page 110 of the Ld. CIT(A)'s order).*
>
> *5.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A) has erred in confirming the addition of Rs. 2,05,11,300/- as undisclosed and unexplained income. (Para 25.6 on page 113 of the Ld. CIT(A)'s order).*
>
> *6.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A) has erred in confirming the disallowance of Rs.1,50,000/- u/s 40(a)(ia) of the Act. (Para 27 on page 115 of the Ld. CIT(A)'s order).*
>
> *7.0 On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A) has erred in confirming the addition due to disallowance of depreciation of Rs.7,00,000/-. (Para 28.1 on page 116 of the Ld. CIT(A)'s order)."*

67. At the outset we note that the issues raised by the assessee in ground Nos. 1 to 5 of its appeal have already been decided along with ground No. 3 of assessee's appeal in ITA No. 135/Ahd/2019 for A.Y. 2012-13, where we allowed the appeal of

the assessee in part vide paragraph number 52 to 59 of this order. For detail discussion please refer aforementioned paragraph number. Hence the grounds of appeal raised by the assessee are allowed in part.

68. The next issue raised by the assessee in ground no. 6 of its appeal is that the learned CIT (A) erred in confirming the addition of Rs. 1.5 Lacs under section 40(a)(ia) of the Act.

69. At the outset we note that the learned AR before us submitted that he was directed by the appellant not to press this ground of appeal. Accordingly, this ground of appeal of the assessee is dismissed being not pressed.

70. The next issue raised by the assessee in ground no. 7 of its appeal is that the learned CIT (A) erred in confirming the disallowance of the depreciation for Rs.7 Lacs on account of excess value of the building.

71. There was the addition in the block of assets under the head building which was held in the year under consideration for less than 6 months. The value of such addition stands at Rs.13,53,95,335/- only. However, the AO based on the seized document bearing No. 55 of Annexure A-1 found that the assessee has received cash of Rs. 1.40 crores from the contractors. The impugned seized document was handwritten by Ms. Dhruvi Pandya, the chief accountant of the company. On confrontation, she admitted in the statement furnished on oath under section 131 of the Act that the contractor has raised the bills at the higher value and the payment was accordingly made to the contractor at the higher value which was received back in cash by the assessee. Based on the statement, the AO held that the assessee is not eligible for depreciation on the higher value of the construction expenses added in the value of the building which was of worked out at Rs. 7 Lacs. Thus the AO treated the same as excessive depreciation claimed by the assessee and disallowed the same.

72. Aggrieved assessee preferred an appeal to the learned CIT (A) who confirmed the addition made by the AO by observing as under:

"(i) Excess depreciation claim – Rs.7,00,000/-:

28. The detailed discussion in this regard appears at pages 17 to 22 of the assessment order. The AO noted that the assessee had claimed depreciation @ 10% on the building and on verification of the seized material (specially pages 83 to 145 of Anexure A-l/1) from Neotech Technical Campus at |1rod found that certain invoices (as tabulated on page IS & 19 of the assessment order) aggregating to Rs.1,36,53,389/- were raised but cash of Rs.1,40,00,000/- was received back from contractors as evidenced by Page No.55 of Annexure Al (as reproduced on page 2O of the assessment order). Page No.55 of Annexure Al is in the handwriting of MsDhruvi Pandya, the CFO of the Group who stated in her statement that these noting related to contract bills and payments and that actual payment made and cash received back, and therefore not repeated here. The AO also noted that payments of Rs.lcrore were made twice and after making actual payment of Rs.40 lakh and Rs.20 lakh to the contractors, Rs.60 lakh and Rs.80 lakh were received back in cash by the appellant company. The assessee was asked by the AO to explain vide show cause notice dtd. 04/11/2016 and it was submitted that invoices were dummy for loan purposes and hence nothing to do with the accounting. The AO noted that the assessee had claimed depreciation of Rs.67,69,787/- on addition during the year of Rs.12,13,95,355/-whereas the depreciation actually allowable should be of Rs.60,69,787/- and accordingly the addition of Rs.7,00,000/- was made.

28.1 In the submission vide dated 08/06/2018 the appellant has merely contended that on facts, such disallowance of depreciation is not sustainable. No specific has been provided and no rebuttal to the findings of the AO has been made by the appellant. Thus the addition of Rs.7,00,000/- is not required to be interfered with. The addition is confirmed and the appeal on this ground is dismissed."

73. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

74. The learned AR before us contended that the name of the assessee was not appearing in the so-called seized document. Likewise, there was no date mentioned in the seized document so as to indicate the particular year to which it pertains. Accordingly, the learned AR contended that there cannot be any disallowance of the depreciation. On the other hand, the learned DR vehemently supported the order of the authorities below.

75. We have heard the rival contentions of the parties and perused the materials available on record. The seized document bearing page No. 55 is placed on page 138 of the paper book. On perusal of the seized document, we note that no name either of the assessee or the contractor is appearing therein. Likewise, there is no date mentioned on such seized paper. In simple words, such seized document contains certain figures with the remark cash back only. Thus, to our understanding,

no adverse inference can be drawn against the assessee solely on the basis of such seized document. However, if such seized document is seen in aggregation of the statement of the chief accountant, as alleged by the revenue, it appears that the assessee has claimed higher amount of expenses. In other words, it seems that the conclusion has been drawn by the revenue solely based on the statement furnished during the assessment proceedings. We find that the CBDT in instruction no 286/2/2003-IT(Inv.II)has instructed the revenue authority to make addition in search proceeding only in the basis of material found instead of mere admission. The relevant extract of the instruction reads as under:

> *Instances have come to the notice of the Board where assessees have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assessees while filing returns of income. In these circumstances, such confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income-tax Department. Similarly, while recording statement during the course of search & seizure and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.*

76. Admittedly, the information gathered during the search proceedings can be vital piece of input/material but the same cannot substitute the evidence. It was expected by the revenue to carry out necessary investigation based on the seized document and the statement obtained during the search proceedings to find out the truth after conducting the enquiries from the contractors. But no enquiry from the 3rd party has been conducted by the revenue. Accordingly, we are not inclined to uphold the finding of the authorities below. Thus we set aside the finding of the learned CIT(A) with the direction to the AO to allow the claim of the assessee for the depreciation amounting to Rs.7 Lacs. Hence the ground of appeal of the assessee is allowed.

77. The last issue raised by the assessee is general and connected with above grounds. Therefore, the same does not require any separate adjudication. Hence, the same is being dismissed as infructuous.

78. In the result, the appeal of the assessee is partly allowed.

79. Coming to ITA No. 194/Ahd/2019 an appeal by Revenue for A.Y. 2014-15

80. The Revenue has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law, the !d. CIT(A) has erred in deleting the addition of Rs.1,35,00,000/-on account of unexplained investment u/s 69B of the I. T. Act, when the seized document itself proves that the assessee had made investment of Rs.1,35,00,000/- (altogether Rs.5,68,00,000/- for different years) in the purchase of land for A.Y.2014-15.

2. On the facts and in the circumstances of the case and in law, the Id CIT(A) has erred in deleting the entire addition of Rs.1,62,44,073/- on account of unsecured loan, which also includes unsecured loan of Rs.58,00,000/- [claimed to be received from Shri Shashikant R. Patel (Rs.50,00,000/-) and ShnDeshraj Singh (Rs.8,00,000/-)] for which the assessee as well as the lenders miserably failed to prove their creditworthiness.

3. It is, therefore, prayed that the order the Ld. CIT(A)-12, Ahmedabad may be set aside and that of the AO may be restored to the above extent."

81. The first issue raised by the Revenue is that the learned CIT(A) erred in deleting the addition of Rs. 1.35 crore made on account of unexplained investment in land.

82. At the outset we note that the issue raised by the Revenue in ground number 1 of its appeal has already been adjudicated along with issue raised by the assessee in ground 2 in ITA No. 135/Ahd/2019 for A.Y. 2012-13 where we have decided the issue against the Revenue vide paragraph Nos. 24 to 28 of this order. For, the detailed discussion, please refer the above paragraph. Hence, the ground of appeal of the Revenue is dismissed.

83. The second issue raised by the Revenue is that the learned CIT (A) erred in deleting the addition made by the AO for Rs. 1,62,44,073/- representing the unexplained cash credit under section 68 of the Act on account of lack of creditworthiness of the parties.

84. The AO found the assessee in the year under consideration has taken loan from 13 parties amounting to Rs. 1,62,44,073/-. However the assessee during the assessment proceedings failed to file the necessary documentary evidence to justify the impugned loans on the parameters specified under section 68 of the Act,

accordingly the AO treated the same as an unexplained cash credit and added to the total income of the assessee.

85. Aggrieved assessee preferred an appeal to the learned CIT (A).

86. The assessee before the learned CIT (A) submitted that all the loans are received through the banking channel. Likewise, all the parties who have given loan to the assessee are the income tax assessee and filing their regular income tax return. The assessee in support of its contention filed the bank statement, PAN, income tax return and the confirmation from all the parties.

87. The assessee also submitted that it has repaid the loan in the later years through the banking channel. Thus the assessee submitted that there cannot be any addition of the impugned loan under the provisions of section 68 of the Act.The learned CIT (A) called for the remand report from the AO who have admitted the identity of the lending parties and genuineness of the transaction. However the AO was of the view that the income shown by the lending parties are not sufficient enough to advance the loan to the assessee. Thus, the AO had a doubt on the creditworthiness on the parties which isone of the test to get through the conditions as specified under section 68 of the Act. Thus the AO in his remand report requested the learned CIT (A) confirmed the addition as made in the assessment framed under section 143(3) of the Act.However the learned CIT (A) after considering the submission of the assessee and the remand report of the AO deleted the addition made by the AO by observing as under:

> *"26.2 From the perusal of the Remand Report dtd.09/03/2018 read with the Remand Report dtd.11/07/2018 it is seen that AO has examined the details submitted by the appellant vide the letters dated 16/02/2018 and 09/03/2018 the AO has accepted the identity of 13 depositors/lenders but has doubted the nature of transactions and worthiness (on account of low income as per the respective returns of income) in respect of some, the remand reports are already reproduced in this order earlier. In this regard it is submitted by the appellant vide dated 01/08/2018 that since these monies were received (and-subsequently repaid) through account payee cheques/bank transfers and were duly recorded in the books of account and the lenders confirmed the transactions, it is clear that the appellant-Company has discharged its onus regarding the said deposits.*
>
> *26.3 I have examined the submission of the appellant vide dated 01/08/2018 and gone through the supporting evidences furnished earlier and I am of the considered view that the appellant has discharged its onus of proving identities, the sources of the loans and the genuineness of the transactions in accordance with the provisions of section 68, and*

thereafter the onus has shifted to the AO to prove the transactions to be otherwise. The same has not been done by the AO. Relying upon the decision of the Hon'ble High Court of Gujarat in CTT vsChanakya Developers (supra) and in absence of any contrary evidence brought on record, I hold that the addition of Rs.1,62,44,073/- cannot be upheld. The AO is directed to delete the addition and the appeal on this ground succeeds."

88. Being aggrieved by the order of the learned CIT (A), the Revenue is in appeal before us.

89. Both the learned DR and the learned AR before us vehemently supported the order of the authorities below as favourable to them.

90. We have heard the rival contentions of both the parties and perused the materials available on record. The provision of section 68 of the Act fastens the liability on the assessee to provide the identity of the lenders, establish the genuineness of the transactions and creditworthiness of the parties. These liabilities on the assessee were imposed to justify the cash credit entries under section 68 of the Act by the Hon'ble Calcutta High Court in the case of CIT Vs. Precision finance (p) Ltd reported in 208 ITR 465 wherein it was held as under:

"It was for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions. On the facts of this case, the Tribunal did not take into account all these ingredients which had to be satisfied by the assessee. Mere furnishing of the particulars was not enough. The enquiry of the ITO revealed that either the assessee was not traceable or there was no such file and, accordingly, the first ingredient as to the identity of the creditors had not been established. If the identity of the creditors had not been established, consequently, the question of establishment of the genuineness of the transactions or the creditworthiness of the creditors did not and could not arise. The Tribunal did not apply its mind to the facts of this particular case and proceeded on the footing that since the transactions were through the bank account, it was to be presumed that the transactions were genuine. It was not for the ITO to find out by making investigation from the bank accounts unless the assessee proved the identity of the creditors and their creditworthiness. Mere payment by account payee cheque was not sacrosanct nor could it make a non-genuine transaction genuine."

91. The assessee has discharged its onus by furnishing the necessary details such as a copy of PAN, bank details, and ITR etc. in support of identity of the parties, genuineness of transaction and creditworthiness of the parties. Admittedly the AO has accepted the identity and genuineness of transaction but doubted the credit worthiness of the parties. However the learned CIT(A) held that the assessee has

discharged the primary onus cast under section 68 of the Act and onus shifted on the AO to prove otherwise based on contrary materials on record.

92. Now coming to the third condition, i.e. creditworthiness of the parties, regarding this we note that the assessee has refunded the amount through banking channel to all the parties.The repayment of the loan amount by the assessee was duly accepted by the Revenue. In this regard, we find support and guidance from the judgment of Hon'ble Gujarat High Court in the case of the CIT Vs. Rohini builders reported in 256 ITR 360 wherein it was held as under:

> *"The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques."*

93. Thus there remains no doubt that the transaction of the advance received by the assessee from the parties was genuine. In our considered view, once the assessee is able to prove that the money received by it was returned in the subsequent assessment year in the account of the party, then there remains no doubt that the advances received by the assessee were unexplained cash credit.

94. Similarly, we also note that the assessee in respect of all the parties out of the parties as discussed above has furnished the sufficient documentary pieces of evidence including the details of the income of the parties. Therefore in our considered view, the assessee has discharged its onus imposed under section 68 of the Act.

95. In view of the above, we do not find any infirmity in the order of Ld. CIT (A). Hence the ground of appeal of the revenue is dismissed.

96. The issue raised by the assessee in ground 3 and 4 of its appeal are general in nature hence the same is dismissed being infructuous.

97. In the result appeal filed by the Revenue is dismissed

98. Coming to ITA No. 195/Ahd/2019 an appeal by the Revenue for A.Y. 2015-16

99. Sole ground raised in this appeal reads as under:

> *"1. On the facts and in the circumstances of the case and in law, the ld.CIT(A) has erred in deleting the addition of Rs.1,35,00,000/- on account of unexplained investment u/s.69B of the I.T.Act, when the seized document itself proves that the assessee had made investment of Rs.1,35,00,000/- (altogether Rs.5,68,00,000/- for different years) in the purchase of land for A.Y.2015-16.*

100. At the outset, the ld.counsel for the assessee submitted that effective tax effect involved in this appeal is below Rs.50 Lacs, and therefore, the appeal of the Revenue is not maintainable in view of recent CBDT Circular restricted the filing of the appeal by the Revenue before the Tribunal, where the tax effect is below Rs.50 Lacs. Therefore, the ld.counsel for the assessee contended that this appeal of the Revenue requires to be dismissed at the threshold. To which, the ld.DR disputed the same, but left the issue to the Bench to decide the same in accordance with law.

101. Admittedly,the tax effect in appeal of the Revenue is below Rs.50 Lacs, and therefore, keeping in view the above CBDT circular and provisions of section 268A of the Income Tax Act, we are of the view that the present appeal of the Revenue deserve to be dismissed at the threshold. It is accordingly dismissed.

102. However, it is observed that in case on re-verification at the end of the AO it can be demonstrated that the tax effect on the disputed addition is more, or Revenue's case falls within the ambit of exceptions provided in the Circular, then the Department will be at liberty to approach the Tribunal for recall of this order. Such application should be filed within the time period prescribed under the Act.

103. In the result, appeal of the Revenue is dismissed due to low tax effect.

104. Now we take following appeals in the case of Shri Parvinchandra Patel:

IT(SS)A Nos. 69/AHD/2019, 71/AHD/2019, 72/AHD/2019 and 73/AHD/2019 for the assessment years 2009-10, 2011-12, 2012-13 and 2013-14.

105. The issues raised by the Revenue in IT(SS)A Nos. 69/AHD/2019, 71/AHD/2019, 72/AHD/2019 and 73/AHD/2019 for the assessment years 2009-10, 2011-12, 2012-13 and 2013-14 are inter-related and common to each other. Therefore, for the sake of brevity and convenience, we have clubbed all these appeals of the Revenue together for the purpose of adjudication. The facts of the case as appearing in IT(SS)A No. 69/AHD/2019 have been adopted for the decision which are given hereunder:

106. The Revenue in IT(SS)A No. 69/AHD/2019 for the assessment year 2009-10 has raised the following grounds of appeal:

> *"1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.13,111/- on account of disallowance of deduction under Chapter VI-A, by not appreciating the fact involved in this case and holding that no incriminating material was found during search for A.Y,2009-10 and hence the proceeding for A.Y.2009-10 remained unabated.*
>
> *2. On the facts and in the circumstances of the case and in law, the td. CIT(A) has erred in deleting the addition of Rs.4,52,29,955/- on account of unexplained credit entries in the bank accounts, by not appreciating the fact involved in this case and holding that no incriminating material was found during search for A.Y.2009-10 and hence the proceeding for A.Y,2009-10 remained unabated.*
>
> *3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in relying on various decisions of the Hon'ble Court including the decision of Hon'ble High Court of Gujarat in the case of Pr. CIT VsSaumya Construction Pvt. Ltd., when the facts involved in this case are distinguishable for the reason that all the referred decisions cover the situation where assessment for a particular year was completed. However, in the instant case no assessment for A,Y.2009-10 was completed. Therefore, the issue involved in this case is covered under exception criteria as mentioned in para 10 of circular No.03 of 2018 dated 11.07.2018 and amended on 20.08.2018.*
>
> *4. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in adjudicating that proceeding u/s 153A/153C will be abated only for those Assessment Years and issues for which incriminating materials have been found, when the law does not impose any such restriction,*
>
> *5. On the facts and in the circumstances of the case and in law, the decision of the Id. CIT(A) is perverse when the Remand report has been called for from the A.O. and the case has not been decided on the facts submitted by the A.0.*
>
> *6. It is, therefore, prayed that the order of the Ld. CIT(A)-12, Ahmedabad may be set aside and that of the AO may be restored to the above extent.*
>
> *7. The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal."*

107. The preliminary issue that has to be decided in all these appeals whether there can be any addition with respect to the unabated assessment years without having found any incriminating materials in the course of search proceedings under section 132 of the Act.

108. The facts of the case are that there was the search and seizure operation under the provisions of section 132 of the Act at the premises of the assessee dated 13th November 2014. Accordingly, the proceedings for the assessment under the provisions of section 153A of the Act were initiated for the assessment years as discussed above. The assessment was framed by the AO after making certain additions in different assessment years as detailed below:

For the AY 2009-10

1. *Disallowances of deduction claimed under chapter VI of the Act for Rs. 1,43,111/- only.*
2. *Addition of credit in bank account under section 68 of the Act.*

For the AY 2011-12

1. *Disallowances of deduction claimed under chapter VI of the Act for Rs. 15,000/- only.*
2. *Addition of credit in bank account under section 68 of the Act for Rs. 3,31,56,223/- only.*
3. *Unexplained investment for purchase of land at Rs. 2,77,000/- only.*

For the AY 2012-13

1. *Disallowances of deduction claimed under chapter VI of the Act for Rs. 15,000/- only.*
2. *Addition of credit in bank account under section 68 of the Act for Rs. 3,14,86,703/- only.*
3. *Disallowances of agricultural income claimed as exempt for Rs. 1,89,810/- only.*
4. *Addition under section 50C of the Act for Rs. 3,58,51,000/- only.*

For the AY 2013-14

1. *Disallowances of deduction claimed under chapter VI of the Act for Rs. 1,15,000/- only.*
2. *Addition of credit in bank account under section 68 of the Act for Rs. 7,73,50,390/- only.*
3. *Disallowance of agricultural income claimed as exempted for Rs.1,98,000/- only.*

109. The AO has made the additions of the above amount in different assessment years under the search proceedings to the total income of the assessee.

110. Aggrieved assessee preferred an appeal to the learned CIT (A).

111. The assessee before the learned CIT (A), inter-alia, contended that there was no incriminating document found during the search proceedings qua the additions made by the AO on account of disallowances of agricultural income, deduction under chapter VI-A of the Act and credit entry in bank account in the different assessment years. All the above items of addition made by the AO were duly disclosed in the original return of income filed under section 139 of the Act. As per the assessee, in

the search proceedings, the regular items of income and expense disclosed by the assessee in the income tax return filed under section 139 of the Act cannot be subject matter of any addition/disallowances in absence of any incriminating material found with respect to the unabated assessment years.

112. With regard to the addition of Rs. 2,77,000/- in A.Y. 2011-12 on account of unexplained investment which was based on seized paper being page 2-50 of annexure BS-2, page 1-65 of annexure BS-3 and page 1 of annexure BS-4, the assessee submitted that same is payment towards purposed purchase of agricultural land which was made out of cash available in hand from bank withdrawal on different dates.

113. The learned CIT (A) after considering the submission of the assessee observed that there are plethora of judgments of various tribunals, Hon'ble High courts including the Hon'ble Gujarat High court in case of Pr. CIT vs. Saumya Construction Pvt. Ltd. reported in 81 taxmann.com 292 and Hon'ble Apex court in case of CIT vs. Singhad Technical Education Society reported in 84 taxmann.com 290 wherein it has been laid down that in case of elapsed/unabated AYs there cannot any addition in the absence incriminating material found and available on record. In the present case all the assessment years i.e. 2009-10 to 2013-14 have been elapsed/unabated. Therefore no addition can be made in the absence of incriminating material in all these assessment years. Accordingly,the learned CIT (A) held that the AO has made the addition in the present search proceedings of regular items of agricultural income, credit entry in bank statements and deduction claimed under chapter VI-A which were duly disclosed in the income tax return. Therefore addition on account of above regular items cannot be sustained as per the law laid down by the Hon'ble courts and directed to delete the addition made in different assessment years.

114. With regard to addition of Rs. 2,77,000/- made in A.Y. 2011-12 on account of unexplained investment, the learned CIT(A) held that though this addition was based on seized documents, however, the assessee has submitted cash flow

statement showing the availability of having cash from his known/disclosed sources of income. The submission of the assessee cannot be rejected merely on surmises and conjecture without pointing out any defect in cash flow statement especially in circumstances where assessee is a man of means and disclosed healthy amount of income throughout all the AYs in the income tax returns. Accordingly, the learned CIT(A) deleted the addition made by the AO.

115. Similarly, the learned CIT (A) also deleted the addition of Rs. 3,58,51,000/- made under section 50C of the Act by holding that the information received from the office of registrar about the stamp value of land, which is higher than the sale consideration, cannot be termed as incriminating material for unabated assessment years under the proceeding of section 153A of the Act. It is for the reason that no such document or material was found during search proceeding that the assessee has received sale consideration over and above what has been in shown in sale deed. Thus such addition of regular item under section 50C cannot be made in proceeding under section 153A of the Act without having found incriminating materials during search proceedings. Thus the learned CIT(A) deleted the addition made by the AO on this technical ground.

116. Being aggrieved by the order of the learned CIT-A, the Revenue is in appeal before us.

117. Both the learned DR and the AR before us vehemently supported the order of the authorities below as favourable to them.

118. We have heard the rival contentions of both the parties and perused the materials available on record including the case laws cited by the learned AR for the assessee. As a result of search conducted under section 132 of the Act for the respective years under consideration, the assessment has to be framed under section 153A of the Act for the 6 assessment years and relevant assessment year in which such search was conducted. The 2nd proviso to section 153A of the Act speaks/deals for the unabated and abated assessment years. As per the 2nd proviso to section 153A of the Act, the assessment/reassessment, if any, relating to the

period of 6 assessment years as on the date of search is pending, then the same shall abate which implies that there will be regular assessment meaning thereby all the items of income and expense disclosed by the assessee in that assessment year shall be subject to scrutiny.

119. On the contrary, the assessment years which have been completed as on the date of search, there cannot be any addition/disallowance to the total income of the assessee until and unless found some document of incriminating nature during the course of search proceedings.

120. The word incriminating document has nowhere been defined under the income tax Act but the same has been evolved by the Hon'ble courts while rendering judgments. In this connection we draw support and guidance from the judgment of Hon'ble Gujarat High Court in the case of Pr. CIT vs. Saumaya Construction (P.) Ltd. (supra), the relevant observation is extracted here under:

> *"Under section 153A of the Act, an assessment has to be made in relation to the search or requisition, namely, in relation to material disclosed during the search or requisition. If in relation to any assessment year, no incriminating material is found, no addition or disallowance can be made in relation to that assessment year in exercise of powers under section 153A of the Act and the earlier assessment shall have to be reiterated."*

121. In view of the above, there remains no doubt that there cannot be any addition of the regular item with respect to the unabated/completed assessment years until and unless such documents of incriminating nature are found in the course of search proceedings.

122. Admittedly, all the cases before us are completed/unabated assessment years. The assessee for all the years have filed the return of income under section 139(1)/139(4) of the Act and the time limit for issuing notice under section 143(2) of the Act have already been expired. Thus, the returns filed by the assessee for all the years have reached to finality and therefore the same can be disturbed if there was some document of incriminating nature found during the search proceedings with respect to the year under consideration. However, we find that the AO has not made any reference to such documents/incriminating materials found in the course of

search while making the addition in the assessment framed under section 143(3) read with section 153A of the Act except for the assessment year 2011-12 which we shall deal separately. Thus in the absence of any reference by the AO about the seized documents in the assessment order, we are inclined to hold that the additions have been made by the AO of the regular items which were disclosed in the income tax return. Incriminating documents refer to those documents which was seized during the assessment proceedings and not disclosed in the income tax return. However, on perusal of the assessment records there is no mentioned about the documents seized which were incriminating in nature.

123. At this stage, we are also inclined to point out the fact that the assessee was maintaining several bank accounts but the addition was made for the amount deposited in three bank accounts only. A question may arise whether there is any document in relation to transaction carried out in these banks seized during the search proceedings which is being incriminating in nature. To our understanding, as there were not mentioned any document discovered in connection with transaction in the bank accounts during the search proceedings, the same cannot be said as incriminating document. Furthermore, there was no allegation of the AO that these bank accounts were not disclosed in the income tax return. Moreover, the learned CIT-A in his order has also observed as under:

> *"13.4 On the technical ground of applicability of Sec. 153A, it is seen that the A.Y, 2009-10 is an unabated assessment year and thus the appellant is protected by the case laws relied upon by him and that the AO cannot make addition without any basis of incriminating material. If the bank accounts with various banks including the City Bank and the Royal Bank of Scotland were disclosed for the purpose of Income tax, the bank accounts cannot be held to be incriminating and no addition on account of credit entries therein can be made by the AO without there being any material found during the course of search which could incriminate a particular or set of or whole of credit entries in these bank accounts. In the assessment order it is no where mentioned that the said bank account was undisclosed and that incriminating materials related thereto were found during the search/survey in the Group. In absence of such finding, the credit entries in this account cannot be held to be unaccounted/undisclosed and added to the total income in the proceeding u/s 153 A The addition made in the assessment is required to be dismissed and the submissions made on the merits of the issues are not required to be gone into and adjudicated. The addition of Rs.4,58,29,955/- as per the assessment order (or/and Rs.4,58,29,955/- as per the subsequent rectification order) is directed to be deleted. The appeal succeeds on this ground."*

124. The above finding of the learned CIT (A) has not been controverted by the learned DR appearing on behalf of the Revenue at the time of hearing. Thus in view of the above we can hold that there was no incriminating document found/seized during the search proceedings and therefore the concluded/unabated assessment years cannot be disturbed.

125. Coming to the addition made by the AO of Rs. 2,77,000/- for the assessment year 2011-12, in this connection we note that the investment shown by the assessee is of negligible amount considering the income declared by the assessee in different assessment years. In other words the assessee was the man of means and capable of making the investments. The assessee in support of his contention has also filed the cash flow statement i.e. showing the source of money invested in the impugned property. It was submitted by the assessee that the investment was made out of the drawing from the bank and this contention of the assessee was not controverted by the learned DR appearing for the Revenue at the time of hearing. In view of the above and after considering the facts in totality, we do not find any reason to interfere in the finding of the learned CIT-A and thus we uphold the same. Thus the grounds of appeal of the revenue are dismissed.

126. Before parting, it is also important to highlight that there was an addition of Rs. 3,58,51,000/- under section 50C of the Act which was made in A.Y. 2012-13. The assessee disclosed that he has sold property for a consideration of Rs. 1,47,00,000/- whereas the AO base on AIR information found that stamp value of such property was of Rs. 5,05,51,000/-. Thus the AO made addition of Rs. 3,58,51,000/- being difference in sale consideration and stamp value under section 50C of the Act. In this regard we are of the view that had this addition been made under normal assessment/ reassessment proceedings, then the addition may have sustained subject to other conditions laid down under the provision of section 50C of the Act. However, the proceedings before us are special proceeding under section 153A and assessment is also unabated/completed. Therefore, addition can only be restricted to the extent of incriminating material found during search as discussed above. As there was no material found in search suggesting that the assessee has

received any amount over and above what have been already disclosed by the assessee in the income tax return, we are also of the view that the AIR information cannot be held as incriminating material as there is no evidence that assessee has received excess sale consideration. Therefore, the addition under section 50C in A.Y. 2012-13 being unabated/completed assessment also cannot be sustained. Thus the grounds of appeal of the Revenue are dismissed.

127. In the result, all the four appeals of the Revenue are dismissed.

128. Coming to ITA No. IT(SS) No. 41/AHD/2019 and 42/AHD/2019 an appeal by the Assessee for A.Y. 2012-13 and 2013-14

129. The only issue raised by the assessee in both the AYs is that the learned CIT (A) erred in making the protective addition of Rs. 1 croreand 1.98 crores on account of unexplained investment.

130. At the outset, we note that the addition of Rs. 1 crores and 1.98 crores on account of unexplained investment was made on substantive basis in the hands of M/s Neotech Education Foundation and protective basis in the hands of directors. The assessee is one of the director in M/s Neotech Education Foundation. It was alleged by the Revenue that there was the cash payment against the purchase of land by M/s Neotech Education Foundation which was not recorded in the books of accounts. In this regard, we find that once the addition on substantive basis to the tune of Rs.3,97,37,485/ representing the investment in cash by the another director namely Shri Pravin C Patel has been made by us in the AY 2014-15, there cannot be any other addition either in the hands of M/s Neotech Education Foundation or other directors on substantive/protective basis. In other words, the payment of ▪ 1 and 1.98 crores represents the application of the income added in the hands of Shri Pravin Patel. As such, the investment of Rs. 1 crores and 1.98 crores has been made out of the addition made in the hands of Shri Pravin Patel for Rs.3,97,37,485/. Thus if any addition is sustained in the hands of any other party, that would lead to the double addition which is not desirable under the provisions of law.

131. In the result both the appeals of the assessee are allowed.

132. Coming to ITA number IT(SS) No. 43/Ahd/2019, an appeal by the Assessee for A.Y. 2014-15.

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

1.0 On the facts and in the circumstances of your appellant's case and in law, the Id. C1T (A) has erred in treating agriculture income to the extent of Rs.4,00,000/- as income from unexplained other sources. (Para 18.2 on page 146/147 of the appellate order).

2.0 (a) On the facts and in the circumstances of your appellant's case and in law, the Id. CIT (A) has erred in confirming addition as unexplained credits to the extent of Rs.26,63,386/- in various banks on the ground that for the related bank transfers and the related loans taken no details / evidences have been furnished by appellant and therefore onus u/s 68 has not been discharged. (Para 18.4 on page 148/149 of the appellate order).

(b) On the facts and in the circumstances of your appellant's case and in law, the Id.CIT (A) has erred in confirming addition u/s 68 of the Act as unexplained credits to the extent of Rs.26,63,386/- in various banks, since appellant submits that bank statements/pass books are not books of accounts as envisaged under the provisions of section 68 of the Act. {Para 18,4 on page 148/149 of the appellate order).

3.0 On the facts and in the circumstances of your appellant's case and in law, the Id. CIT (A) has erred in confirming addition as unexplained loan / investments in cash in Neotech Education Foundation to the extent of Rs.3,97,37,485/-. (Para 21.2 and 21.7 on page 152/153 and 156 of the appellate order).

134. The first issue raised by the assessee is that the learned CIT(A) erred in treating the agriculture income of Rs. 4Lacs as income from other sources out of the total agricultural income declared by the assessee at Rs. 4,48,600/-.

135. The assessee in the year under consideration has declared agriculture income of Rs. 4,48,600/- only. The assessee in support of such income has filed the extract of 7/12 form. However, the AO was not satisfied with the 7/12 form filed by the assessee to justify the agriculture income. As per the AO, the assessee was expected to furnish the details of the crop produced, sold and the expenses incurred in connection with the production of the crop. But the assessee failed to furnish the

same. Therefore the AO treated the entire amount of agriculture income declared by the assessee for Rs. 4,48,600/- as income from other sources.

136. Aggrieved assessee preferred an appeal to the learned CIT-A.

137. The assessee before the learned CIT (A) submitted that he along with wife has in his possession substantial agricultural land of 32 vigha where the cash crop such as cotton and tuvar was produced during the year which was sold in the open market. The assessee also furnished the details/information of the crop cultivated in different assessment years in different pieces of land. The assessee in support of his contention has also filed the certificate from the head of 'Dena' Gram Panchayat of Vadodra District where such land is situated which evidences that the cash crop was cultivated. In the light of the above details, the assessee contended that the agricultural income declared by him cannot be treated as income from other sources in the absence of the details of sales bills and the expenses. Accordingly the assessee, prayed that the agriculture income was the genuine income.

138. The AO in the remand report submitted that the assessee failed to furnish the details of the exact quantity of crops produced and sold along with the rate at which such crop was sold. Therefore, the agriculture income declared by the assessee cannot be treated as genuine.

139. The learned CIT (A) found that land on which agricultural activity claimed to be carried out are not fertile land. Further, the assessee in the assessment year 2009-10 has declared agriculture income of Rs.84,460/- only whereas the assessee has declared an income of Rs. 4,48,600/- in the year under consideration which has increased manifolds. But the assessee failed to justify the increase in the amount of agriculture income. Accordingly, the learned the CIT (A) allowed the part of the amount for Rs. 48,600/- as agriculture income and treated the balance amount of Rs. 4 Lacs as income from other sources.

140. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

141. The learned AR before us submitted that the assessee in possession of the agricultural land which is capable of generating the agricultural produce. Likewise, an agricultural land was purchased in the year under consideration for the value of Rs.1 crores. Even if 0.5% of the value of such investment is taken as the return on such investment, an income of Rs.50,000 is worked out and if it is multiplied with 16 vigha it comes out to Rs. 8 Lacs per annum. However the assessee has declared an income of negligible value at Rs. 4,48,600 which is very much viable.

142. On the contrary the learned DR before us contended that in the absence of necessary evidences about the details of the production, sales and expenditures, it cannot be presumed that the assessee has earned agriculture income merely on the basis of possession of land in his hand.

143. Both the learned AR and the DR before us vehemently supported the order of the authorities below to the extent favourable to them.

144. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, if the assessee is showing the agricultural income, then it is the onus upon him to produce the necessary evidences to justify such income. Indeed, the assessee has furnished the certificate from the Gram Panchayat. But to our considered view such certificate cannot replace the primary documents such as the details for the cultivation of the crop, details of the sales and the expenses incurred for the production of the crop. Such certificate is secondary piece of evidence.

145. However, the assessee failed to bring any primary evidence. Nevertheless, this fact is also not in dispute that the assessee is in possession of agricultural land along with his wife aggregating to 32 Vigha. Accordingly, the fact of possession of land and the Gram Panchayat certificate cannot be brushed aside in view of the fact that part of the agriculture income has been admitted by the learned CIT-A. Considering the size of the agricultural land and interest of justice and fair play we are of the view that justice will be served to the revenue and the assessee if 50% of the total agriculture income is treated as income from the agricultural activity and

the remaining 50% is treated as income from other sources in the given facts and circumstances. Hence the ground of appeal of the assessee is partly allowed.

146. The second issue raised by the assessee is that learned CIT-A erred in treating the sum of Rs. 26,63,386/- as unexplained cash credit out of the total amount of Rs. 2,94,98,782/- credited in different bank accounts.There were appearing credit entries of Rs. 4,00,84,234/- in the different bank account of the assessee. But the assessee, failed to justify the source of such credit entries and therefore the AO treated the same as unexplained cash credit by adding to the total income of the assessee. However, the AO subsequently in the order under section 154 of the Act reduced the addition to Rs. 2,94,98.782/- only.

147. The assessee carried the matter to the learned CIT (A).

148. The assessee before the learned CIT (A) made detailed submission about the source of credit entries in the bank accounts. The learned CIT (A) also called for the remand report from the AO on the details submitted by the assessee. The learned CIT (A) after considering the remand report founds that the assessee failed to discharge the onus cast under section 68 of the Act for an amount of Rs. 26,63,386/- credited in different bank accounts from different party detailed as under:

1. Rs. 8,386/- in RBS Bank bearing account number 1555195
2. Loan amount of Rs. 24,75,000/- received from one Shri Arunishbhai P. Patel in HDFC Bank account.
3. Loan amount of Rs. 90,000/- each from Shri Razak Mohammad bhai and Shri Kalubhai Mohammad bhai credited in HDF bank account.

149. Thus the learned CIT (A) was pleased to confirm the addition of ▪ 26,63,386/- only. The ground of appeal of the assessee was partly allowed.

150. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

151. The learned AR before us submitted that an amount of Rs. 8386.00 was representing the transfer from RBS Bank. The learned AR for the receipt of Rs. 24.75 Lacs from Shri Arunishbhai P. Patel in HDFC Bank account submitted that he has made best effort to collect necessary document from the party but failed. Thus the Revenue should exercise power conferred under the Act to verify the genuineness impugned transaction by collecting necessary details from the bank directly.

152. The ld. AR for the receipt of Rs. 1.8 Lacs from Shri Razak Mohammad bhai and Shri Kalubhai Mohammad bhai credited in HDFC bank account submitted that the amount was received against some transaction. But the assessee is unable to trace the party as of now.

153. On the contrary the learned DR before us vehemently supported the order of the authorities below.

154. We have heard the rival contentions of both the parties and perused the materials available on record. It is the trite law that the primary onus lies upon the assessee to justify his stand. Thus, it was the duty of the assessee to explain the source of credit entries appearing the bank account to the tune of Rs.26,63,386/- only.

155. As regards addition of Rs.8,386/-, we note that the assessee has submitted that it represents the transfer from the other bank maintained by him. Admittedly, the internal transfer of the fund does not represent the income. But it has to be proved based on the documentary evidence. However, we note that the AO in his remand report has submitted that he is not able to arrive at the clear conclusion after seeing the bank statement that amount represents the internal transfer of fund. The comment of the AO in the remand report, which has been relied upon by the learned CIT-A, does not appear to be based on cogent reasons. No plausible reason has been furnished by the AO in the remand report. Accordingly in the absence of specific finding of the AO in the remand report, we are not inclined to uphold the addition of Rs.8,386/- to the total income of the assessee.

156. Regarding the addition of Rs. 24.75 Lacs, we note that the assessee failed to provide the details of the party including the address. Indeed, the primary onus lies upon the assessee to produce the necessary evidences in support of cash credit. The assessee was afforded enough opportunities to bring the necessary details on record during the assessment and remand proceedings.

157. The request of the assessee to collect the necessary details from the bank is not acceptable for the reason that the assessee should have been known about the party such as name and address. On the letter written by the assessee to the bank, it is revealed that the assessee was not aware of anything about the credit entry reflecting in his bank statement. The relevant contents of the letter written (PB No.217) to the bank reads as under:

"To,
The Manager,
The Royal Bank of Scotland pic
Brady House,
14, Veer Nariman Road,
Fort, Mumbai - 400023

Date: 25/06/2018

Subject: Request for Identification of Remitter for the F.Y. 2013-14 Dtd. 08/01/2014 (Ref. CHQ DEP/544951/OWPADRA1/5) Rs.24,75,000=00

"Dear SirMadam,

I. Pravinbhai R. Patel, had account in your bank. The Bank Details are as follow:

Name of the A/c Holder Address	*: Pravinbhai R. Patel* *52, Sarvoday Society* *Nizampura, Vadodara.* *390002, Gujarat, India.*
Bank Account Number	*: 1555195*
Bank Name and Address	*: GF, Chitrakut Complex, Nr.* *Pashabhai Park &* *Natubhai Circle, Race Course* *Vadodara.*
Customer Relation ***Number***	***: 852207***

Please note that in my personal case there is raid from Income Tax Department. My case is in Appeal with Income Tax Department. In this regards they are asking for the clarifications of all the receipts (Credit) entries in my Bank Statement.

In this regards, one entry dated 08/01/2014 Rs. 24,75,000=00 ref. CHQ DEP/544951/owpadra1/SBIN/DAND/, I am not able to found the remitter details.

Hence requesting you to please inform the remitter (Party name) details of the above payment made to me.

Matter is very urgent and hence request you to inform ASAP. My email ID is: pravinpatel78@yahoo.co.in

Thanks and regards,
Sd/-
Pravinchandra R. Patel"

158. Thus, in view of the above we hold that the assessee failed to discharge the onus imposed upon him under the provisions of section 68 of the Act. Hence, we are not inclined to interfere in the order of learned CIT-A.

159. As regards to the addition of Rs.180,000/-, we again note that the assessee has not furnished the necessary details in support of the bank entry of Rs.1.80 Lacs. It was the onus of the assessee to furnish the identity, creditworthiness and genuineness of the transaction. But we note that the assessee failed to do so. Accordingly we do not find any reason to deviate from the finding of the authorities below. Hence the ground of appeal of the assessee is partly allowed.

160. The issue raised by the assessee in ground No. 3 is that the learned CIT(A) erred in confirming the addition made by the AO for Rs.3,97,37,485/- as unexplained loans/investments in M/s Neotech Education foundation.

161. As a result of search and survey operation under section 132 and 133A of the Act at the premises of Sigma Group dated 13th November 2014 in which assessee was also covered and at the premises of M/s Neothech Education Foundation a document bearing page No. 35 of Annexure A-3 was seized. This document was containing the amount of cash and bank under the head 'sources of funds' as on 28 February 2014 in the name of PRP and PPP. As per the AO 'PRP' stands for Shri Parvin Chandra R Patel and 'PPP' stands for Shri PreetParvin Chandra Patel. On the seized document, there was the breakup of bank amount of Rs.14 Lacs and 79 Lacs shown in the name of PRP and PPP respectively. Such breakup of the bank account was containing the details of cheque Nos. along with the dates and amount which was exactly matching with the bank account of the assessee. The bank entries were

reflecting the payment made to Neotech Education Foundation which was shown as unsecured loan in the books of Neotech Education Foundation. Accordingly, the AO was of the view that the amount shown under 'cash' aggregating to Rs.3,97,37,485/- was representing the cash payment made to M/s Neotech Education Foundation. Based on the above, the AO sought an explanation from the assessee about the source of the fund recorded as cash and bank for Rs.3,97,37,485/- and 14 Lacs which has been utilized for making the payment to the M/s Neotech Education Foundation. However, the assessee failed to make any reply to the question raised by the AO. In the absence of any reply from the side of the assessee, the AO treated the cash and bank amount of Rs.3,97,37,485/- and 14 Lacs respectively as unexplained loans/investments in M/s Neotech Education Foundation. Accordingly, the entire amount of Rs. 4,11,37,485/- (Rs. 3,97,37,485/- plus 14 lacs) was added to the total income of the assessee.

162. Aggrieved assessee preferred an appeal to the learned CIT (A).

163. The assessee before the learned CIT (A) submitted that there was no corroborative evidence found during the course of search suggesting that the assessee has made cash payment to M/s Neotech Education Foundation. As such, the assessee has only made the payment through the banking channel which was duly recorded. Had there been any payment in cash, there would have been the entry in the books of accounts of M/s Neotech Education Foundation. Thus, the addition has been made by the AO based on surmises and conjecture by holding that the loans/investments was extended/made in the Neotech Education Foundation.

164. The assessee alternatively also submitted that if alleged investment presumed to be made in cash by him in Neotech Education Foundation. Then setoff of income already shown by way of brokerage income in cash along with the other assessee who are forming the part of the group amounting to Rs.3,21,46,600/- in different assessment years should be provided. As such cash income was available with the assessee for investment.

165. The assessee without prejudice to the above further contended that he has already shown surplus of cash in the regular books of accounts along with the group in different assessment years amounting to Rs. 81,05,565/- only. As per the assessee, such cash amount was available with him for making the impugned investments and therefore, the same should be adjusted with the alleged amount of cash invested in Neothech Education foundation.

166. The assessee also submitted that there was protective addition of Rs. 2.98 crore made in its hand on account of on money paid by the M/s Neotech Education Foundation for purchase of land. The payment for alleged on money was made to the vendor of the land before the date as mentioned on page 35 of Annexure A-3 i.e. 28th February 2014. Then, it should be treated that such amount has been paid by him to M/s Neotech Education foundation out of the alleged cash investment/loan of Rs. 3,97,37,485/- only. Therefore, the protective addition of Rs. 1.98 core and 1 crore in A.Y. 2012-13 and 2013-14 respectively should be deleted.

167. The learned CIT (A) after considering the submission of the assessee deleted the addition to the extent of Rs. 14 Lacs made through banking channel whereas he confirmed the addition of Rs. 3,97,37,485/- for the alleged payment made in cash by observing as under:

> *"21.4 At para 4 of the assessment order for A.Y.2014-15 and at para 3 of the assessment order for A.Y.2015-16, the AO mentions that "Assessee has disclosed Rs.49,00,000/- as undisclosed income for A.Y.2014-15 and 2015/16. Assessee has filed return of income u/s 153A by offering income of Rs.39,00,000/- (which is a typographical error and the amount in the return is Rs.30,00,000/-) in A.Y.2014-15 and Rs.10,00,000/- (which is a typographical error and the amount in the return is Rs.19,00,000/-) in A.Y.2015-16. Hence penalty proceedings u/s 271(l)(c) are initiated in respect of unaccounted income for which disclosure is made". However, the AO has not allowed any set off of any unaccounted/undisclosed expenses on account of the additional income of Rs.30 Lacs and Rs.19 Lacs which becomes available with the appellant.*
>
> *21.5 In this regard, it is reiterated that I have held in the case of M/s. Neotech Education Foundation that it is not possible to hold the "brokerage income" shown in the returns u/s 139(4) and u/s 153A by some of the Directors and their family members as "disclosure of (unaccounted) income". Reasons are at para 12.10.3 before of this order. However, in view of the submission of the appellant at para 21.3 above, it cannot be denied that the income of the appellant including the "brokerage income" of Rs.30 Lacs in A.Y.2014-15 and of Rs.19 Lacs in A.Y.2015-16 which is in cash are definitely available to the appellant and some of the unaccounted expenses/loans must be telescoped/set off as apparently the appellant has not shown any appropriation of the "brokerage income" (which has been claimed as disclosure of*

unaccounted income by the appellant). Not only thevSe, but other additions in relation to undisclosed income/unaccounted receipts made in the assessment order and being confirmed in this appeal order are available in the hands of the appellant to be set off as being applied/appropriated towards the undisclosed expenses/unaccounted payments which have been added in the assessment order and by themselves, each item may have been held unexplained in this appeal order.

21.6 I would not be fair if I do not mention that I note that the cases in the Neotech Education Foundation Group (specially of the appellant and M/s. Neotech Education Foundation) have not been represented well during the assessment proceedings and the seized documents and the transactions contained therein were not properly explained to the AO. The submission during the appellate proceedings before me also has not been up to the mark as is evident that the appellant has taken various additional grounds and arguments subsequently (and very late in the proceedings) and they were in piecemeal which I cannot concede to at this stage unless the AO is given opportunity to examine them again. So also I have the feeling that the appellant still (even after the last submission dated 28/11/2018) has not come clean and complete with a consolidated fund flow encompassing all the affairs as it should have been.
21.7 In principle good many set off of unexplained expenses against unexplained income appears as claimed now but so late in the proceedings by the appellant seem reasonable. At this stage I can only direct the AO to allow the set off to the extent possible while giving effect to the appeal orders. I direct the AO to allow set off of at least Rs.30 Lacs (of brokerage income during the year) against the addition of Rs.3,97,37,485/- confirmed at para 21.2 of this order.

168. Being aggrieved by the order of the learned CIT (A), both the assessee and the Revenue are in appeal before us. The assessee is in appeal against the confirmation of the addition of Rs.3,97,37,485/- whereas Revenue is appeal against the direction of learned CIT (A) to allow the credit of Rs. 30 Lacs as declared by the assessee in return of income as brokerage income.

169. The learned AR before us filed a paper book running from pages 1 to 227 and contended that the document bearing page No. 35 is not an authentic piece of evidence. Hence, the same is not reliable. The addition made on such page is based on surmises and conjecture without having corroborative material. Likewise, such page No. 35 was not confronted during the search to the assessee while recording the statement. Thus the addition has been made hypothetically.

170. Without prejudice to the above, the benefit of telescoping of cash income by way of brokerage declared by the group of the assessee for Rs. 3,21,41,600/- crores and the amount of cash available in the hands of the assessee should be provided.
The learned AR without prejudice to the above also contended that there was the surplus of cash in hand available with him amounting to Rs.81,00,065/- which should

be adjusted against the impugned addition. The learned AR in support of his contention drew our attention on page 226 of the paper book where the cash flow statement was placed.

171. On the contrary the learned DR before us vehemently supported the order of the authorities below.

172. We have heard the rival contentions of both the parties and perused the materials available on record including the seized documents based on which the addition was made by the authorities below. The 1st question that arises for adjudication whether the document bearing No. 35 of Annexure A-3 for the purpose of the addition is a dumb document. Admittedly, there was not only the amount of cash but also the transaction of banks were recorded in the seized document i.e. containing the date and the cheque numbers of the bank account maintained by the assessee. The bank entries were duly matching with the bank account of the assessee. These bank entries were representing the payment made by the assessee to M/s Neotech Education Foundation which were classified as unsecured loan by M/s Neotech Education Foundation in its books of accounts. It was not also contended by the assessee that the bank entries are the dumb documents. Thus, to the extent of bank entries, there is no iota of doubt on the genuineness of such transactions which were recorded in the same seized document where amount of cash without any details was mentioned at ₹ 3,97,37,485/ only. It is the trite law that seized documents should be read as a whole and not in piecemeal to reach to the logical end. In holding so we draw support and guidance from the order of the coordinate bench of Pune ITAT in case of Dhanvarsha Builders & Developer (P.) Ltd. reported in 102 ITD 375, the relevant portion of the order is extracted herein:

> *"So far as the argument of the assessee that the impugned papers not only showed the receipts but also the expenditure and, therefore, the documentshould be read as a whole and deduction for the expenditure incurred should be given to the assessee while computing undisclosed income was concerned, the seizeddocumentshould be read as a whole if it has to be relied upon. It cannot be read only to the extent it is advantageous to the revenue and not read when it becomes disadvantageous to the revenue. It is an accepted principle of interpretation of documents that they should be read as a whole, as persons of common prudence will read them. They cannot be read in bits and parts to suit the convenience of one party or the other.*

172.1. Once the bank entries are matching with the regular books of accounts of the assessee, it would be meaningless to contend that amount of cash recorded in the same seized document is a dumb information. In other words, the cash amount recorded in the seized documents is a meaningful information and the same should be read in a scientific manner. At this juncture, it is also pertinent to note that there is a presumption provided under section 132(4A) /292C of the Act which provides that the contents of the seized documents are true. The relevant extract of the provisions of this section are extracted as below:

> ***Search and seizure.***
> *(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed—*
> *(i) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX*
> *(ii) that the contents of such books of account and other documents are true ; and*
> XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
>
> ***Presumption as to assets, books of account, etc.***
> ***292C.*** *(1) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed—*
> *(i) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX*
> *(ii) that the contents of such books of account and other documents are true; and*

173. Indeed, the presumption as provided above is rebuttable and the onus lies upon the assessee to rebut such presumption based on the cogent reasons as discussed above. However, we note that the assessee has not brought any plausible reason before us against the finding of the learned CIT (A) insofar the presumption of the contents are concerned. Accordingly we conclude that such document is an important piece of evidence which can be used for computing taxable income of the assessee. Accordingly, we conclude that the amount of cash invested in M/s Neotech Education Foundation of Rs.3,97,37,485/ represents the unaccounted income of the assessee.

174. However, we note that the assessee along with the group has already disclosed income in the income tax returns for the different assessment years in cash by way of brokerage income aggregating to Rs.3,21,41,600/- crores which is undisputed fact. The relevant of such disclosure stands as under:

Name of assessee	***AY 2013-14***	*AY 2014-15*	*AY 2015-16*	*Total*
Shri Pravinchandra R. Patel	***-***	*3,000,000*	*1,900,000*	*4,900,000*
Smt.Anauyaben P. Patel	*-*	*1,000,000*	*-*	*1,000,000*
Shri Manish B Shah	*-*	*-*	*-*	*7,000,000*
Shri Dipali M Shah	*-*	*-*	*-*	*-*
Shri Preet P Patel	*4,400,000*	*5,841,600*	*9,000,000*	*9,241,600*
Total /s (Rs.)	*4,400,000*	*9,841,600*	*10,900,000*	***32,141,600***

174.1 The above disclosure of cash income for the sum of Rs.3,21,41,600/- crores evidences the availability of cash in the hands of the group which requires to be set off against the unaccounted of Rs. 3,97,37,485/ added in the hands of the assessee. In this connection, we also note that the learned CIT (A) has also given a categorical finding that the assessee along with the group has shown income in cash. The relevant finding of the learned CIT (A) stands as under:

> *21.7 In principle good many set off of unexplained expenses against unexplained income appears as claimed now but so late in the proceedings by the appellant seem reasonable. At this stage I can only direct the AO to allow the set off to the extent possible while giving effect to the appeal orders. I direct the AO to allow set off of at least Rs.30 Lacs (of brokerage income during the year) against the addition of Rs.3,97,37,485/- confirmed at para 21.2 of this order.*

175. It is the settled law that the Revenue cannot mix the hot and cold for making the addition to the total income of the assessee which would certain lead to the double addition. As such the Revenue on the one hand cannot treat the cash investments as income of the assessee without adjusting the cash income declared by the assessee in the income tax return. It should be presumed that the cash income disclosed by the assessee is utilized for making investment in Neotech Education Foundation in the absence of any contrary evidence. It is also not in dispute that the assessee along with family members have earned cash income and declared the same as brokerage and there is no finding that such cash income has been utilized for any other purpose. In other words, the cash income disclosed by the assessee was available for the impugned investment in cash. Thus to our considered view, the adjustments to the extent of the cash income declared by the assessee along with the group should be made against such cash investments.

176. Before parting, we also note that there was the surplus of cash available with the assessee in different assessment years and nothing was brought on record by the revenue suggesting that this cash available in the books of accounts has been utilized for any other purpose. Thus in the absence of any contrary information about the cash available with the assessee in the books of accounts, it could be inferred that such amount in cash has also been utilized for the purpose of making the investment in cash M/s Neotech Education Foundation. Thus, to our understanding the regular cash available with the assessee for Rs. 81,00,065/-, as submitted before us by the assessee, should also be adjusted against the addition of the impugned investment in cash of Rs.3,97,37,485/subject to verification. In this connection, it is also important to note that the assessee is not into any business activity and not maintaining any books of accounts. So, it can be assumed in the absence of any contrary information, such cash in hand was available with the assessee for the investment. The learned DR at the time of hearing has also not brought anything contrary to the arguments advanced by the learned AR appearing on behalf of the assessee.

177. At is juncture, it is equally pertinent to note that there was addition of ₹ 2.98 crores (being 1.98 crore and 1 crore in A.Y. 2012-13 and 2013-14) on substantive basis in the hands of M/s Neotech Education Foundation and protective basis in the hands of assessee in respective assessment year i.e. 2012-13 and 2013-14. It was alleged by the Revenue that there was the cash payment against the purchase of land acquired by M/s Neotech Education Foundation which was not recorded the books of accounts in the respective assessment years. In this regard, we hold that once the addition on substantive basis to the tune of Rs.3,97,37,485/ representing the investment in cash by the assessee has been made by us, there cannot be any other addition either in the hands of M/s Neotech Education Foundation or other directors on substantive/protective basis. In other words, the payment of Rs.2.98 crores represents the application of the income added in the hands of the assessee. As such, the investment of Rs.2.98 crores has been made out of the addition made in the hands of the assessee for Rs.3,97,37,485/. Thus if any addition is sustained in

the hands of any other party, that would lead to the double addition which is not desirable under the provisions of law.

178. However, before we part with the matter, we are inclined to deal with one procedural issue as well. The payment of Rs. 2.98 crores for the acquisition of the land was made in the assessment years 2012-13 and 2013-14 whereas the income of Rs.3,97,37,485/ crores has been added in the hands of the assessee in the assessment year 2014-15. Thus a question arises how to establish the link between the income added in the hands of the assessee viz a viz the cash payment made by M/s Neotech Education Foundation as these transactions pertain to different assessment years. In this regard, we note that the seized document bearing page No. 35 contains the position of investment made by the assessee in cash as on 28 February 2014 and it does not establish the fact that this cash income was generated by the assessee in the year under consideration. Thus, in the absence of necessary information, we can safely presume that this income was earned by the assessee over the period of time which was invested inM/s Neotech Education Foundation over the period. We are presuming so for the reason that there is no other information available on record except that the cash income of Rs.3,97,37,485/ was invested in M/s Neotech Education Foundation.

179. In view of the above and after considering the facts in totality, we direct the AO to allow the adjustments for Rs. 3,21,41,600/- and Rs. 81,00,065 lacs against the addition made by him for the investment in cash in M/s Neotech Education Foundation for Rs.3,97,37,485/ only. The adjustment of Rs. 81,00,065/- is subject to verification. Effectively, if the availability of cash for Rs.81,00,065/- is found based on the documentary evidence, there cannot be addition of any income in the hands of the assessee. Hence the ground of appeal of the assessee is partly allowed in terms of the above.

180. In the result, the appeal of the assessee party allowed.

181. Coming to ITA number IT(SS) No. 74/Ahd/2019, an appeal by the Revenue for A.Y. 2014-15.

1. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.85,06,250/- as unexplained credit entries in the bank account, when the assessee failed to prove creditworthiness of lender and genuineness of transaction.*
2. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the additions of Rs.2,51,180/-; Rs.5,58,300/- as unexplained income when the assessee failed to substantiate the source of above income.*
3. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in allowing set off of Rs.30,00,000/- of brokerage income, when the assessee could not substantiate the same with documentary evidence and there is no nexus between the brokerage income and the addition made on account of Loan/investment.*
4. *It is, therefore, prayed that the order the Ld. CIT(A)-12, Ahmedabad may be set aside and that of the AO maybe restored to the above extent.*

182. The ld.counsel for the assessee, at the outset submitted that total tax effect involved in disputed aggregate additionis below Rs.50 Lacs, and therefore, the appeal of the Revenue is not maintainable in terms of recent CBDT Circular which has prohibited the Department not to file the appeal before the Tribunal, where the tax effect is below Rs.50 Lacs. Therefore, appeal of the Revenue is liable to be dismissed at the threshold as not maintainable. However, the ld.DR did not dispute the same, but left the issue to the Bench to pass appropriate order in accordance with law.

183. We find that admittedly total tax effect in appeal of the Revenue is below Rs.50 Lacs, and therefore, keeping in view the above CBDT circular and provisions of section 268A of the Income Tax Act, we are of the view that the present appeal of the Revenue deserve to be dismissed at the threshold. It is accordingly dismissed.

184. However, it is observed that in case on re-verification at the end of the AO it can be demonstrated that the tax effect on the disputed addition is more, or Revenue's case falls within the ambit of exceptions provided in the Circular, then the Department will be at liberty to approach the Tribunal for recall of this order. Such application should be filed within the time period prescribed in the Act

185. In the result, the appeal of the Revenue is dismissed due to low tax effect.

186. Coming to ITA No. 299/Ahd/2019, an appeal by the assessee for A.Y. 2015-16.

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

"1.0 On the facts and in the circumstances of your appellant's case and in law, the Id. CIT (A) has erred in treating agriculture income to the extent of Rs.4,50,000/- as income from unexplained other sources. (Para 22.1 on page 156/157 of the appellate order).

2.0 (a) On the facts and in the circumstances of your appellant's case and in law, the Id. CIT (A) has erred in confirming addition as unexplained credits to the extent of Rs.33,50,000/- in various banks on the ground that for various deposits alleged as received from parties onus u/s 68 has not been discharged by the appellant. (Para 22.5 on page 158/159 of the appellate order).

(b) On the facts and in the circumstances of your appellant's case and in law, the Id. CIT (A) has erred in confirming addition u/s 68 of the Act as unexplained credits to the extent of Rs.33,50,000/- in various banks, since appellant submits that bank statements/pass books are not books of accounts as envisaged under the provisions of section 68 of the Act. (Para 22.5 on page 158/159 of the appellate order).

3.0 On the facts and in the circumstances of your appellant's case and in law, the Id. CIT (A) has erred in confirming addition as investment from undisclosed sources to the extent of Rs.46,00,000/- in purchase of agricultural land. (Para 22.7 and 22.9 on page 159/160/161 of the appellate order).

4.0 On the facts and in the circumstances of your appellant's case and in law, the Id. CIT (A) has erred in confirming addition as unexplained investments/payments of Rs.5,11,000/- from undisclosed sources (Para 22.8 on page 160 of the appellate order)."

188. The first issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowances of agricultural to the extent of Rs. 4.5 Lacs.

189. At the outset we note that the issues raised by the Assessee in its ground of appeal for the AY 2015-16 are identical to the issues raised by the assessee in IT(SS) No. 43/AHD/2019 for the assessment year 2014-15. Therefore, the findings given in IT(SS) No. 43/AHD/2019 shall also be applicable for the year under consideration i.e. AY 2015-16. The appeal of the assessee for the assessment year 2014-15 has been decided by us vide paragraph No. 144 to 145 of this order partly in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2014-15 shall also be applied for the year under consideration i.e. AY 2015-16. Hence, the grounds of appeal filed by the assessee is partly allowed.

190. The second issue raised by the assessee is that learned the CIT (A) erred in treating the sum of Rs.33.50 lacs as unexplained cash credit out of the total amount of Rs.13,92,28,464/ credited in different bank accounts.

190.1 There were appearing the credit entries for Rs. 13,92,28,464/- in the bank account of the assessee. But the assessee, failed to justify the source of such credit entries and therefore the AO treated the same as unexplained cash credit by adding the same to the total income of the assessee.

191. The assessee carried the matter to the learned CIT (A).

191.1. The assessee before the learned CIT (A) made detailed submission about the source of entries in the bank account. The learned CIT (A) also called for the remand report from the AO on the details filed by the assessee. The learned CIT (A) after considering the remand report held that the assessee failed to discharge the onus cast under section 68 of the Act for the amount aggregating to ₹ 33.50 Lacs credited in HDFC bank which is detailed as under:

S. No.	Party name	Amount
1.	Shri SachinAshokbhi Patel	Rs. 6.5 Lacs
2.	Shri RavibhaiRashikbhai Patel	Rs. 7.5 Lacs
3.	Smt. Archnabenkantibhai Patel	Rs. 6 Lacs
4.	Shri Manish I Patel	Rs. 1 Lacs
5.	Smt. DevarshiVipul Thakkar	Rs. 12.5 Lacs

192. Thus the learned CIT (A) was pleased to confirm the addition of Rs.33.50 Lacs. The ground of appeal of the assessee was partly allowed.

193. Being aggrieved by the order of the learned CIT (A), both the assessee and Revenue are in appeal before us. The assessee is in appeal for confirmation of Rs. 33.5 Lacs whereas the Revenue is in appeal for the deletion of Rs. 4.3 crore. The relevant grounds of the Revenue's appeal read as under:

> *"1. On the facts and in the circumstances of the case and in law, the ld.CIT(A) has erred in deleting the addition of Rs.2,89,30,469/-* ***(wrongly mentioned actual Rs.4.30 crores)*** *as unexplained credit entries in the bank account, when the assessee failed to prove creditworthiness of lender and genuineness of transaction."*

194. The learned DR at the time of hearing submitted before us submitted that ground of appeal is for Rs. 4.3 crores but at the time of filling of appeal it was inadvertently written as Rs. 2,89,30,469.00

195. The learned AR before us contended that the assessee has furnished all the details of the parties from whom the amount was received such as PAN, confirmation and bank statement. Thus, the assessee has discharged the onus by furnishing the necessary details. Accordingly, no addition is warranted.

196. On the contrary the learned DR before us submitted that the assessee failed to file the copies of the income tax return of the parties who have given loan to the assessee. Both the learned AR and the DR vehemently supported the order of the authorities below to the extent favourable to them.

197. We have heard the rival contentions of both the parties and perused the materials available on record. It is the trite law that the primary onus lies upon the assessee to justify his stand. Thus, it was the duty of the assessee to explain the source of credit entries appearing in the bank account to the tune of ₹ 33.50 Lacs. But we find that the assessee has failed to do so in respect of the party namely Shri SachinAshokbhai Patel. Accordingly, we confirm the addition of ₹ 6,50,000 representing the amount received from Shri SachinAshokbhai Patel.

198. With respect to the remaining parties, we note that the assessee has furnished the confirmation along with the PAN and in some of the cases bank statement. Thus we hold that the assessee has discharged the primary onus imposed under section 68 of the Act. Considering the profile of the assessee, the value of loan is not of significant amount which would create doubt on the genuineness of such loan. Had there been any doubt about the genuineness of the loan, the Revenue should have verified the same by issuing notice under section 133(6) of the Act. But we note that the authorities below have not exercised such powers. Accordingly, we are not impressed with the finding of the authorities below to the extent of the loan shown by the assessee for Rs. 27 Lacs. Accordingly, we set

aside the order of the learned CIT-A and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is partly allowed.

199. With respect to the issue raised by the revenue, we find that the AO in his remand report has not pointed out any defect with respect to the onus imposed upon the assessee under the provisions of section 68 of the Act. Accordingly we are of the view that, once the assessee has discharged the onus by furnishing the necessary details then the onus is shifted upon the revenue to reject the submission of the assessee based on the cogent reasons. But we note that the AO failed to exercise the powers conferred under the provisions of section 133(6)/131 of the Act by issuing notices upon the loan parties for taking the confirmation. The learned DR at the time of hearing has also not brought anything on record contrary to the finding of the learned CIT-A. Hence, we do not find any reason to interfere in the finding of the learned CIT-A. Hence the ground of appeal of the Revenue is hereby dismissed.

200. The third issue raised by the assessee is that the learned CIT(A) erred in confirming the order of the AO by sustaining the addition of Rs.46 Lacs out of the total addition of Rs. 50 Lacs made by the AO.

201. As per seized document bearing page No. 11 and 12 of annexure A1, the assessee along with his wife purchased a piece of land for a sum of Rs. 1 crores. The share of the assessee was 50% in such investment of land. But the assessee has not made any satisfactory explanation about the source of investment. Thus, the AO made the addition of Rs.50 Lacs as unexplained investment under section 69C of the Act to the total income of the assessee.

202. Aggrieved assessee preferred an appeal to the learned CIT(A).

203. The assessee furnished the details of the payment for Rs.37.5 Lacs in connection with the purchase of land.The learned CIT (A) called for the remand report from the AO who submitted that there were cash withdrawals from the bank but there was no clarity that the same has been utilized for the purpose of making

the payment for the purchase of land. As per the sale deed the total consideration was paid before the execution of the sale deed dated 24th of September 2014 whereas the assessee has tried to clarify to have made the payment of Rs.37.50 Lacs after execution of the sale deed except for a cheque of Rs. 8 Lacs dated 30th April 2012 i.e. the payment was made before the execution of the sale deed.

204. The assessee in his rejoinder submitted that he has paid along with the co-owner the token money of Rs.8 Lacs and reaming amount through postdated cheques and till a total of Rs. 37.5 Lacs only in cleared. The balance amount of Rs. 62.25 Lacs is still payable. To this effect, assessee has furnished the confirmation from the vendor of the land in the form of the affidavit. However, the learned CIT (A) confirmed the addition of Rs.46 Lacs by observing as under:

> *"22.6 As to this addition of Rs.50,00,000/- on account of investment in land, it is seen that verification of documents seized from the premises of Neotech Education Foundation revealed that Pages 11 and 12 of Annexure-A-1 contained noting regarding purchase (jointly by the appellant with his wife) of agriculture land for Rs.l,00,00,000/- from one Shri Aas Mohammed Pathan. It is case of the appellant that the land was purchased vide Deed dated 24/09/2014 (FY 2014 related to AY 2015-16) and that post dated cheques were issued to the Seller out of which, till date only Rs.37,50,OOO/- out of appellant's bank account has been encashed by the Seller. In the Remand Report dated 16/08/2018, the AO has noted that the dates of cheques except one dated 30/04/2012 (of Rs.8,00,000/-) are after the date of execution of purchase deed and has held that the claimed payment of Rs.37,50,OOO/- is not towards purchase of land and therefore, investment of Rs.50,00,000/- made by the assessee remains unexplained.*
>
> *22.7 I have examined the details and find that the purchase deed mentions receipt of Rs.1,00,00,000/- by the Seller without mentioning the details (break up and mode) of such receipts. Thus the appellant cannot say that the considerations are being paid subsequent to registration of sale deed and by post dated cheques. However, during the appellate proceedings the appellant was required to furnish a confirmation from the Seller as to the actual receipt so far and also a certificate/ confirmation from the bank that the stated cheques were credited to the bank account of the Seller. The appellant has failed to fulfill these requirements and thus it is held that the appellant has failed to substantiate his claim. It is impossible to believe chat a person will sell land (that too of such size and of such consideration) based only on post dated or undated cheques to be realised in future and that too without mentioning those instruments in the sale deed. If at all, realization of post-dated cheques can happen only if the consideration is already paid in cash at the time of purchase/before execution/registration of sale deed and subsequently as and when cheques are realised, the equivalent cash may be returned by the seller(s) to the buyer(s). Thus even if the claim of payment till date of Rs.37,50,000/- through banking channels by the appellant is conceded to (though the same was not evidenced by way of certificate/confirmation from the bank), his share in the consideration (being 50%) which has natural presumption of being paid on or before the execution of the said sale deed and such amount will remain unexplained in the FY 2014-15 (deed being dated 24/09/2014) and addition on that account will be liable in corresponding A.Y. 2014-15. However, as advance token money of Rs.8,00,000/- vide cheque dated 30/04/2012 has been claimed to have been paid to the*

sellers, only Rs.92,00,000/-can be held to have been paid in cash. Thus 50% thereof i.e. Rs.46,00,000/- remains the income of the appellant on account of the investment having been made out of undisclosed sources. The AO is directed to substitute the addition of Rs.50,00,000/- with Rs.46,00,OOO/-. The ground succeeds partly."

205. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

206. The learned AR for us submitted that the payment has been made to the vendor after withdrawing the cash the bank. There is no information available with the Revenue indicating that the withdrawal of cash has been utilized for any other purpose. Thus, there cannot be any doubt with respect to the payment of Rs.37.50 Lacs which was made after the withdrawal of cash from the bank. The assessee for the balance amount has contended that it is outstanding. To this effect, confirmation from the vendor was also filed which is available on record.

207. On the contrary, the learned DR before us vehemently supported the order of the authorities below.

208. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the present case relates whether assessee has made payment from the unaccounted sources for the purchase of the property along with his wife. As per the assessee, total value of the land stands at Rs.1 crores only. Part of the same has been paid for Rs.37.50 Lacs and the balance amount is still remaining outstanding. Payment for the amount of Rs.37.5 Lacs was made after withdrawing the money from the bank. However, the AO did not believe the contention of the assessee for the reason that there was no evidence available with the assessee suggesting that money after withdrawal from the bank was paid to the vendor. It was also alleged by the revenue that as per sale deed dated 24 September 2014, the entire amount of payment should have been made by the assessee before the registration of sale deed whereas the payment has been made by the assessee post registration. This finding of the authorities below can create a suspicion about the fact that the assessee has made the payment from undisclosed sources to the vendor. But such suspicion however strong it cannot substitute the

evidence. It was the onus upon the revenue to establish based on cogent material that the payment has been made by the assessee from some other sources. But the revenue has not brought anything on record. Moreover, we also note that there is a confirmation from the side of the vendor that he has not received the full payment from the assessee, rather he has accepted to have received postdate cheque for the dispute arose in the impugned land. Confirmation of the vendor cannot be brushed aside until and unless other documentary evidences are brought on record. In view of the above we do not incline to uphold the finding of the authorities below. Accordingly we set aside the order of the learned CIT-A and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

209. The fourth issue raised by the assessee is that the learned CIT (A) erred in confirming the addition made by the AO for Rs. 5.11 Lacs as unexplained investment.

209.1. The assessee during the assessment proceedings claimed to have made the payment of Rs.5.11 Lacs as token amount for the purchase of land to Shri Sajid Khan through the cheque. However, the assessee failed to justify the source of payment made by him based on the documentary evidence. Accordingly, the AO treated the same as unexplained investment and added to the total income of the assessee.

210. Aggrieved assessee preferred an appeal to the learned CIT (A) who confirmed the order of the AO by observing that the assessee has not denied to have made the payment of Rs.5.11 Lacs for the purchase of the land which is also evident from the seized document bearing page No. 1-2 of annexure BS-1. However, the assessee failed to justify the source of payment i.e. from which bank such amount was transferred.

211. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

212. The learned AR before us submitted that the payment of Rs.5.11 Lacs was paid to the banking channel and therefore no addition is warranted. On the contrary the learned DR before us vehemently supported the order of the authorities below.

213. We have heard the rival contentions of both the parties and perused the materials available on record. It is the trite law that the primary onus lies upon the assessee to justify his stand. Thus, it was the duty of the assessee to explain the source of amount which was utilised for making token money for purchase of land. We note that the assessee failed to provide the details of bank or cheque from where fund was transferred. Indeed, the primary onus lies upon the assessee to produce the necessary evidences in support of amount paid. The assessee was afforded enough opportunities to bring the necessary details on record during the assessment and remand proceedings.Thus, in view of the above we hold that the assessee failed to discharge the onus imposed upon him under the provisions of section 69B of the Act. Hence, we are not inclined to interfere in the order of learned CIT-A., thus the ground of appeal of the assessee is dismissed

214. In the result, the appeal of the assessee partly allowed.

215. Coming to the ITA No. 392/AHD/2019, an appeal by the Revenue for A.Y. 2015-16.

216. The Revenue has raised the following grounds of appeal:

> *"1. On the facts and in the circumstances of the case and in law, the ld.CIT(A) has erred in deleting the addition of Rs.2,89,30,469/-* ***(wrongly mentioned actual Rs.4.30 crores)*** *as unexplained credit entries in the bank account, when the assessee failed to prove creditworthiness of lender and genuineness of transaction."*
> *2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in allowing set off of Rs.19,00,000/- of brokerage Income, when the assessee could not substantiate the same with documentary evidence and there is no nexus between the brokerage income and the addition made on account of Loan/investment.*
>
> *3. It is, therefore, prayed that the order the Ld. CIT(A)-12, Ahmedabad may be set aside and that of the AO maybe restored to the above extent.*
>
> *4. The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal."*

217. At the outset we note that the issue raised by the Revenue in ground 1 is adjudicated along with assessee appeal bearing ITA No. 299/Ahd/2019 vide paragraph number 197 to 199 of this order where we decided the issue against the Revenue. For the detailed discussion please refer the aforementioned paragraph. Accordingly, the ground of appeal by the Revenue is hereby dismissed.

218. The next issue raised by the Revenue is that the learned CIT(A) erred in setting off the brokerage income of Rs. 19 with unexplained investment.

219. At the outset we note that the issue is connected with addition of Rs. 3,97,37,485/- on account of unexplained investment made in A.Y. 2014-15where the assessee has sought setoff brokerage income of Rs. 3.21 crore in cash offered by the assessee along with other persons of the group in different assessment years. The present amount of Rs. 19 Lacs offered by the assessee is part of such disclosure of 3.21 crores. It is important here to note that we while the adjudicating the issue forthe addition of Rs. 3,97,37,485/- in AY. 2014-15 has allowed the setoff Rs. 3.21 core vide paragraph number 172 to 179 of this order. Thus the issue is covered against the revenue. Hence, the ground of appeal raised by the Revenue is dismissed.

220. The other issue raised by the revenue is general in nature. Hence the same is dismissed being infructuous.

221. In the result appeal of the Revenue is dismissed.

Now coming issue related to Ansuyaben P Patel

222. Coming to ITA No. IT(SS) No. 27/AHD/2019 and 31/AHD/2019 appeals by the Assessee for A.Y. 2012-13 and 2013-14

223. The only issue raised by the assessee in both the AYs is that the learned CIT (A) erred in making the protective addition of Rs. 1 crore and 1.98 crores on account of unexplained investment.

224. At the outset we note that the addition of Rs.1 crores and 1.98 crores on account of unexplained investment was made on substantive basis in the hands of M/s Neotech Education Foundation and protective basis in the hands of directors. The assessee is one of the director in M/s Neotech Education Foundation. It was alleged by the Revenue that there was the cash payment against the purchase of land by M/s Neotech Education Foundation which was not recorded in the books of accounts. In this regard, we find that once the addition on substantive basis to the tune of Rs. 3,97,37,485/ representing the investment in cash by the another director namely Shri Pravin C Patel has been made by us in the AY 2014-15, there cannot be any other addition either in the hands of M/s Neotech Education Foundation or other directors on substantive/protective basis. In other words, the payment of ▪ 1 and 1.98 crores represents the application of the income added in the hands of Shri Pravin Patel. As such, the investment of Rs.1 crores and 1.98 crores has been made out of the addition made in the hands of Shri Pravin Patel for Rs.3,97,37,485/. Thus if any addition is sustained in the hands of any other party, that would lead to the double addition which is not desirable under the provisions of law. Thus, we set aside the order of the ld. CIT-A and direct the AO to delete the addition made by him.

225. In the result both the appeals of the assessee are allowed.

226. Coming toIT(SS) No. 32/Ahd/2019, an appeal by the assessee for the AY 2013-14

227. The assessee has raised following grounds of appeal:

> *"1.0 On the facts and in the circumstances of your appellant's case and in law, the Id. CIT (A) has erred in holding that the addition of Rs.1,00,00,000/- be ma.de as unexplained investment in the hands of the appellant on protective basis as one of the directors of Neotech Education Foundation despite the said addition being made by the Ld AO and confirmed by the LdCIT(A) on substantive basis in the hands of the said Neotech Education Foundation, by holding thai appellant has joint and several liability along with other Directors. (Para 16,4 on page 72 of the CIT(A)'s order),*
>
> *2.0 Your appellant craves leave to add to and / or to amend / alter any or all of the ground(s) herein above raised."*

228. The only issue raised by the assessee is that the learned CIT (A) erred in making the protective addition of Rs. 1 crore on account of unexplained investment.

229. At the outset we note that the addition of Rs.1 crores on account of unexplained investment was made on substantive basis in the hands of M/s Neotech Education Foundation and protective basis in the hands of directors. The assessee is one of the director in M/s Neotech Education Foundation. It was alleged by the Revenue that there was the cash payment against the purchase of land by M/s Neotech Education Foundation which was not recorded in the books of accounts. In this regard, we find that once the addition on substantive basis to the tune of Rs.3,97,37,485/ representing the investment in cash by the another director namely Shri PravinCPatel has been made by us in the AY 2014-15, there cannot be any other addition either in the hands of M/s Neotech Education Foundation or other directors on substantive/protective basis. In other words, the payment of ₹ 1 crores represents the application of the income added in the hands of Shri Pravin Patel. As such, the investment of Rs.1 crores has been made out of the addition made in the hands of Shri Pravin Patel for Rs.3,97,37,485/. Thus if any addition is sustained in the hands of any other party, that would lead to the double addition which is not desirable under the provisions of law.

230. In the result appeal of the assessee is allowed.

231. Coming to IT(SS) No 28/Ahd/2019 an appeal by the assessee for A.Y. 2014-15

232. The assessee has raised following grounds of appeal:

> *"1.0 On the facts and in the circumstances of your appellant's case and in law, the Id. CIT (A) has erred in treating agriculture income to the extent of Rs. 2,00,000/- as income from unexplained other sources and further erred in holding that this addition shall invite consequences of Sec. 115BBE of the Act. (Para 16,3 on page 74 of the appellate order).*
>
> *2.0 On the facts and in the circumstances of your appellant's case and in law, the Id. CIT (A) has erred in confirming addition as unexplained credits to the extent of Rs.2,68,063/- in ICICI Bank on the ground that appellant has failed to give the details of redemption of mutual fund. (Para 17.4 on page 74 of the appellate order).*
>
> *3.0 On the facts and in the circumstances of your appellant's case and in law, the Id. CIT (A) has erred in confirming addition as unexplained credits to the extent of Rs.25,000/- in*

HDFC Bank on the ground that appellant has failed to give proof of transfer (Para 17.5 on page 75 of the appellate order).

4.0 On the facts and in the circumstances of your appellant's case and in law, the Id. CIT (A) has erred in holding that the addition of Rs.1,00,00,000/- be made in the hands of the appellant on protective basis with joint and several liability to pay tax thereon along with other directors of Neotech Education Foundation though there is no such finding in the appellate order of the said assessee. (Para 17.8 on page 76 of the CIT(A)'s order).

233. The first issue raised by the assessee that the learned CIT-A erred in holding the agricultural income shown by the assessee as income from undisclosed sources to the extent of Rs. 2 Lacs out of the total agricultural income of Rs. 2,48,600/-.

234. At the outset we note that the issues raised by the Assessee in its ground of appeal for the year under consideration is identical to the issues raised by the assessee's husband Shri Pravin Patel in IT(SS) No. 43/AHD/2019 for the assessment year 2014-15. Therefore, the findings given in IT(SS) No. 43/AHD/2019 shall also be applicable in case of the assessee on hand. The appeal of Shri Pravin Patel for the assessment 2014-15 has been decided by us vide paragraph No. 144 to 145 of this order partly in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings given in case of Shri Pravin Patel shall also be applied for the assessee. Hence, the grounds of appeal filed by the assessee is partly allowed.

235. The 2nd issue raised by the assessee is that the learned CIT (A) erred in confirming the addition of Rs. 2,68,063/- and Rs. 25,000/- as unexplained cash credit under section 68 of the Act out of the total amount of Rs. 28,29,777/-.

235.1 There were certain credit entries appearing in the bank accounts of the assessee namely ICICI bank and HDFC Bank amounting to Rs.4,04,739/- and 24,25,038/- respectively but the assessee failed to explain the source of the same during the assessment proceedings. Therefore, the AO treated the entire amount as unexplained cash credit under section 68 of the Act and added the same to the total income of the assessee.

236. Aggrieved assessee preferred an appeal to the learned CIT (A) who partly confirmed the addition made by the AO during the assessment proceedings. As per the learned CIT (A) there was the credit entry of Rs. 2,68,063/- in the ICICI bank account of the assessee dated 23rd July 2013 which was claimed by the assessee as redemption of the mutual fund. But the assessee failed to produce any documentary evidence justifying that the impugned amount of credit entry of Rs. 2,68,063/- represents the redemption of mutual fund. Likewise, there was the credit entry of Rs.25,000/- in the bank account of the assessee as on 8th March 2014 which was claimed by the assessee account opening fund transfer from RBS bank account no. 574901. However, the assessee failed to produce any documentary evidence in support of his contention. Therefore the learned CIT (A) confirmed the same. Hence the ground of appeal of the assessee was partly allowed by the learned CIT (A).

237. Being aggrieved by the order of the learned CIT, the assessee is in appeal before us.

238. The learned AR before us submitted that all the transactions were carried out through the banking channels. Therefore, no addition is warranted.

239. On the contrary, the learned DR before us vehemently supported the order of the authorities below.

240. We have heard the rival contentions of both the parties and perused the materials available on record. It is the trite law that the primary onus lies upon the assessee to justify his stand. Thus, it was the duty of the assessee to explain the source of credit entries appearing the bank account to the tune of Rs.2,68,063/- and Rs. 25,000/- only.

241. As regards to addition of Rs.25,000/-, we note that the assessee has submitted that it represents fund transferred from the RBS bank. Admittedly, the internal transfer of the fund does not represent the income. But it has to be proved based on the documentary evidence. However, we note that the AO in his remand report has submitted that no detail in relation to the amount transferred from RBS

bank was provided. The comment of the AO in the remand report, which has been relied upon by the learned CIT-A, does not appear to be based on cogent reasons. As such the assessee has furnished the detail of cheque and the AO was also having jurisdiction over the other group member of the assessee. The AO should have verified the detail with RBS Bank but AO not done so and in arbitrary manner held that no information was provided. Accordingly, in the absence of specific finding of the AO in the remand report, we are not inclined to uphold the addition of ₹ 25,000/- to the total income of the assessee.

242. Regarding the addition of Rs.2,68,063/-, we note that the assessee failed to provide the details of mutual fund which have been redeemed. Indeed, the primary onus lies upon the assessee to produce the necessary evidences in support of her claim. The assessee was afforded enough opportunities to bring the necessary details on record during the assessment and remand proceedings.Thus, in view of the above we hold that the assessee failed to discharge the onus imposed upon him under the provisions of section 68 of the Act. Hence, we are not inclined to interfere in the order of learned CIT-A to the extent addition confirmed for Rs. 2,68,063/-. Thus the grounds of appeal of the assessee is partly allowed.

243. The third issue raised by the assessee is that the learned CIT(A) erred in confirming the addition made by the AO for Rs.1 crore on protective basis ignoring the fact that there was no addition made on substantive basis in the hands of M/s Neotech Education Foundation in the year under consideration.

244. At the outset the learned AR contended that there was no substantive addition with respect to Rs. 1 crore in the hands of M/s Neotech Education Foundation for the year under consideration.Therefore, the question of making the addition on protective basis in the hands of the assessee does not arise. On the other hand, the learned DR vehemently supported the order of the authorities below.

245. We have heard the rival contentions of the parties and perused the materials available on record. The question of making protective and substantive assessment

arises in a situation where income accrues in the hands of 2 different persons/assessee and the revenue does not have clarity in whose hand the same should be brought to tax. In such a situation, to protect interest of revenue, the AO makes the addition of the same income in the hands of 2 different persons. The addition in the hands of 1 of the party is made on substantive basis and on protective basis in the case of other party for the same item of income. Thus, there is no ambiguity to the fact that the protective assessment can be made only in a situation where there is a substantive assessment in the hands of the other party for the same item of income. If it is not done so in such a manner, then the question of making the addition on protective basis does not arise. In the case on hand, we note that there is no substantive addition of Rs.1 crores in the hands of any other party for the year under consideration, therefore we are of the view that the question of making the addition on protective basis does not arise. Accordingly, we hold that no addition in the given case can be made on protective basis. Accordingly, we set aside the order of learned CIT (A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

246. In the result of the assessee is partly allowed.

247. Coming to ITA No 179/Ahd/2019 an appeal by the assessee for A.Y. 2015-16

248. The assessee has following grounds of appeal:

> *"1.0 On the facts and in the circumstances of your appellant's case and in law, the Id. CIT (A) has erred in treating agriculture income to the extent of Rs.4,00,000/- as income from other undisclosed sources and further erred in holding that this addition shall invite consequences of Sec. 115BBEof the Act. (Para 18.3 on page 77/78 of the appellate order).*
>
> *2.0 On the facts and in the circumstances of your appellant's case and in law, the Id. CIT (A) has erred in confirming addition as investment from undisclosed sources to the extent of Rs. 46,00,000/- in purchase of agricultural land. (Para 18.4 on page 78/79 of the appellate order).*

249. The first issue raised by the assessee that the learned CIT-A erred in holding that the agricultural income shown by the assessee as income from undisclosed

sources to the extent of Rs. 4 Lacs out of the total agricultural income of Rs. 4,48,600/- only.

250. At the outset we note that the issues raised by the Assessee in its ground of appeal for the A.Y. 2015-16is identical to the issues raised by the assessee in IT(SS) No. 28/AHD/2019 for the assessment year 2014-15. Therefore, the findings given in IT(SS) No. 28/AHD/2019 shall also be applicable A.Y. 2015-16. The appeal of the assessee for the assessment 2014-15 has been decided by us vide paragraph No. 234 of this order partly in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2014-15 shall also be applied for the year under consideration i.e. AY 2015-16. Hence, the grounds of appeal filed by the assessee is partly allowed.

251. The second issue raised by the assessee is that the learned CIT(A) erred in confirming the order of the AO by sustaining the addition of ▪ 46 Lacs out of the total addition of Rs.50 Lacs made by the AO.

252. At the outset, we note that the issues raised by the Assessee in its ground of appeal for year under consideration is identical to the issue raised by the assessee's husband Shri Pravin Patel in ITA No. 299/AHD/2019 for the assessment year 2015-16. Therefore, the findings given in ITA No. 299/AHD/2019 shall also be applicable in case of the assessee on hand. The appeal of Shri Pravin Patel for the assessment 2015-16 has been decided by us vide paragraph No. 208 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings given in case of Shri Pravin Patel shall also be applied to the assessee. Hence, the ground of appeal filed by the assessee is partly allowed.

253. In the result appeal of the assessee is partly allowed.

254. Coming to IT(SS) No. 68/Ahd/2019, an appeal by the Revenue for the A.Y. 2015-16.

255. The Revenue has raised the following grounds of appeal:

1. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.1,24,00,000/- as unexplained credit entries in the ICICI bank account, when the assessee failed to prove creditworthiness of lender and genuineness of the transactions.*

2. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.59,50,225/- as unexplained credit entries in the HDFC bank account, when the assessee failed to prove creditworthiness of lender and genuineness of the transactions.*

3. *It is, therefore, prayed that the order the Ld. CIT(A)-12, Ahmedabad may be set aside and that of the AO maybe restored to the above extent.*

256. The interconnected issue raised by the revenue is that the learned CIT (A) erred in deleting the addition made by the AO for Rs. 1,24,00,000/- and Rs. 59,50,225/- representing the deposits in the bank namely ICICI and HDFC treating the same as unexplained cash credit.

257. There were credit entries appearing in the bank account of the assessee namely ICICI bank and HDFC Bank amounting to Rs. 1,37,55,954/- and Rs. 2,17,00,225/- respectively which were not explained by the assessee during the assessment proceedings. Therefore, the AO treated the same as unexplained cash credit under section 68 of the Act and added to the total income of the assessee.

258. The assessee carried the matter before the learned CIT-A, who deleted the addition made by the AO by observing as under:

> *"18.5 As to the credit entries in the bank statement of ICICI bank, it is seen that a deposit of Rs.1,24,00,000/- in ICICI bank account has been claimed by the appellant to be loan from one Shri PankajIshwarbhai Patel who has been claimed to be an NRI. It is the case of the AO that no loan confirmation was filed by the appellant. It is the case of the appellant that the said loan was received in cheque and has been repaid by the appellant through banking channel. Though it is a settled principle of law that mere transaction in cheque and the claim of return are not sufficient to hold that the assessee has discharged the onus cast u/s.68 of the Act, however, the appellant has submitted the copy of bank statement of Shri PankajIshwarbhai Patel (ICICI Bank S/B A/c 0830175126) which evidences the identity and capacity of the lender. The lender is claimed to be an NRI and therefore not a filer of ITR in India. During the appeal proceedings, the appellant has verbally narrated the reasons of hostile attitude of the lender which is coming in way of obtaining the loan confirmation of the lender and that because of the same bad relationship the loan had to be repaid also. According to me, the furnishing of loan confirmation appears beyond her capacity now and in the circumstances, it would not be fair to hold that the loan was non-genuine merely in absence of loan confirmation and IT return. It was possible for the AO to obtain the response of Shri PankajIshwarbhai Patel and to*

ascertain whether thesubmission of the appellant is false. Accordingly, the loan is treated to be explained and the addition of Rs.1,24,00,000/- is directed to be deleted. The appeal succeeds on this ground.

18.6 As to the claim of loans of Rs.8,50,000/- from Neotech Education Foundation kffcT Rs.5,00,000/- from one Betullah Khan, the genuineness of loans have been accepted by the AQ based on the evidences furnished during the appeal proceedings. The bank interest of Rs.654/- has not been shown in the return of income and therefore, the addition thereof is justified. There is cash deposit aggregating to Rs.5,300/- which has been sought to be explained by the appellant to be out of cash withdrawal from the bank which cannot be denied and otherwise also the amount is small and can be ignored.

18.7 As to the credits in the HDFC bank account, it is seen that the loans taken from various persons and returns of cheques can be accepted as explained as the appellant has discharged the onus of establishing identity and worthiness of the creditors and genuineness of the transactions and that in the Remand Report dated 16/08/2018, the AO has not drawn any adverse inference. The cash deposits aggregating to Rs.10,00,000/- and claimed to be out of cash withdrawals from the bank has been doubted by the AO as the cash flow statement was not satisfactory. I am of the opinion that there is no basis to deny the appellant's working of cash flow statement and claim that cash deposits in the bank were out of the cash withdrawals from the bank because neither any evidence was found during the course of search nor any evidence brought on record during assessment proceedings as to any unaccounted expenses and any appropriation of withdrawals of the bank for any purpose such that the withdrawals would not have been available with them for the cash deposit. I hold the deposits in the bank account to be explained. The ground succeeds."

259. Being aggrieved by the order of the learned CIT (A), the Revenue is in appeal before us.

260. The learned DR before us contended that the assessee failed to discharge the onus imposed under section 68 of the Act. The ld. DR vehemently supported the order of the AO.

261. On the other hand, the learned AR before us vehemently supported the order of the ld. CIT-A.

262. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, the issues involved in the appeal before us can be categorized in two compartment.

i. Deletion of the deposits of Rs.1.24 crores in the ICICI bank account of the assessee.

ii. Deletion of the deposits of Rs.59 Lacs in the HDFC Bank account of the assessee.

263. With respect to the deletion made by the learned CIT (A) for the amount credited in the ICICI bank for Rs.1.24 crores, we note that this amount was received by the assessee from his relative based in abroad which was repaid in the subsequent assessment year. The acceptance of loan and the repayment of loan has not been doubted by the authorities below. The addition was made on the reasoning that the assessee failed to furnish the confirmation and the copy of the ITR of the party who is based in abroad. Insofar the copy of the ITR is concerned, we note that the party based in abroad is liable to file his income tax return when he has the income taxable in India. The revenue has not brought anything on record suggesting that the loan party was having any taxable income in India. Thus in the absence of return of income in the given facts and circumstances no adverse inference can be drawn against the assessee. Furthermore, the assessee has produced the bank statement of the party maintained with ICICI bank, Vadodra wherein sufficient balance was available for advancing loan to the assessee. Thus, the identity and the genuineness of transactions viz a viz the creditworthiness is established from the impugned statement. Thus, there cannot be any addition to the total income of the assessee merely on the reasoning that the assessee failed to file the confirmation and the ITR of the loan party.

264. With respect to credit entries appearing in the bank account of the assessee amounting to Rs.59 Lacs, we find that the AO in his remand report has not pointed out any defect with respect to the onus imposed upon the assessee under the provisions of section 68 of the Act. Accordingly we are of the view that, once the assessee has discharged the onus by furnishing the necessary details then the onus is shifted upon the revenue to reject the submission of the assessee based on the cogent reasons. But we note that the AO failed to exercise the powers conferred under the provisions of section 133(6)/131 of the Act by issuing notices upon the loan parties for taking the confirmation. The learned DR at the time of hearing has

also not brought anything on record contrary to the finding of the learned CIT-A. Hence, we do not find any reason to interfere in the finding of the learned CIT-A. Hence the ground of appeal of the Revenue is hereby dismissed.

265. In the result appeal filed by the Revenue is dismissed.

In the combined result –

i) ITA No. 135, 136 and 137/Ahd/2019 of the assessee is partly allowed;
ii) ITA No. 194 & 195/Ahd/2019 of the Revenue is dismissed;
iii) IT(SS) No. 69 and 71 to 74/Ahd/2019 of the Revenue is dismissed;
iv) ITSS No. 41 and 42/Ahd/2019 of the assessee is allowed ;
v) ITSS No. 43 and 299/Ahd/2019 of the assessee are partly allowed;
vi) ITA No. 392/Ahd/2019 of the Revenue is dismissed;
vii) IT(SS) No. 27, 31 and 32/Ahd/2019 of the assessee is allowed;
viii) IT(SS) No. 28 and 179/Ahd/2019 of the assessee are partly allowed;
ix) ITSS No. 68/Ahd/2019 of the Revenue is dismissed.

Order pronounced in the Court on 13th January, 2022 at Ahmedabad.

Sd/-	Sd/-
(RAJPAL YADAV)	(WASEEM AHMED)
VICE-PRESIDENT	ACCOUNTANT MEMBER

Ahmedabad; Dated 13 /01/2022