IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI
BEFORE SHRI P.K. BANSAL, VICE PRESIDENT AND SHRI RAVISH SOOD, JM

ITA No. 4754 & 4755/Mum/2016
(**निर्धारण वर्ष** / Assessment Year:2006-07 & 2007-08)

Mrs. Shardaben Bhavani, Office No. 2, Laxmi Nivas No. 5, Chandavarkar, Borivali West, Mumbai-400 092.	**बनाम**/ Vs.	ITO-32(3)(4) Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN No. AAJPB9774D		
(अपीलार्थी /**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओर से / **Appellant by**	:	S/Shri Kiran Mehta and Ravi Dasija, A.Rs.
प्रत्यर्थी की ओर से/**Respondent by**	:	Shri Purushotam Kumar, D.R.

सुनवाई की तारीख / **Date of Hearing**	:	19.12.2017
घोषणा की तारीख / **Date of Pronouncement**	:	29.12.2017

आदेश / **O R D E R**

PER RAVISH SOOD, JUDICIAL MEMBER:

The present appeals filed by the assessee are directed against the orders passed by the Commissioner of Income Tax (Appeals)-44, Mumbai, dated 20.04.2016, for A.Ys 2006-07 and 2007-08, which in itself arises from the orders passed by the A.O under Sec. 147 r.w.s 143(3) of the Income-tax act, 1961 (for short 'Act'), eachdated 14.03.2014. That as certain common issues are involved in

the appeals, therefore, they are taken up and disposed of by way of a consolidate order. We shall first take up the appeal for A.Y. 2006-07, wherein the assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal:-

> *"Being aggrieved by the orders of the learned lower authorities, the Appellant craves your Honor's leave to file the appeal on the following alternative grounds of appeal:*
>
> *1. In the facts and circumstances of the case and in law the learned CIT(A) erred in not holding that the reassessment made u/s 147/148 was bad in law.*
>
> *2. The learned CIT(A) erred in confirming addition of Rs. 36,75,826 made u/s 69 on the footing that the investment made by the Appellant in purchase of a flat was not explained.*
>
> *3. It is respectfully submitted that the source of investment made in the flat in reference was duly explained with substantial evidence in support. The learned CIT(A) gravely erred in not accepting the explanation and evidence submitted by the Appellant and in rejecting the same on hyper-technical and flimsy grounds.*
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> *4. The ld. CIT(A) further erred in confirming the additions/disallowance made by the Learned ITO (herein after called the AO) u/s 24(b) of the Income Tax Act, 1961 of Rs. 1,50,000/- for deduction of interest on the housing loan borrowed for purchase of flat.*
>
> *5. The learned CIT(A) erred in confirming the interest levied u/s 234A/B/C.*
>
> *6. The appellant craves leave to leave to alter, to amend, to add, or to delete any or all of the grounds of appeal on or before the final hearing."*

2. Briefly stated, the facts of the case are that the assessee who is a director of a company M/s Dev Sharda Developers Pvt. Ltd (hereinafter referred to as 'Company') had filed her return of income for A.Y. 2006-07 on 31.03.2008, declaring total income at Rs. 1,25,821/- and agriculture income of Rs. 51,680/-. The return of income of the assessee was processed as such under Sec. 143(1) of the Act.

3. Survey proceedings were conducted by the investigation wing of the department u/s 133A(1) in the case of the company, viz. M/s Dev Sharda Developers Pvt. Ltd. During the post survey proceedings it was revealed that the assessee, viz. Smt. Shardaben D. Bhavani had during the F.Y. 2005-06 claimed to have purchased a Flat No. 2001 for a consideration of Rs. 42 lac. The investment in the purchase of Flat was shown by the assessee in her balance sheet at Rs. 45,36,929/- (i.e after including stamp duty and registration expenses) under the head "Flat at Kent-2001". The A.O observed that the assessee had claimed that the investment in the property was made by raising a loan from a bank, viz. Citi Finance, which was shown under the head "Loan from Citi Finance –Kent 2001: Rs. 36,75,826/-" on 31.03.2006. The assessee had further in her return of income claimed deduction of Rs. 1,50,000/- on account of interest paid on housing loan borrowed from Citi Finance. The A.O observed that the "Interest certificate" dated 25.08.2006 issued by Citi Bank showing interest payment of Rs. 2,47,856/- for the period 01.04.2004 to 31.03.2006, which was enclosed by the assessee alongwith her return of income, was in the name of Sh. Dharmesh Devram Bhavani and not in the name of the assessee. The A.O on the basis of the aforesaid facts concluded that as the assessee had not raised any loan from Citi Bank to purchase the Flat No. 2001 at Kent Garden, therefore, the source of investment in the flat to the extent of Rs. 36,75,826/- was an unexplained investment of the assessee.

3. That on the basis of the aforesaid facts the case of the assessee was reopened under Sec. 147 of the Act. During the course of the assessment proceedings the assessee submitted before the A.O that the Flat No. 2001 belonged to her and for purchasing the same she had raised a loan of Rs. 37,50,000/- from Citi Finance Consumer Fund Ltd. It was submitted by the assessee that as she was an aged

person, therefore, in order to avoid the hassles involved in dealings with the bank, her son Mr. Dharmesh Devram Bhavani was named as first applicant, as he would be of working age at the stage of repayment of loan. The assessee further submitted before the A.O that as the loan funds raised from Citi Finance Consumer Fund Ltd. were utilized for purchase of Flat No. 2001 in the name of the assessee, viz. Shardaben Bhavani, therefore, she was duly entitled towards claim of deduction of Rs. 1,50,000/- under Sec. 24(b) of the Act. However, the explanation of the assessee did not find favour with the A.O, who concluded that as the books of account and other documents impounded during the course of the survey action proved that the assessee had made an unexplained investment in the Flat No. 2001 at Kent Garden, therefore, the assessee by putting forth the aforesaid irrelevant and untenable explanation was trying to escape from the facts that had emerged during the course of the survey proceedings. Thus, the A.O on the basis of his aforesaid conviction made an addition of Rs. 36,75,826/- towards Unexplained investment made by the assessee for purchase of the aforesaid flat. The A.O further in the backdrop of his view that the interest certificate of Citi Finance was in the name of Sh. Dharmesh Deveram Bhavani and not in the name of the assessee, therefore, also disallowed her claim of deduction under Sec 24(b) of Rs. 1,50,000/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after perusing the material available on record, therein took cognizance of certain material facts which had a strong bearing on the adjudication of the issue under consideration, viz. (i). the purchase agreement of the flat under consideration revealed that it was jointly purchased by the assessee alongwith her husband Sh. Devaram C. Bhavani and son Sh. Dharmesh D. Bhavani; (ii). that the deed of indemnity was executed between Sh. Dharmesh D. Bhavani

and Citi Finance; (iii). the letter dated 09.08.2005 of Citi Finance was addressed only to Sh. Dharmesh D. Bhavani; (iv). the letter dated 25.08.2005 of Citi Finance was addressed only to Sh. Dharmesh D. Bhavani, while for the name of the assessee and her husband Sh. Devaram C. Bhawani was added by way of handwritten insertions; (v). the letter dated 09.08.2005 of Citi Finance was addressed only to Sh. Dharmesh D. Bhavani, while for the name of the assessee and her husband Sh. Devaram C. Bhawani was added by way of handwritten insertions; and (vi). the interest certificate issued by Citi Finance was only addressed to Sh. Dharmesh D. Bhawani. The CIT(A) after deliberating on the abovementioned facts concluded that a perusal of the aforesaid documents revealed that the claim of the assessee that she had raised a loan of Rs. 36,75,826/- for purchasing the flat was clearly disproved. Thus, the CIT(A) on the basis of his aforesaid observations upheld the addition of Rs. 36,75,826/- made by the A.O. The CIT(A) further observed that as it was proved that the assessee had not raised the loan from M/s Citi Finance, therefore, also upheld the disallowance of the claim of the assessee under Sec. 24(b).

5. The assessee being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The ld. Authorised representative (for short 'A.R') for the assessee at the very outset submitted that he is not pressing the Ground of appeal No. 1. The **Ground of appeal No. 1** is thus dismissed as not pressed. The ld. A.R submitted that for purchasing Flat No. 2001 in Kent Garden Tower, Borivli, Mumbai, a loan of Rs. 37,50,000/- was raised by the assessee from M/s Citi Finance. It was submitted by the ld. A.R that as the assessee was an aged lady, therefore, in order to avoid any hassles at the time of repayment of loan her son Mr. Dharmesh Bhavani was named as first applicant, as he would be of working age at the stage of repayment of loan. The ld. A.R averred that the A.O failing to

appreciate the facts of the case in the right perspective had rather hushed through the matter and wrongly concluded that as the loan was not raised by the assessee but by Mr. Dharmesh B. Bhavani, therefore, the investment in the property remained unexplained. The ld. A.R further submitted that on similar misconception of the facts the A.O had disallowed the claim raised by the assessee under Sec. 24(b) of the Act. Per Contra, the ld. Departmental representative (for short 'D.R') relied on the orders of the lower authorities.

6. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We have perused the copy of the 'Agreement for Sale', dated. 23.06.2005 (Page 23–32) of the 'Paper book' of the assessee (for short 'APB') and find that the Flat No. 2001 in Kent Garden Tower, Borivli, Mumbai was purchased jointly by the assessee, her son Mr. Dharmesh D. Bhavani and husband Sh. Devaram C. Bhawani for a consideration of Rs. 42 lac. That a perusal of the agreement reveals that out of the total purchase consideration of Rs. 42 lac an amount of Rs. 2,10,000/- was paid vide a Cheque drawn on Bank of Baroda, Borivli branch, while for the balance amount of Rs. 39,90,000/- was agreed to be paid within a period of 45 days. We find that initially a loan of Rs. 37,50,000/- was raised from Citi Finance for purchase of the flat, which thereafter was foreclosed and the loan was taken over by Bank of Baroda (Page 17 of 'APB'). We find that the Certificate of foreclosure of loan of Citi Finanel, dated 25.08.2006 (Page 17 of 'APB') and Certificate of mortgage of Citi Finance, dated 09.08.2005 (Page 20 of 'APB') clearly makes a mention of the assessee, viz Smt. Shardaben Bhavani, Mr. Dharmesh D. Bhavani (son of the assessee) and Sh. Devaram C. Bhawani (husband of the assessee), all of whom as observed by us hereinabove had jointly purchased the flat. Be that as it may, a perusal of the receipts issued by the seller of the

flat Sh.Labhubhai J. Goti (Page 7-14 of 'APB') reveals that the source of payment of the balance purchase consideration of Rs. 39,90,000/- (supra) had initially flown from the loan account of M/s Citi Finance, and after its foreclosure from the loan account of Bank of Baroda. We find that that the investment in the flat which was claimed by the assessee to have been initially funded from the loan raised from Citi Finance was having an outstanding balance of Rs. 36,75,826/- on 31.03.2006, remains a fact which is borne from the records. We are of the considered view that a perusal of the purchase agreement and other documents clearly reveals that the flat was jointly purchased by the assessee, viz Smt. Shardaben Bhavani, Mr. Dharmesh D. Bhavani (son of the assessee) and Sh. Devaram C. Bhavani (husband of the assessee). Thus, the claim of the assessee that she was the exclusive owner of the flat cannot be accepted and falls to ground. We are of the considered view that now when the purchase of the flat was funded from the loan raised from M/s Citi Finance, therefore, it was incorrect on the part of the lower authorities to conclude that the source of investment in the property was unexplained. We are of the considered view that the lower authorities on the basis of premature observations had taken a hyper technical view and despite the fact that the material available on record clearly revealed that the investment made towards purchase of flat was from the loan raised from Citi Finance, had thus wrongly concluded that the source of investment to the extent of Rs. 36,75,826/- on 31.03.2006 was to be held as an unexplained investment u/s 69 in the hands of the assessee. We are of the considered view that as the investment of Rs. 36,75,826/- is clearly routed to the loan raised from Citi Finance, therefore, the addition of the same as an unexplained investment u/s 69 in the hands of the assessee cannot be sustained. We thus set aside the order of the CIT(A) and delete the addition of Rs. 36,75,826/-.

7. We now advert to the disallowance of the claim of interest on housing loan of Rs. 1,50,000/- raised by the assessee u/s 24(b) in her return of income, but disallowed by the A.O and thereafter sustained by the CIT(A). We are of the considered view that as observed by us hereinabove, as the flat under consideration had jointly been purchased by the assessee, viz. Smt. Shardaben Bhavani, Mr. Dharmesh D. Bhavani (son of the assessee) and Sh. Devaram C. Bhawani (husband of the assessee), therefore, there remains no occasion to hold that the assessee was the exclusive owner of the property, as claimed by her before the lower authorities. We are of the considered view that from a conjoint reading of Sec. 24 r.w s. 22 of the Act, it can safely be concluded that the deduction under Sec. 24(b) is to be allowed to the owner of the property as regards the interest payable on the amounts borrowed by him for acquiring, constructing, repairing, renewal or reconstruction of the property. Thus, in the backdrop of the aforesaid settled position of law, now when the assessee, viz Smt. Shardaben Bhavani, Mr. Dharmesh D. Bhavani (son of the assessee) and Sh. Devaram C. Bhawani (husband of the assessee) are the joint owners of the flat and had as co-borrowers raised the loan for purchase of the property, viz. Flat No. 2001 in Kent Garden Tower, Borivli, Mumbai, therefore, the entitlement of the assessee towards claim of deduction of such interest on housing loan shall be restricted to the extent of her 1/3rd share. We thus direct the A.O to allow deduction of the interest on housing loan to the assessee to the extent of 1/3rd of the aggregate of the interest payable on such loan during the year under consideration. The order of the CIT(A) sustaining the disallowance of the entire amount of the interest on housing loan claimed by the assessee u/s 24(b) is modified in terms of our aforesaid directions. The **Ground of appeal No. 4** is partly allowed.

8. The **Ground of appeal No. 5** wherein the assessee had assailed the levy of interest u/s 234A, 234B & 234C being consequential in nature, therefore, the A.O is directed to recompute the same after giving effect to our directions. The **Ground of appeal No. 6** being general is dismissed as not pressed.

9. The appeal of the assessee is partly allowed in terms of our aforesaid observations.

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A.Y. 2007-08

8. We shall now advert to the appeal of the assessee for A.Y. 2007-08. The assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal:

> *"Being aggrieved by the orders of the learned lower authorities, the Appellant craves your Honor's leave to file the appeal on the following alternative grounds of appeal:*
>
> *1. In the facts and circumstances of the case and in law the learned CIT(A) erred in not holding that the reassessment made u/s 147/148 was bad in law.*
>
> *2. The learned CIT(A) erred in confirming additions of Rs. 54,20,000/- made u/s 68 on account of alleged "on money" received for the sale of flat.*
>
> *3. The learned CIT(A) erred in not holding that no addition could be made based solely on the scrap of loose papers found in the course of survey action in the case of Dev Sharda Developers Pvt.Ltd. It is submitted that the said loose papers had no evidential value.*
>
> *4. The learned CIT(A) erred in not appreciating that there were ample other evidences to show that the Appellant had not received "on money" as alleged and hence no addition was tenable u/s 68 or otherwise.*
>
> *5. The learned CIT(A) further erred in confirming the additions /disallowance made by the Learned ITO (herein after called the AO) u/s 24(b) of the Income Tax Act, 1961 of Rs. 1,50,000/- for deduction of interest on the housing loan borrowed for purchase of flat.*

6. The learned CIT(A) erred in confirming the interest levied u/s 234A/B/C.

7. The appellant craves leave to leave to alter, to amend, to add, or to delete any or all of the grounds of appeal on or before the final hearing."

2. Briefly stated, the facts of the case are that the assessee had filed her return of income for A.Y. 2007-08 on 06.02.2009, declaring total income of Rs. 5,59,970/- and agriculture income of Rs. 65,565/-. The return of income filed by the assessee was processed as such u/s 143(1) of the Act. The case of the assessee was thereafter reopened and a notice u/s 148, dated 25.08.2013 was issued to the assessee.

9. The A.O while framing the assessment observed that documents impounded during the course of survey proceedings conducted on M/s Dev Sharda Developers Pvt. Ltd. revealed that the assessee had received "on money" on sale of Flat No. 2001 at Kent Garden, Borivali (W), Mumbai. The A.O called upon the assessee to show cause as to why the amount of Rs. 54,20,000/- received by her in cash on the sale of flat may not be added to her income for the year under consideration. The assessee in her reply to the observations of the A.O submitted that Flat No. 2001, Kent Garden, Borivali (W), Mumbai which was purchased by her for Rs. 45,36,929/- was sold in the year under consideration for Rs. 54,00,000/- and the Short term capital gain (for short 'STCG') on sale of the same was offered for tax in the return of income for the year under consideration. The assessee rebutting the observations of the A.O relied on the 'Agreement for sale' of the flat and submitted that while for the size of the flat under consideration was 92 Sq. mtrs (i.e 990 Sq. ft), that mentioned in the impounded document, marked as Annexure A-2 – Page No. 37 on the basis of which adverse inferences were being drawn by the A.O, referred to 1520 sq. ft (after scribbling) multiplied by six thousand, which notings thus could safely be gathered were not in context of Flat

No. 2001, Kent Garden, Borivali (W), Mumbai. The assessee further submitted before the A.O that earlier the ITO, Ward 9(1)(3) while framing the assessment in the case of M/s Dev Sharda Developers P. Ltd by referring to the said notings in Annexure A-2 – Page 37 had added Rs. 1,68,40,000/- in the hands of the company on account of sale proceeds of Flat Nos. 2001 & 2002, which was deleted by the CIT(A) vide his order dated 30.03.2011, however, there were no directions in his order to bring the said amount to tax in the hands of the respective assesses. The A.O not being persuaded to be in agreement with the contentions of the assessee, therein proceeded with and made an addition of Rs. 54,20,000/- in the hands of the assessee.

10. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The assessee assailed the addition of Rs. 54,20,000/- before the CIT(A) and averred that the A.O had made the addition only on the basis of conjectures and misconceived observations. The assessee submitted before the CIT(A) that as against the stamp duty valuation of Rs. 28,65,984/- the flat was sold by her for a consideration of Rs. 54,00,000/-, which fact further fortified the veracity of the sale transaction of the property under consideration. However, the CIT(A) not finding favour with the contentions of the assessee, being of the view that the assessee had failed to rebut the presumptions regarding the noting of the receipt of cash in the impounded document, therefore, upheld the addition made by the A.O.

11. The assessee being aggrieved with the order of the A.O had carried the matter in appeal before us. The ld. Authorised representative (for short 'A.R') for the assessee at the very outset submitted that he was not pressing **Ground of appeal No. 1.** The

Ground of appeal No. 1 is thus dismissed as not pressed. The ld. A.R took us through the 'Agreement to Sell', dated 26.09.2006 for the Flat No. 2001, Kent Garden, Borivali (W), Mumbai, which was sold be her during the year under consideration. The ld. A.R taking us through the relevant extract of the sale agreement at Page 18 of the 'APB', therein drew our attention to the fact that the area of the flat was 92 Sq. mtr. That in the backdrop of the said fact the ld. A.R took us through the impounded document, viz. Annexure A-2 – Page 37 which was placed at Page 23 of the 'APB'. The ld. A.R submitted that the A.O had drawn adverse inferences and alleged receipt of "on money" of Rs. 54,20,000/- by the assessee on the basis of the figure of Rs. 96,20,000/- which stood mentioned as against a figure of "1520" (after scribbling) multiplied by six thousand. The ld. A.R submitted that the A.O had whimsically inferred the receipt of "on money" of Rs. 54,20,000/- by the assessee, by reducing another amount of Rs. 42,00,000/- mentioned in the said impounded document from the amount of Rs. 96,20,000/- (supra). The ld. A.R submitted that there was no basis for the A.O to have concluded that the amount of Rs. 96,20,000/- mentioned in the aforesaid impounded document pertained to the property under consideration, viz. Flat No. 2001, Kent Garden, Borivali (W), Mumbai. The ld. A.R to drive home his aforesaid contention, therein submitted that the figure of "1520" mentioned in the impounded document possibly referred to an area, which did not tally with the area of the flat under consideration that was of 92 Sq. mtrs (i.e 990 Sq. ft). It was thus submitted by the ld. A.R that there was nothing either in the orders of the lower authorities, nor in the impounded document, on the basis of which the impugned notings as against the figure of Rs. 96,20,000/- could be related to the property under consideration. The ld. A.R in the backdrop of his aforesaid contentions averred that the A.O had made an addition of Rs.

54,20,000/- absolutely on a baseless ground, which being nothing better than an addition in the thin air could not be sustained and was liable to be vacated. Per contra, the ld. Departmental representative (for short 'D.R') relied on the orders of the lower authorities. The ld. D.R submitted that as the notings at Page 37 of the impounded diary pertained to the Flat No. 2001, Kent Garden, Borivali (W), Mumbai, therefore, the lower authorities had rightly concluded that the assessee had received "on money" of Rs. 54,20,000/- on the sale of the property. The ld. D.R in order to support his contention relied on the judgment of the **Hon'ble High Court of Bombay** in the case of **Surendra M. Khandhar Vs. Assistant Commissioner of Income-tax & Ors (2010) 321 ITR 254 (Bom)**. The ld. D.R relying on the said judgment submitted that it was held by the Hon'ble High Court that as the assessee had failed to rebut the presumption drawn by the A.O under Sec 292C, therefore, the addition under Sec. 69 on the basis of the document seized from the possession of assessee was rightly made by AO and sustained by the Tribunal. It was thus submitted by the ld. D.R that now when the assessee had failed to rebut the presumption drawn by the A.O on the basis of the notings in the diary impounded in the course of the survey proceedings conducted on M/s Devsharda developers, therefore, the addition of Rs. 54,20,000/- was rightly made by the A.O.

12. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that the addition of Rs. 54,20,000/- had been made in the hands of the assessee on the basis of the notings in Annexure A-2–Page 37 which is a page of a diary that was impounded during the course of survey proceedings on the company M/s Dev Sharda developers, in which the assessee was a director. We have deliberated at length on the notings mentioned in Annexure A-2 – Page

37, and find that the adverse inference as regards receipt of on money Rs. 54,20,000/- was made by the A.O by referring to the figure of Rs. 96,20,000/- which stood mentioned as against a figure of "1520" (after scribbling) multiplied by six thousand in the said document. We are of the considered view that though there is no mention of the amount of Rs. 54,20,000/- in the aforesaid document, the A.O however had inferred the receipt of on money of Rs. 54,20,000/- by the assessee by reducing the amount of Rs. 42,00,000/- mentioned in the said impounded document from the amount of Rs. 96,20,000/-(supra).

13. We have given a thoughtful consideration to the notings in the impounded document, viz. Annexure A-2 – Page 37 and are unable to persuade ourselves to be in agreement with the view taken by the lower authorities. We find that as against the working of the amount of Rs. 91,20,000/- (forming part of Rs. 96,20,000/-) mentioned in the impounded document, there is a scrolling against which the figure of "1520" is mentioned. We are of the considered view that the figure of "1520" referred to an area of a property. We find that the area of the Flat No. 2001, Kent Garden, Borivali (W), Mumbai, as stands gathered from a perusal of the 'Agreement to sell' (Page 18 of 'APB') is 92 Sq. mtrs (i.e 990 Sq. ft), therefore, the said fact in itself safely distances the property under consideration from the workings mentioned against the amount of Rs. 96,20,000/- in the impounded document. We are unable to comprehend that now when there was no basis for concluding that the impugned notings mentioned as against the figure of Rs. 96,20,000/- in the impounded document were in context of Flat No. 2001, Kent Garden, Borivali (W), Mumbai, then how could adverse inferences as regards receipt of "on money" by the assessee on the sale of the said property could have be drawn by the A.O. We are rather of the considered view that as the details mentioned against the amount of Rs. 91,20,000/- (supra) are clearly at variance as against that of the

property under consideration, therefore, there was no occasion for the A.O to have acted upon the said *impugned* notings in context of the sale of the property under consideration. We further find that the judgment of the of the **Hon'ble High Court of Bombay** in the case of **Surendra M. Khandhar Vs. Assistant Commissioner of Income-tax & Ors (2010) 321 ITR 254 (Bom)** relied upon by the ld. D.R is distinguishable on facts. We find that in the case before the High Court a zerox copy of a document signed by two parties, revealing payment of a loan of Rs. 20 lac by the assessee to them and the manner as per which the amount was to be received back was seized from the premises of the assessee during the course of Search & seizure proceedings. The assessee in the said case neither at the first available opportunity, nor at any subsequent stage of appeal or before the High Court denied the document, but had only claimed that the transaction mentioned therein was not given effect to. We find that it was in the backdrop of the aforesaid facts that the High Court held that once a document was seized in the premises under control of the assessee, the presumption under s. 292C as also that under s. 132(4A) followed, and it was for the assessee to rebut that presumption. The High Court observed that as in the case before it, neither the presumption created by the document was rebutted, nor had the assessee denied the loan amount, thus no infirmity could be found with the reasoning adopted by the Tribunal for upholding the correctness of the contents of the documents. We find that the facts of the case before us are distinguishable as against the facts involved in the case before the Hon'ble High Court on multiple grounds, viz. (i). that as the presumption under Sec. 292C and under Sec. 132(4A) invoked in the case before the High Court is applicable only in a respect of documents seized during the course of search proceedings, therefore, the same would not be applicable to the case of the present

assessee where survey proceedings were conducted; (ii). that unlike as in the case before the High Court, the impounded document in the case of the assessee was an unsigned document; (iii). that unlike as in the case before the High Court, the assessee in the present case had never admitted the contents of the seized document, viz. Annexure A-2 – Page 37; and (iv) that unlike as in the case before the High Court, in the case of the present assessee nothing could be safely gathered from a perusal of the dumb notings in the *impugned* impounded document. We thus in the backdrop of our aforesaid observations that there is no basis for relating the notings in the impounded document, viz. Annexure A-2 – Page 37 with the sale of Flat No. 2001, Kent Garden, Borivali (W), Mumbai, therefore, are of the considered view that the addition of Rs. 54,20,000/- made by the A.O u/s 69 and sustained by the CIT(A) cannot be upheld. We thus set aside the order of the CIT(A) and delete the addition of Rs. 54,20,000/-

7. The appeal of the assessee is allowed.

8. The appeal of the assessee for A.Y. 2006-07, marked as ITA No. 4754/Mum/2016 is partly allowed, while for that for A.Y. 2006-07, marked as ITA No. 4755/Mum/2016 is allowed.

Order pronounced in the open court on 29/12/2017

Sd/-	Sd/-
(P.K BANSAL)	(RAVISH SOOD)
VICE PRESIDENT	JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 29.12.2017
Ps. Rohit Kumar

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**