IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 436 of 2026
With
R/TAX APPEAL NO. 437 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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Approved for Reporting	Yes	No
		No

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THE PRINCIPAL COMMISSIONER OF INCOME-TAX (CENTRAL) AHMEDABAD
Versus
EXPERT PARTICLE BOARD

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Appearance:
MR.VARUN K.PATEL(3802) for the Appellant(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 08/09/2026

COMMON ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned Senior Standing Counsel Mr.Varun K. Patel for the appellant.

2. Learned Senior Standing Counsel Mr.Varun Patel has tendered the draft amendments. The same are allowed in terms

of the draft. To be carried out forthwith.

3. By these Appeals under Article 260A of the Income Tax Act, 1961 (for short 'the Act'), the appellant has proposed the following substantial questions of law, arising out of the common order dated 29th August, 2025 passed by the Income Tax Appellate Tribunal (for short 'the Tribunal'), Rajkot Bench, Rajkot in ITA No.139/RJT/2021 and ITA No.142/RJT/2021 for Assessment Year 2019-20 :

"***Tax Appeal No.436 of 2026:***

(a) Whether, on the facts and circumstances of the case and in law, the learned ITAT has erred in considering the facts of the case and in ignoring that the substantive addition was made on account of investment in land as recorded in the

Diary survey impounded during the course of proceedings at the business premises of Shri Bhagwanjibhai P Amrutiya?

(b) Whether, on the facts and circumstances of the case and in law, the learned ITAT has erred in deleting the addition of Rs.6,77,34,130/- made u/s.69A of the Income Tax Act, 1961 ignoring the fact that the amounts reflected in the diary impounded during the course of survey proceedings?

(c) Whether, on the facts and circumstances of the case and in law, the learned ITAT has erred in ignoring the fact that Shri Bhagwanjibhai P. Amrutiya admitted that in the diary impounded during the course of survey proceedings, the name "Bank" is mentioned in the narration of all the bank transactions and accounted for in the books of the Firm and

remaining transactions mentioned in diary are cash transactions?

(d) Whether, on the facts and circumstances of the case and in law, the learned ITAT has erred in deleting the addition of Rs.54,04,130/- made on account of unaccounted bogus purchases ignoring the facts that these were cash purchases which were not recorded in the regular books of the assessee and the corresponding sales have also not been recorded by the assessee?

(e) Whether, on the facts and circumstances of the case and in law, the learned ITAT has erred in deleting the addition of Rs.1,48,89,125/- made on account of unexplained investment u/s.69B of the IT Act ignoring the fact that the partner (Shri Bhupendra B Patel) himself admitted that he along with his partners

purchased a land at Ravapar Nadi village for establishing the factory premises of Expert Particle Board and the total consideration for the said transaction was decided for Rs.1,55,89,125/- and sale deed (document) was executed only for Rs.7,00,000/-, for which payment has been made through demand draft no.013955 on 21.04.2018 and remaining payment for Rs.1,48,89,125/- was to be paid by cash?

(f) Whether, on the facts and circumstances of the case and in law, the learned ITAT has erred in deleting the addition of Rs.1,48,89,125/- made on account of unexplained investment under section 69B of the Income Tax Act, 1961, ignoring the impounded document & diary and the statement/admission of the partner (Shri Bhupendra B. Patel) that the total consideration for purchasing land at

Ravapar Nadi village for establishing the factory of the assessee was Rs.1,55,89,125l-, whereas the executed sale deed reflected only Rs.7,00,000/-, leaving an unrecorded cash payment of Rs.1,48,89,125/-?

(g) Whether, on the facts and circumstances of the case and in law, the learned ITAT has erred in deleting the addition of Rs.6,77,34,130/- made under section 69A of the Income Tax Act, 1961, ignoring the entries in the impounded diary recovered during survey proceedings and the admission of Shri Bhagwanjibhai P. Amrutiya that non-bank transactions mentioned in the diary represented unaccounted cash transactions?

(h) Whether, on the facts and circumstances of the case and in law, the learned ITAT has erred in deleting the

addition of Rs.54,04,130/- made on account of unaccounted purchases, ignoring the facts that these were cash purchases not recorded in the regular books of account of the assessee and that corresponding sales were also unrecorded?

Tax Appeal No.437 of 2026:

(a) Whether, on the facts and circumstances of the case and in law, the learned ITAT has erred in considering the facts of the case and in ignoring that the protective addition was made on account of investment in land as recorded in the Diary impounded during the course of survey proceedings at the business premises of the assessee?

(b) Whether, on the facts and circumstances of the case and in law, the learned ITAT has erred in deleting the

addition of Rs.1,48,89,125/- made on account of unexplained investment u/s. 69B of the Income Tax Act, 1961 ignoring the fact that the partner (Shri Bhupendra B Patel) himself admitted that he along with his partners purchased a land at Ravapar Nadi village for establishing the factory premises of Expert Particle Board and the total consideration for the said transaction was decided for Rs. 1,55,89,125/- and sale deed (document) was executed only for Rs.7,00,000/-, for which payment has been made through demand draft no.013955 on 21/04/2018 and remaining payment for Rs.1,48,89,125/- was paid by cash?

(c) Whether, on the facts and circumstances of the case and in law, the learned ITAT has erred in deleting the addition of Rs.5,79,94,130/- ignoring the

fact that in post-search investigation, all other partners and other related persons were summoned in order to verify the genuineness of the transactions in impounded diary, wherein, all the persons had denied having carried out such transactions as per the noting made in the impounded diary?

(d) Whether, on the facts and circumstances of the case and in law, the learned ITAT has erred in ignoring the fact that the addition on the basis of unaccounted transactions have been made in the case of M/s.Expert Particle board on substantive basis which has not attained to the finality?

(e) Whether, on the facts and circumstances of the case and in law, the learned ITAT has erred in ignoring the fact that the assessee admitted that in

the diary impounded during the course of survey proceedings, the name "Bank" is mentioned in the narration of all the bank transactions and accounted for in the books of the Firm and remaining transactions mentioned in diary are cash transactions?

(f) Whether, on the facts and circumstances of the case and in law, the learned ITAT has erred in deleting the addition of Rs.54,04,130/- made on account of bogus purchases u/s. 37 of the Income Tax Act, 1961 on protective basis ignoring the facts that these were cash purchases which were not recorded in the regular books of the firm and the corresponding sales have also not been recorded by the firm?

(g) Whether, on the facts and circumstances of the case and in law, the

learned ITAT has erred in deleting the protective addition of Rs.1,48,89,125/- made under section 69B of the Income Tax Act, 1961 on account of unexplained investments in land, by ignoring the partner's (Shri Bhupendra B Patel admission regarding the actual land consideration and cash payments recorded in the impounded diary/documents for purchased a land at Ravapar Nadi village for establishing the factory of Expert Particle Board, in whose case the substantive addition has not attainted the finality?

(h) Whether, on the facts and circumstances of the case and in law, the learned ITAT has erred in deleting the the protective addition of Rs.5,79,94,130/- made on account of unrecorded transactions found in the impounded diary, ignoring

denials from partners and other related parties in post-search investigation and the lack of finality on substantive additions in the case of M/s. Expert Particle Board?

(i) Whether, on the facts and circumstances of the case and in law, the learned ITAT has erred in deleting the protective addition of Rs.54,04,130/- made on account of unaccounted bogus purchases ignoring the facts that these were cash purchases which were not recorded in the regular books of the assessee and the corresponding sales have also not been recorded by the assessee?"

4. As the issue involved in these Appeals is common, both the Appeals are heard analogously and are being disposed of by this common Judgment. For sake of

convenience, Tax Appeal No.436 of 2026 is treated as a lead matter.

5. The brief facts of the case are under :

5.1. The assessee-Shri Bhagwanjibhai P Amrutiya @ Bhupat Amrutiya filed Return of Income electronically on 30th August, 2019 declaring total income at Rs.NIL declaring loss of Rs.2,72,94,013/- and has earned income from manufacturing and trading in particle board and other interior decorative products.

5.2. A search was conducted on the group of 'Coral Group of Morbi' which was commenced on 3rd January, 2019 and was finally concluded on 2nd March, 2019, in all the group cases. Along with the search action, a survey under Section 133A of the

Act was also carried out on the office premises of the assessee at Shop No-F-4, First Floor, Darshan Plaza, Near Vardhaman residency, Morbi and certain incriminating documents related to the assesse-firm were found and impounded.

5.3. The assessee's case was selected for compulsory scrutiny and the notice under Section 143(2) of the Act was issued and served upon the assessee on 28th September, 2020, through ITBA. A notice under Section 142(l) of the Act was issued along with a questionnaire dated 25th January, 2021, requesting the assessee to furnish the compliances in the matter, as required, electronically in the e-proceeding facility. The Assessee complied with the notice/questionnaire issued upon him time to time electronically and the submissions made by the assessee were examined by the Assessing Officer.

5.4. During the course of survey proceedings under Section 133A of the Act at the office of the assessee, a satakhat (agreement-in-original) containing heading of 'avejrakamnipahonch' was found. On verification, it was noticed by the Assessing Officer that a land bearing survey number-111, situated at Village-Ravapar Nadi and on which, the premises of Expert Particle Board is located, was purchased in the name of Expert Particle Board for a total purchase consideration of Rs.1,55,89,125/-. However, the sale registration deed was executed for Rs.7,00,000- only. Further, during the course of survey proceedings, a statement of Shri Bhupendra B. Patel, partner of Expert Particle Board, was recorded on oath and the above transaction was confronted with him and in his statement, he admitted that he, along with his partners, purchased a land at Village-Ravapar Nadi for establishing the factory premises of Expert Particle Board and the total consideration for the said transaction was decided for Rs.1,55,89,125/- and sale deed (document) was executed of only Rs.7,00,000/-, for which payment had been made through demand draft no.013955 on 21st April, 2018 and the same had been duly accounted for in the books of accounts. Further, he had admitted that the remaining payment for Rs.1,48,89,125/- was to be paid in cash, out of which, cash payment of Rs.50,00,000/- was paid on 6th April, 2018 and Rs.67,89,125/- was paid on 6th November, 2018 and the balance payment of Rs.31,00,000/- was shown payable at that time. He further stated that as per condition of agreement (satakhat), the seller will charge interest @ 1% per month for balance amount. He also admitted in his statement that the above cash transactions are not reflected in the books of accounts of the firm and accordingly, the source of the differential amount, paid in cash of Rs.1,48,89,125/- remains unexplained and in this regard, the assessee has not furnished any cogent reply to explain the source of investment made in cash of Rs.1,48,89,125/- for purchase of said land.

5.5. The Assessing Officer further noticed that during the course of survey proceedings under Section 133A of the Act at the office of the assessee, a diary was found and impounded as amexure A-1. Further, a statement of Shri Bhupendra B. Patel, partner of Expert Particle Board, on oath under Section 131(1) read with Section 131(1A) of the Act was recorded and the contents of the diary (Annexure A-1) was confronted to him and when the contents of the above cash book were confronted to Shri Bhupendra B. Patel, who is one of the managing partners as mentioned in the partnership deed of Expert Particle Board, he has, in his statement recorded on oath, stated that this diary contains the details of accounted as well as unaccounted transactions related to Expert Particle Board.

5.6. During post search inquiry, statement of the assessee, who is one of the managing partners, who manages day to day affairs of the firm, was recorded on oath. In his statement, he was asked to explain the details of transactions mentioned in above diary, which is impounded as annexure A-1, during the course of survey action at his office premise. In his reply, he has categorically stated that wherever, the name 'BANK' is mentioned in the narration of transaction, they are all bank transactions and accounted in the books of accounts of the firm and the remaining transactions are cash transactions. He had further stated in his statement that the cash transactions mentioned in the diary are unaccounted transactions and no tax has been paid on this amount.

5.7. On perusal of the above mentioned seized data, it was noticed that the firm has total cash receipt of Rs.6,77,34,130/- and assessee has made uncounted bogus purchase of Rs.2,00,000/- from Alpha Entech (Guj) and Rs.52,04,130/- from Anuradha Oil, Mumbai, totaling to Rs.54,04,130/-.

5.8. In this regard, the reply was submitted by the assessee that the above transaction is not related to M/s.Expert Particle Board, however, the Assessing Officer rejected the reply of the assessee and held that reply submitted by the assessee was not supported with cogent evidences and therefore, following additions were made by the Assessing Officer, in the hands of the assessee, on substantive basis and as, these additions were made under Sections 69A and 69B of the Act, by virtue of Section 115BBE of the Act and no deduction was allowed :

> (i) Addition of Rs.1,48,89,125/- under Section 69B of the Act, as amount of investment not disclosed in the books of account;
>
> (ii) Adition of Rs 6,77,34,130/-, on account of unexplained receipt of cash under Section 69A of the Act;
>
> (iii) Adition of Rs.54,04,130/-, on account of bogus purchase under Section 37 of the Act.

5.9. Being aggrieved by the order passed by the Assessing Officer, the Appeals were preferred before the CIT (Appeals), who deleted the addition made by the Assessing Officer by observing that the entire notebook in the hands of the assessee could not have been made in the hands of the partnership firm as the assessee-firm had not started the commercial production and therefore, it was not possible for the partnership firm to have such large cash transactions.

5.10. With regard to the disallowance of Rs.1,48,89,125/-, the CIT(Appeals) held that entire basis of the addition was the seized diary. The CIT(Appeals) arrived at the finding of fact that no cash has been paid on purchase of land, can be proved from the agreement entered into by the partnership firm wherein, it is mentioned that the balance amount of Rs.98,89,125/- was payable on or before 6th November, 2018, whereas, registered conveyance deed of the land was executed on 26th April, 2018 and therefore, such covenant in the agreement cannot be relied upon to make an addition.

5.11. Being aggrieved by the order passed by the CIT(Appeals), the Revenue has preferred Appeals in case of the partnership firm as well as the partner-assessee before the Tribunal. The Tribunal upheld the order of the CIT(Appeals) by observing as under:

> "*25. We note that assessing officer also relied upon various judicial pronouncements. However, the assessee*

submits that none of the decisions are relevant to the facts of the present case. The assessee has submitted rebuttal on each decision relied upon by the AO. The AO also strengthened his case by taking recourse to Section 292C of the Act which presumes that, documents found during the course of survey is presumed as belonging to such person. However, this finding is shallow because, there was no survey at the premises of the assessee-firm and the documents were not impounded from the possession of the assessee. A plain reading of the provisions of section 292C of the Act reveals that where any books of accounts, other documents etc. are found in possession or control of any person in the course of search action under section 132 or survey action under 133A; it may be presumed that such books of account, other documents etc, belong to such person and *that the contents of such books of account and other documents are true. This power has already been exercised by the AO when he made the entire addition in the hands of Shri Bhagwanjibhai Amrutiya, while finalizing his assessment. On the other hand, in the case of the assessee, from the very beginning, all the partners have denied link or relation with the impounded document or with any of the transaction made therein, which may be prima facie authentic because, the documents were not found from the premises of the assessee and neither was there any search or survey in the premises of the assessee. These documents were found from the office of Shri Bhagwanjbhai Amrutiya, a professional accountant and who also handled the accounts of the assessce for bank loan purpose. The same were already added in the hands of Shri Bhagwanjibhai Amnutiya by the*

AO. Hence the nature of document impounded does not point any strong/reliable or standalone presumption under section 292C of the Act against the assessee-firm as such. Besides, the scouting of loans from financial institutions by inflating the net worth is the reason for such notings. Nowhere in the assessment order had the AO made any attempts to investigate the contention of the assessee. Even the Investigation Wing did not contemplate any further proceedings or action in the case of the assessee by carrying out independent survey to corroborate the contents of the notebook found from the office of Shri Bhagwanjibhai Amrutiya.

26. Therefore, Learned CIT(A), observed that no search or survey was carried out at the premises of the assessee. During the course of survey at the office of Shri

Bhagwanjibhai Amrutiya, a notebook was found and impounded, which contained some cash transactions. The first date of the diary / starting point precedes the date on which the firm came into existence and hence, it is clear that the notings are also started for the period prior to the establishment of the firm. Shri Bhagwanjibhai Amrutiya had stated in his statement u/s 132(4) that the notings are rough. From the submission of the assessee, it is found that Shri Bhagwanjibhai Amrutiya is an accountant by profession, who managed accounts of various firms and companies, including the Coral group, The AO had already made the addition of the entire notebook in the hands of Shri Bhagwanjibhai Amrutiya and thus, he had discharged the presumption laid in section 292C, by presuming that the said notebook belongs to the person *from whom it was found and impounded. The assessee firm had not even started commercial production and hence, it was not possible for the assessee-firm to have such large cash transactions. Neither the AO nor the Investigation Wing had established that the unaccounted cash receipts noted in the said diary was of the firm, when it had not even started commercial production. Thus, there was no source of income of the assessee, as it was the first year of its inception and the factory was being established. Therefore, when the noting in the impounded diary contains specific reference of amount received from partners and other persons, the said receipts cannot be treated as unexplained income in the hands of the assessee-firm. Based on these facts, the learned CIT (A) deleted the addition of Rs.6,77,34,130."*

5.12. With regard to the addition of Rs.1,48,89,125/-, the Tribunal upheld the order passed by the CIT (Appeals) by observing as under :

> "*30. The assessee also submitted before the learned CIT(A) that the sanction letter of Term loan and OD facility issued by the Syndicate bank clearly shows that the said loan has been sanctioned on 10.09.2018 in which the bank has taken land as collateral security. The loan sanctioned was for a total sum of Rs. 8.80 crore and hence, it was imperative to show higher valuation of both the land and the factory shed. Even this exaggerated valuation was not sufficient to meet the norms of the bank to obtain such loan. Therefore, Shri Bhagwanjibhai Amrutiya gave his own residential building as*

collateral security along with various other properties, including cash collateral of Rs. 50 lacs. Thus, the entire exercise behind making higher agreement to sale was, to obtain higher bank loan. So far as the statement of Shri Bhupendra Patel is concerned, the appellant submits that, Shri Bhupendra Patel in the post-survey proceeding in his reply dated 08.05.2019, in response to summons dated 01.05.2019 had submitted that he is not aware regarding any noting made in the material impounded from the office premises of Shri Bhagwanjibhai Amrutiya. Further, he had in his affidavit dated 17.05.2019, clarified the facts and circumstances in which his statement was recorded. According to the appellant, all the partners were clearly instructed by Shri Bhagwanjibhai Amrutiya that, since documents showing higher valuations were *already submitted to the bank, therefore, in the event of cross check by the bank or whenever there is any inquiry from the bank or the registered valuer, each partner has to stick to the valuation so contained in the proposal sent to the bank. Based on these facts, the ld. CIT(A) noted that perusal of the assessment order reveals that, the AO has not rebutted any of the claims of the appellant. It is further seen that, similar addition has also been made in the hands of the person who had signed the agreement to sale, viz., Shri Bhagwanjibhai Amrutiya.*

31. Considering these facts, the learned CIT (A) was of the view that the impugned agreement to sale has not been found from the premises of the appellant Neither there was any search or survey proceedings at the premises of the appellant. The *impounded Satakhat (agreement to sale) shows transfer of cash on subsequent dates. Thus, at the time of transfer of property, more than 60% of the cash was yet to be paid. It is obvious that no farmer would allow his land to be sold without getting full consideration, If the consideration is in cash, then the proceeds would be collected first, Besides, the signatory to the deal is only Bhagwanjibhai Amrutiya, from whose office, the said document was impounded and the same has been added in his hands as well. Importantly, the diary impounded from the office premises of Shri Bhagvanjihai Amnutya reflects the cash payment of Rs. 50,00,000, made on 06.04.2018, as per the agreement to sale, which is funded from the fund brought in by the partners of that, even if cash has exchanged hands, it is between the partners of the aplat im* *induding Stir Bhagwaibai Amniya and he sele, and necessary recourse has already been taken by the AO, by making the addition in the hands of Shri Bhagwanjibhai Amrutiya. The appellant has no role in the said transaction. Therefore, the addition made of Rs. 1,48,89, 125/- was deleted by 1d.CIT(A). Considering these facts and circumstances, we find that there is no infirmity in the above conclusion reached by the learned CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and all the grounds of appeal of the Revenue are dismissed."*

5.13. So far as the Appeal filed by the Revenue in case of the partner is concerned, wherein, protective addition was made by the Assessing Officer on the same amount, the Tribunal confirmed the order of the CIT(Appeals) by observing as under :

> *"39. Based on the above facts and circumstances, the Ld. CIT(A) noted that it is a fact that the impugned agreement to sale has been found from the premises of the assessee, who is one of the partners in M/s. Expert Particle Board - registered purchaser of land. Though, the agreement does not contain signature of other partners of the firm and the said agreement have not been endorsed by other partners as also seller of the land, the fact that no on-money had been paid for purchase of land cannot be brushed out as cash payment made of Rs.50,00,000, on 06.04.2018, as per the said agreement is matched with the noting of fund outflow in*

the diary impounded at Annexure A-1. While deciding the appeal of the firm Expert Particle Board, it has been held that the firm came into existence from 02.04.2018 and the deal for purchase of land as per the impounded agreement is stated to have entered into on 18.03.2018. Further, it is the first year of the incorporation of firm, which has not even started any commercial activities. Therefore, the firm could not have any source of income for purchase of land except the funds contributed by partners and in that case, even if cash has exchanged hands for purchase of land, it is between the partners and the seller. On this ground, the addition made in the case of Expert Particle Board on substantive basis has been deleted.

40. The Ld.CIT(A) further notice that the *assessee himself in his affidavit admitted that he has earned unaccounted commission income on sales of vitrified files of Coral Group, which is supported by the documents seized during the course of search at his residential premises. During the assessment proceeding also, the assessee admitted that the unaccounted commission income eared by him has not been offered to tax. Further, the assesse in his letter filed before Investigation Wing also confessed that he had made some initial investment in Expert Particle Board out of his unaccounted commission income as well as realization of funds from partnership firm, wherein he is a partner. Not only that, the AO also in the last para of page 8 of the assessment order categorically observed that in the post-search investigation, it revealed that the assessee has earned undisclosed* *income, out of which some investment is made in the firm Expert Particle Board. Further, it is also seen that the assessee is one of the partners, in M/s. Kishan Minerals, Morbi and during the course of search at the assessee's residential premises digital data containing unaccounted sales of said firm was recovered. In this regard, the assessee in his statement recorded u/s. 132(4) of the Act, admitted that he is maintaining the data of unaccounted activities of Ms. Kishan Minerals and no other partners of said firm are having knowledge about it. Therefore, the assessee is backed with the source of unaccounted funds for investment in the Expert Particle Board and this fact is also strengthen from the diary impounded at Annexure A-1, wherein, name of the assessee is also reflecting as contributor of fund in M/s. Expert*

Particle Board. Therefore, learned CIT (A) noted that the assessee was in possession of unaccounted cash to make his part of investment in the firm as per the specific noting found in the diary impounded at Annexure A-1. On verification of said diary, it is seen that the assessee's name is reflected on credit side as contributor of fund with corresponding outflow on debit side including for purchase of land. Therefore, to the extent of fund contributed by the assessee as per the impounded diary, required amount of addition in the hands of the assessee has been confirmed as discussed in subsequent ground. Thus, no separate addition on account of utilization of funds that would have been brought by the partners including the assesse required to be made otherwise it would be duplication. Hence, ld CIT(A) deleted the addition of

Rs.1,48,89,125I- from the assesse's hands subject to the addition of Rs.6,77,34,130/- and disallowance of purchase of Rs.54,04,130/-, which are narrated in the subsequent para of this order.

41. About the addition to the tune of Rs.6,77,34,130/-, the Ld.CIT(A) noted that assessee relied upon the statement of Shri Bhupendra Balubhai Patel (partner of the firm M/s. Expert Particle Board) where, during survey it is stated that this diary contains the details of accounted as well as unaccounted transactions related to the firm; in the statement recorded from the assessee w/s. 131(1A), he has stated that wherever, the name of bank is mentioned in the narration of transaction, they are all bank transactions and accounted in the books of accounts of the firm and the *remaining transactions are cash transactions; In post-search investigation, Expert Particle Board and other partners of said firm have denied having carried out transactions as per the noting in the impounded diary and the same averments made in the individual assessment proceeding of partners by filing an affidavit. In post-search investigation, it is revealed that the assessee earned unaccounted business income and as per provision of Section 292C, he is liable to explain the noting in the impounded diary.*

42. The assessee submitted before the learned CIT(A) that the statement of Shri Bhupendra Balubhai Patel recorded w/s 133A of the Act dated 03.01.2019, was a non-connected party, as he is neither subjected to survey action nor he is owner *of the premises surveyed from which the material was found. In fact, survey was conducted at the office premises of the assessee, accountant of the Coral Group for verification of their data / materials if any lying at accountant's office premises. As the said premises was closed therefore, his friend Shri Bhupendra Balubhai Patel who was engaged in the business of videography was called upon to open the said office premises. The Bhupendra Patel was unavare about the data lying at surveyed premises and was not competent to reply questions or queries raised by the Survey party. Be that as it may be, in the said statement, Shri Bhupendra Patel had stated about the impugned Annexure A-1 that he is not aware about the transactions and that he needs to consult other partners, permission for further information needs to be taken.*

Thus, according to the assessee, the statement of Shri Bhupendra Patel cannot be said to be corroborative material evidence. The assessee further submitted before the CIT(A) that during the post-search investigation, Shri Bhupendra Patel, vide letter dated 08.05.2019, filed before Investigation Wing, had clarified that the noting in the impounded note-book are not fully correct and not binding to anybody and that the replies given by him during the survey was one sided and without verification. This was further reinforced by similar affidavit filed during assessment proceeding, which was neither verified nor investigated by the assessing officer. It was also contended that when the statement of Shri Bhupendra Patel was confronted to the assessee in the search, the assessee in his statement recorded u/s 132(4) categorically stated *that the impounded diary is the rough cash book of Expert Particle Board, meaning thereby the noting in the said diary are not correct. The assessee stated that statement recorded during post-search investigation dated 15.03.2019 was retracted by filing an affidavit dated 16.05.2019 and also by clarifying the fact in the letter filed before investigation wing on 01.05.2019.*

43. The assessee also submitted before the learned CIT(A) that the diary reflecting credit and debit transactions was fabricated with arbitrary figures so as to get required bank finance on the basis of projected financials and sound financial capacity of partners. The assessee highlighted certain defects and contradictions in the impounded diary and he also relied upon the decision of Hon.

TAT, Ahmedabad in the case of ACIT vs. Shree Krishna Developers ITA No. 1177 and 1231/Ahd/2011, wherein, the addition made in the similar facts and circumstances was deleted by CIT(A) and ITAT. The assessee, alternatively argued before the learned CIT(A) that he has earned unaccounted commission income from Coral Group and also had access of unaccounted income / fund of the partnership- firm M/s. Kishan Minerals. This fact was deposed by the assessee in his statement recorded u/s 132(4) of the Act and in the affidavits made in post-search investigation. In this context, the assessee submitted that the noting in the impounded diary containing his name as contributor of fund to the extent of Rs. 97,40,000/-, may be considered as his unaccounted investment and the same may be telescoped against the unaccounted income of M/s Kishan Minerals *and the assessee's unaccounted commission income, which estimated at Rs. 10,00,000-.The assessee also submitted that peak balance working of the impounded diary as per which peak credit comes to Rs. 64,15,000/-, which is lower than the unaccounted investment in his name of Rs.97,40,000/-. The assessee further argued that name of other persons and partners in the impounded diary is nothing but rotation of same funds and thus, the same cannot be subject matter of addition in the hands of the assessee. At last, the assessee contended that if the entire receipt in the impounded diary would be treated as unaccounted business receipts, then also considering the estimated profit of 2% in the trading activities, net unaccounted income comes to Rs.14,62,765/- only.*

43. Based on the above facts, the Ld. CIT (A) noticed that the credit entries are in the name of various persons including partners of M's Expert Particle Board who might have contributed funds in the firm for making initial investment in land and other expenditure. Therefore, it is clear that unaccounted fund, if any has been flown from the persons named in the impounded diary and thus, such inflow of funds cannot be treated as an income of the firm viz., Expert Particle Board. Accordingly, substantive addition made by the AO in the hands of Expert Particle Board has been deleted in the appeal filed in the case of said firm. The Ld.CIT(A) also noted that the credit side of the impounded diary reflects name of the assessee, who have contributed funds in the firm M/s.Expert Particle Board and the same were utilized for making payments *against various expenditures. The assessee's contention that the noting in the diary is unreal for showing sound financials of partners to banker and that the funds were rotated by way of temporary payment given to suppliers and cash received back from such suppliers upon payment through cheque (loan account) cannot be accepted, as there is no any corroborative evidences to such events. On the contrary, it is a fact on record that the assessee was having unaccounted source of funds, that is the access of unaccounted cash / income of M/s. Kishan Minerals and his own commission income, which is not offered to tax and such funds have admittedly been infused by the assessee in M/s. Expert Particle Board for funding its outflows. Therefore, unaccounted investment made by the assessee and other persons in whose names* *credits noted in the diary were introduction of their funds in M/s. Expert Particle Board which cannot be denied. On going through the seized diary, it was noted by Ld.PCIT that there was total cash introduction/credits were to the tune of Rs.6,77,34,130/- and such cash introduction was from the various person as per the details noted below:*

Sr. No.	***Name of Person***	***Amount (Rs.)***
1	*Bhupathai Amrutiya (Appellant)*	*97,40,000*
2	*Bhupendrabhai Patel*	*1,15,14,000*
3	*Sureshbhal Soriya*	*73,00,000*
4	*Jitubhai Jetpariya*	*1,08,00,000*
5	*Harshadbhai Gami*	*59,00,000*
6	*Jayantibhai Amrutiya*	*5,00,000*
7	*Daksh Amrutiya*	*10,00,000*
8	*Laljibhai Sherashiya*	*20,00,000*
9	*Ranchhodbhai Bela*	*20,00,000*
10	*Randeepbhai Ughreja*	*1,43,00,000*
11	*Umeshbhai Merja*	*25,00,000*
12	*Others (Unreconciled)*	*1,80,130*
Total		*6,77,34,130*

44. The Ld.CIT(A) noted that it is apparent from the above table that the *cash introduction has been made on different dates by various persons including the assessee. It has been noticed that the cash deposits in respect of the assessee was at Rs.97,40,000/- on various dates as per the notings in the seized diary, In respect to the source of such cash deposits, it has been submitted by the assessee that he was one of the partners in M/s Kishan Minerals having share of 15% therein. During the course of search at the place of M/s Kishan Minerals, various incriminating documents showing unaccounted sales were found and seized. Such incriminating documents of M/s Kishan Minerals claimed to have been maintained by the assessee. The Id.CIT(A) found merit in the contention of the assessee to allow telescoping of the unaccounted income of M/s Kishan Minerals against unaccounted investment as in the* *statement recorded during the search, the assessee categorically stated that entire affairs of unaccounted activities of M/s Kishan Minerals was kept by him only. Thus, the claim of the assessee was that the entire unaccounted income of the Kishan Minerals was with the assessee only and the set off of such unaccounted income ought to have been given against the cash introduction made by the assessee as per the seized diary. The contention of the assessee has been examined but the same was found partially acceptable by ld.CIT(A). It is a fact that there was unaccounted turnover in the case of M/s Kishan Minerals but the unaccounted income derived on such unaccounted business would have been shared by each of the partners including the assessee as per their partnership share. As discussed above, the assessee had 15% share in the aforesaid* *firm, therefore, whatever unaccounted income is determined in the case of M's Kishan Minerals, could be given set off to the extent of 15% in the hands of the assessee once the matter of Kishan mineral reached to the finality and such source of cash generation could be considered and reduced from the unaccounted cash deposits made by the asse as per the seized diary at Rs.97,40,000/-, The A0 was directed by Ld. CIT(A), to tax the unaccounted cash deposits of Rs.97,40,000/- in the hand of assessee, but grant the set off of the share in unaccounted income of M/s.Kishan Minerals as discussed above. Meaning thereby the balance unaccounted cash deposits is directed to be treated as income of the assessee for which it has been submitted through the affidavit before the AO that he was having the unaccounted commission income from Coral* *group of cases on the sales affected through the assessee. Thus, the source of the cash deposits as per the seized diary is the unaccounted commission income of the assessee. Considering the totality of facts as above, amount credited in the impounded note-book in the name of the assessee of Rs.97,40,000/- was treated as the assessee's unaccounted investment in M/s. Expert Particle Board and accordingly such unaccounted cash deposits as discussed above is to be treated as the unaccounted fund infused by the assessee in the firm. So far as credits in the impounded diary in the name of other partners and persons as noted above, the same cannot be treated as the assessee's unaccounted investment or income and same may be considered in the respective hands by the AO."*

5.14. With regard to the disallowance of Rs.54,04,130/- made under Section 37 of the Act by the Assessing Officer, both the CIT(Appeals) and the Tribunal deleted the same on the ground that the same was never claimed as deduction of alleged purchase in the books of accounts or in the Return of Income and therefore, there is no question of disallowance of purchase and accordingly, the Tribunal upheld the order of the CIT(Appeals) deleting the disallowance.

6. In view of the aforesaid concurrent findings of facts, the contention was raised on behalf of the Revenue that as the diary was seized from the possession of the partner, entire amount of Rs.6,77,34,130/- is to be added at the hands of the partner

and could not have been restricted to Rs.97,40,000/-, as per the submission of the assessee, which was accepted by the CIT(Appeals).

7. Considering the findings of facts recorded by both the Appellate Authorities, accepting the submission of the assessee that Rs.97,40,000/- found in the name of the assessee is after taking into consideration the income from the unaccounted business of M/s.Kishan Minerals as well as the unaccounted commission income of the assessee-partner and considering the totality of the facts, both the CIT(Appeals) and the Tribunal directed the Assessing Officer to tax the amount of Rs.97,40,000/-, which was credited in impounded notebook in name of the assessee,

by treating the same as unaccounted investment in the partnership firm by the assessee-partner, being unaccounted fund infused in the firm.

8. In view of such findings of facts recorded by the Tribunal, we are of the opinion that no question of law, much less any substantial question of law, arises from the impugned order of the Tribunal.

9. The Appeals are accordingly dismissed.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

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