आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
In The Income Tax Appellate Tribunal, "SMC"
Rajkot Bench, Rajkot
Before Dr. Arjun Lal Saini, Accountant Member

आयकर अपील सं./ITA No. 874 & 875/RJT/2026

[निर्धारण वर्ष/Assessment Year: 2020-21 & 2021-22]

Neepaben Sunnybhai Motwani, "Radha Swami", 3, Chandan Park, Raiya Road, Rajkot, Gujarat-360007	**Vs.**	The Income-tax Officer, Ward-1(1)(1), Aayakar Bhavan, Race course Ring Road, Rajkot, Gujarat -360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AQHPM2444F**		
(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**

Appellant by	:	Shri Hiren Shah, Ld. AR
Respondent by	:	Shri Ganesh Iyer, Ld. Sr. DR
Date of Hearing	:	30/09/2026
Date of Pronouncement	:	19/10/2026

:: ORDER ::

Per, Dr. Arjun Lal Saini, AM:

Captioned two appeals filed by the same assessee, pertaining to assessment years (AY) 2020-21 & 2021-22, are directed against the separate orders under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') passed by the National Faceless Appeal Centre (NAC) Delhi/Commissioner of Income-tax (Appeals) [in short 'NFAC/Ld.CIT(A)'], dated, which in turn arise out of separate assessment order passed by the Assessing Officer u/s 147 of the Act.

2. Since the issue involved in these two appeals are common and identical, therefore these two appeals are clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. The facts as well

as the grounds of appeal in ITA No.874/Rjt/2026, in the case of Neepaben Sunnybhai Motwani for the AY 2020-21 have been taken into consideration for these appeals *en-masse.*

3. The grounds raised by the assessee in lead case, in ITA No. 874/Rjt/2026, are as follows:

> *"1. Ld. Commissioner of Income tax (Appeals), National Faceless Appeal Centre has erred in law and facts in dismissing the grounds raised in appeal agitating validity of initiation of proceedings u/s 147 of the Income-tax Act, 1961;*
>
> *1.1 Ld. Commissioner of Income tax (Appeals), National Faceless Appeal Centre has erred in law and facts in dismissing the grounds raised in appeal agitating validity placing judicial precedents, which in fact had no relevant, in humble opinion;*
>
> *2. Ld. Commissioner of Income tax (Appeals), National Faceless Appeal Centre has erred in law and facts placing reliance on unsigned: unauthenticated ledger and statement of accountant, which possess no evidential value;*
>
> *2.1 Ld. Commissioner of Income tax (Appeals), National Faceless Appeal Centre endorsed denial of cross examination of the accountant and key person, who did not spell out name of the appellant on on-money transactions;*
>
> *2.2 Ld. Commissioner of Income tax (Appeals), National Faceless Appeal Centre erred on facts and in law in confirming addition of Rs.22,21,070/- , placing reliance on decision of Hon'ble ITAT in the case of in R. K. Group of cases;"*

4. Brief facts qua the issue are that the assessee is deriving income as commission and maintaining regular books and e-filed her return of income for the assessment year under consideration on 24.12.2020, declaring therein the total income at Rs. 3,71,480/-. At the outset, it is respectfully submitted that the appellant had purchased one office, bearing number 1013, in R. K. Prime project for apparent consideration of Rs. 20, 12,000/-, as declared purchase deed dated 06.11.2019. The assessing officer possessed information of on-

money transactions in purchase of office in R. K. Prime and initiated proceedings u/s 147 of the Act by issue of notice u/s 148 of the Act, which is respected by appellant and e-filed her return on 08.04.2024. During the course of assessment proceedings, the appellant objected to the proceedings u/s 147 of the Act and denied involvement of on-money transactions in purchase of office in R. K. Prime and very fact is deposed in sworn-in-affidavit. During the assessment proceedings, the assessee also submitted before the assessing officer that addition should not made based on the unsigned excel sheet/ledger copy found from the premises of third-party. Besides, the ledger copy/excel sheet, which are unsigned, did not relate to the assessee. The assessee also demanded the opportunity of cross-examination.

5. However, the assessing officer was not receptive to the denial of "on-money" transaction and fall back on the data retired from pen-drive found from the residential premises of accountant, such as excel sheet/ledger copy. The assessing officer accordingly, ignoring the explanation furnished, by the assessee, came to conclusion that the appellant made "on-money" payment of Rs. 22,21,070/- in purchase of office in R. K. Prime and the same should be taxed u/s 69A r.w.s. 115BBE of the Act.

6. Being aggrieved by the said order of the Assessing Officer, the assessee filed an appeal before the Ld. CIT(A), but remained unsuccessful. Therefore, assessee is left with no other alternative but to knock on the doors of the Tribunal with this appeal praying for justice.

7. I have heard, both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the

case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. Learned Counsel for the assessee argued that the seized digital data did not contain assessee's property name and had no nexus with him. The addition was made merely on the basis of third-party statement and digital data seized from another person and no cross-examination opportunity was provided. The entries in the excel sheet/ledger copy which is neither signed by the assessee nor signed by the seller, therefore, no addition should be made based on dump document. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which I have already noted in my earlier para and is not being repeated for the sake of brevity.

8. I have considered submissions of both the parties. I note that issue under consideration is squarely covered in favour of the assessee by the decision of the Coordinate Bench of ITAT Rajkot in the case of M/s. RC Buildcon/ M/s. RC Heights Pvt. Ltd,vide ITA Nos. 941/RJT/2024, for Assessment Year, 2019-20 & 2021-22, wherein, Co-ordinate Bench of ITAT held as follows:

> *"16. We note that the excel sheet, which was found from the third party's premises, the opportunity of cross- examination ought to have been provided to the assessee. The owner of such excel sheet was the third party, therefore opportunity of cross examination was compulsory, to examine the veracity of excel sheet, as such excel sheet was neither signed by the assessee nor signed by the opposite party and moreover assessee`s name is not getting reflected on such excel sheet. We note that the assessee has strongly objected that until & unless, an opportunity of* ***cross-examination*** *is granted, such adverse material cannot be used against the assessee. This is strongly objected that until & unless, an opportunity of cross-examination is granted, such adverse material cannot be used against the assessee, as he said excel sheet was found from third party premises, hence, opportunity of cross-examination is necessary. Undoubtedly, apart from this excel -sheet, there is no positive evidence brought on record by the assessing officer to substantiate his findings that the assessee has actually received money out of books of accounts, hence, an opportunity of cross examination was mandatory in the assessee`s case under consideration.*
>
> *17. It is settled law that any additions made in absence of providing opportunity of cross examinations of persons, whose statement has been relied upon for making the additions is*

in violation of natural justice, hence cannot be sustained. The Hon'ble Supreme Court of India, in the case of Krishnachand Chelaram Vs. CIT 125 ITR 713 (SC) and Andaman Timber Industries Vs. Commissioner of Central Excise (2015) 281 CTR 0241 (SC) has held that additions without providing the opportunity of cross examination is in violation of natural justice. Thus, we note that additions made in absence of providing opportunity of cross-examination of the persons, whose statement has been relied upon for making the additions is violation of principle of natural justice. We also note that not allowing the assessee to cross examine the witness by the adjudicating authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity. We note that same view was expressed by the Hon`ble Calcutta High Court in the case of Eastern Commercial Enterprises 210 ITR 103 (Cal), wherein it was held that it is a trite law that cross examination is the sine qua-non of due process of taking evidence and no adverse inference can be drawn against the party unless the party is put on notice of the case made out against him. Therefore, the addition made by the assessing officer, on this score, only, needs to be deleted.

18. We note that the assessee has contended that the addition made by the assessing officer is just based on the excel file data found and seized from the third party. The addition cannot be made without rejecting the audited books of account u/s 145(3) of the Act. We note that no tangible documents, loose papers found during the course of search. So far, the excel sheet is concerned, there is no signature of the assessee as well as authorized partner of M/s Vivan Infraspace LLP. The Assessing Officer one side has observed that perusal of the excel sheet revealed that the assessee- company has not reported entire receipts, as appearing from the seized excel sheet. Matching of entries on the seized excel -sheet found from the third- party with those on the accounting ledger of the assessee and of M/s Titanium Buildcon LLP (developer of the project The City Centre) has no any nexus in the case since the assessee has worked with company, M/s Titanium Buildcon LLP and has no relevance with any document seized in the form of data/transactions recorded in the excel file from third-party. In absence of any instance of transactions being pointed out by the assessing officer, there is nothing for rebuttal by the person receiving such notice from the assessing officer. A person can offer rebuttal with evidence only where the department provides the details of the transactions which they consider to have led to cash receipt by the assessee. Merely comparing the excel sheet found from the third- party with the accounts of assessee-company, will not be an instance to prove that the assessee- company has received cash from the third- party. The well settled legal position is that a non- speaking document without any corroborative material, evidence on record and finding that such document has materialized into transactions giving rise to income of the assessee which had not been disclosed in regular books of account by such assessee, has to disregarded for the purposes of assessments to be framed pursuant to search and seizure action. From the search and seizure perspective, such non speaking seized documents are referred to as "Dump Documents".

19. Therefore, we find that no arbitrary addition to the income of the assessee can be made by the Assessing Officer based on the dump documents, loose papers containing scribbling, rough/vague notings in the absence of any corroborative material, evidence recorded and finding that such dump documents had materialized into transactions giving rise to income of the assessee, which had not been disclosed in regular books of accounts by the assessee. For that reliance is placed on the judgement of the Hon'ble Supreme Court in the case of K.P. Varghese vs. ITO [1981] 7 Taxman 13/131 ITR 597 held that the fictional receipt cannot be deemed to be receipt in the absence of any cogent material to support the factum of actual receipt. Moreover, the Hon'ble High Court of Delhi in case of CIT vs. D.K.

Gupta [2008] 174 Taxman 476 upheld the order of the Tribunal wherein it was held that Ad-hoc/Dumb Documents without any corroborative evidence and finding, that the alleged documents nave materialized into transactions cannot be deemed to be the income of the assessee. The Hon'ble Calcutta Bench of ITAT in case of T.S. Venkatesan v. Asstt. CIT [2000] 74 ITD 298 held that in the absence of corroborative evidence, addition of undisclosed income could not be made simply on the basis of entries on loose papers recovered from the residence of a third- party and certain general statements of said party. Therefore, the well settled legal position is that a non- speaking document referred to as a "Dump Document" without any corroborative material, evidence on record, has to disregarded for the purposes of assessments to be framed u/s 153A and 153C of the Act. The aforementioned legal position also gathers support from the Judgement of the Hon'ble Supreme Court in case of CBI v. V.C. Shukla 1998 taxmann.com 2155 popularly known as Jain Hawala Case wherein it was held that any presumption of transaction on some vague, tenuous and dubious entries in a sheet of paper is not rational and hence legal unless there is corroboration by corresponding entry in regular accounts of both the parties to the transaction. In this case it was held that entries in Jain Notebooks held on facts admissible under section 34, but file containing loose sheets of papers are not "book" and hence entries therein not admissible under section 34 of the evidence Act. Further it was also held in this case that entries in books of account shall not alone be sufficient evidence to charge any person with liability. The above view further gathers reinforcement from the judgment of the Hon'ble Supreme Court in case of Common Cause v. Union of India [2017] 77 taxmann.com 245/245 Taxman 214/394 ITR 220 popularly known Sahara dairies and Aditya Birla diaries case. In this case, the Hon'ble Supreme Court, following the judgment rendered in case of V.C. Shukla (supra), laid down the following principles:

(i) Entries in loose papers/sheets are irrelevant and not admissible under section 34 of the Evidence Act. It is only where the entries are in the books of account regularly kept, depending on the nature of occupation, that those are admissible;

(ii) As to the value of entries in the books of account, such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. Even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability.

(iii) The meaning of account book would be spiral notebook/ped but not loose sheets.

(iv) Entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another;

(v) Even if books of account are regularly kept in the ordinary course of business, the entries therein shall not alone be sufficient evidence to charge any person with liability. It is not enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts;

(vi) The Court has to be on guard while ordering investigation against any important Constitutional functionary, officers or any person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence it is not admissible in evidence.

20. We note that apart from excel sheet, no evidence has been found to suggest that the assessee had actually received the said amount. In the absence of any documentary evidence to suggest the same, it could not be presumed that the amounts reflected in the excel sheet were the income of the assessee, received from RK Group. The Assessing Officer has not brought on record any evidence to suggest that RK Group has admitted that the amounts were paid to the assessee- company. Hence, simply rough noting on the excel file, which is not signed by any party, does not mean that the addition could be made in the hands of the assessee- company. Since no evidence was found relating to the existence of any transaction between the assessee- company and R K Group and in the absence of any corroborative evidence to suggest that the assessee- company had actually received the said amount, no addition could be made merely on the basis of noting excel file found during the search proceedings from third party.

21. We find that no tangible documents, any loose papers found during the courses of search, which contains the signature of the assessee as well as authorized partner of M/s Titanium Buildcon LLP. In Pankaj Dahyabhai Patel (HUF) Vs. ACIT (1999) 63 TT) (Ahm) 790-where papers were not seized from house of the assessee nor was in his handwriting, of the assessee, the inference of on-money receipt based on such paper was not justified. Additions based on loose papers without corroborative evidence, it was held, by Tribunal, to be not sustainable. Neither evidence to link the seized documents found in the premises of third party, that is, R K Group during the course of search, then the presumption u/s 132(4A) of the Act not applicable. The action of the Assessing Officer in making addition based on the searched person`s excel -sheet data, recording of third party, that the same belongs to the assessee, is incorrect, as the same would be clearly impermissible, as the seized data, admittedly, had no nexus with the assessee and there is no signature of assessee or third-party, on such excel sheet. In the case of Addl. CIT v. Miss Lata Mangeshkar [1974] 97 ITR 696 (Bom), the addition was made in the hands of the assessee on the basis of the entries in the books of third persons. Hon'ble Bombay High Court held that such addition could not be made only on the basis of the nothings in the books of third persons. The entire addition revolving to the excel sheet found and seized from the third- party which is "dump documents" which has no legality in the eyes of the law and the addition exclusively based on such documents needs to be deleted.

22. We note that assessee's issue under consideration is also covered by the judgement of the Hon'ble High Court of Gujarat in the case of PCIT vs. Kaushik Nanubhai Majithia R/Tax Appeal No. 20 of 2024 order dated 06.03.2024, while passing the order the Hon'ble Gujarat High Court has made the following observations:

"1. Having noted the findings of the facts returned by the Commissioner of Income Tax (Appeals) ('CITA', in brief) and the Income Tax Appellate Tribunal ('ITAT', herein after), we may record that, essentially, the proceedings under Section 153C of the Income Tax Act, 1961 (in short, 'IT Act of 1961') were initiated against the Respondent- assessee on the basis of an excel sheet found from the computer of a person, associated with the Company, namely Navratna Organizers and Developers Private Limited (in short as "the Developer'), in the premises of whom the search was conducted.

2. The excel sheet, according to the learned Counsel for the Revenue, contained the details of payment made by the assessee to the developer, with respect to which tax had been paid by the developer before the Settlement Commissioner. The findings returned by the CITA and ITAT on the issue is sought to be assailed on the ground that the payment of tax by the developer, in whose premises search was conducted, before the Settlement Commissioner, with respect to the amount entered in the excel sheet found from the possession of the assistant working with the developer, is sufficient proof of the transaction between the assessee and the developer.

3. We find Inherent fallacy in this submission, inasmuch as, there is no basis for conducting proceedings against the assessee merely for the fact that the developer had paid tax on the amount shown in the excel-sheet There is no adjudication with regard to the payment, which was shown in the excel-sheet to the effect that the same was actually paid by the assessee to the developer. Even otherwise, the concurrent findings written by the CITA and ITAT are that the document found from the premises of the third party namely excel-sheet, which is the basis the proceedings was without any signature and there is no corroborative material to substantia the said document. The nature of the document has not been explained by the Assessing Officer while proceeding against the assessee. The statements of the persons recorded during search with reference to the alleged, seized material, was not provided to the assessee and hence, the entire proceedings under Section 153C of the IT Act of 1961 stood vitiated.

4. Learned Counsel for the petitioner could not successfully demolish the facts, which ai recorded concurrently by the CITA and ITAT.

5. No question of law much less any substantial question of law arises to entertain this appeal. The same is accordingly, dismissed."

9. Since the issue is same and identical in both appeals that is, in ITA No.874,875/RJT/2026 and as the issue is squarely covered in favour of the assessee by the decision of the Coordinate Bench, of ITAT Rajkot in the case of M/s. RC Buildcon/ M/s. RC Heights Pvt. Ltd. (supra), wherein it was held that addition should not be made based on the excel sheet/ledger copy, which was neither signed by the purchaser, nor signed by the seller, and while delivering the judgement, the Tribunal has relied on the judgement of the jurisdictional Hon'ble High Court of Gujarat in the case of Kaushik Nanubhai Majithia R/Tax Appeal No. 20 of 2024 order dated 06.03.2024. Since the issue is covered in favour of the assessee, and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings of the Coordinate Bench (supra). I find no reason to interfere in the

Case Citation: (2026) taxcode.in 88 ITAT

said order of the Coordinate Bench (supra), therefore, respectfully following the binding decision of the Coordinate Bench (supra), I delete the addition and allow both these appeals of the assessee.

10. In the result, both appeals of the assessee (in ITA No.874/Rjt/2026 and 875/Rjt/2026) are allowed.

Order is pronounced in the open Court on 19/10/2026.

Sd/-
[Dr. Arjun Lal Saini]
लेखा सदस्य/Accountant Member

//True Copy//

राजकोट/Rajkot
दिनांक/ Date: 19/10/2026
Copy of the order forwarded to :

1. The assessee
2. The Respondent
3. CIT
4. The CIT(A)
5. DR, ITAT, Rajkot
6. Guard File

By order

Private Secretary
ITAT, Rajkot

www.taxcode.in