

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA**

**BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER, AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**I.T.A No. 429/Agra/2011
(ASSESSMENT YEAR-2006-07)**

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| ITO, (AO) Ward-1, Aligarh. (Revenue) | Vs. | Sahara City Homes, Aligarh, Vill.- Bhukravali, Sidandarpur, Khera Khushkabar, Pargana Koil, Aligarh. PAN No.AACAS2123B (Assessee) |
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| Revenue by | Shri Waseem Arshad, Sr. DR. |
| Assessee by | Shri Sumit Kumar Agarwal, AR. |

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| Date of Hearing | 30.08.2017 |
| Date of Pronouncement | 16.11.2017 |

ORDER

PER A. D. JAIN, JUDICIAL MEMBER:

This is Department's appeal for A.Y. 2006-07, raising the following sole ground of appeal:

“The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.1,83,42,020/- on account of unexplained cash credit u/s 68 of the IT Act, 1961 by accepting the genuineness,

creditworthiness and identity of the members of AOP and treating the fund contributed as explained in the hand of members.”

2. The appeal was filed on 15.11.2011. It has, thus, been hanging fire for almost six years. It was lastly adjourned on 1.08.2017 for 30.08.2017, which date, as is available from the Order Sheet noting dated 01.08.2017, stands noted by Shri Sumit Kumar Agarwal, on behalf of the assessee. However, on 30.08.2017, the last of numerous applications for adjournment, dated 29.08.2017, was put up. As per this application, Shri Jeevanji Mehrotra, FCA, the applicant, was not in the know of the date (30.08.2017) for which the appeal was adjourned, due to which he remained in Calcutta and could not be present before us.

3. As per the Power of Attorney available on record, both Shri Jeevanji Mehrotra, FCA and Shri Sumit Kumar Agarwal, have been authorized by the assessee to represent the assessee before this Bench in the present appeal. In view of these facts, the application for adjournment was rejected.

4. The AO made addition of Rs.1,83,42,016/- as unexplained cash credit, by holding that the AOP had failed to prove its capital of this amount, shown in the names of three persons, i.e., Sarv Shri Raja Ram, Rajesh Babu and Ram Jeevan. The Id. CIT(A) has deleted this addition.

5. The Id. DR contended that the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.1,83,42,020/- on account of unexplained cash credit u/s 68 of the IT Act, 1961 by accepting the genuineness, creditworthiness and identity of the members of the AOP and treating the fund contributed as explained in the hand of the members.

6. The Id. Counsel has placed strong reliance on the impugned order.

7. We have heard both the parties and have perused the material on record. The following are the undisputed facts. The assessee AOP consists of thirteen members. The amounts in the names of ten members were not added by the AO. Addition was made only in respect of the aforesaid three members. The assessee, during the year under consideration, was developing a township in the name of Sahara City Homes at Village Bhukravali, Aligarh, under a joint venture with Sahara India Commercial Corporation Ltd. (SICCL). SICCL was authorized by all the members of the AOP for the overall management of the project. SICCL provided the funds to all the members of the AOP, from its bank account. The money was provided by way of loans, for purchasing of land. It was given directly to the seller. All the bank drafts for the purchase of the land in the names of the members of the AOP were made from the account of SICCL. The AO did not question the capacity of SICCL to advance the loans. The source of the

funds/credit entries in the books of the AOP stand explained, because the identity of SICCL was not questioned. The factum of the funds having travelled through genuine banking channel from SICCL was not challenged. The creditworthiness of SICCL stood explained. The identities of the aforesaid Sarv Shri Ram Jeevan, Rajesh Babu and Raja Ram were also not called in question by the AO. They confirmed all the members of the AOP having bought the land through registered sale deeds out of the loans provided by SICCL. The AO did not allege that these three persons had introduced their own funds and that thereby, unexplained or unaccounted money stood laundered. Moreover, a substantial portion of the capital contribution stood made in the earlier financial year, vide agreement dated 09.02.2005, whereby, the assessee AOP came into existence. In the AOP, SICCL holds 86.35% shares. Sarv Shri Rajesh Babu, Ram Jeevan and Raja Ram, on the other hand, have holdings to the extent of 0.10% to 0.75% only. The factum of the payment for the purchase of land having come from SICCL stands accepted by the AO himself.

8. All these facts have duly been taken into consideration by the Id. CIT(A) and there is no rebuttal thereto before us.

9. For the above, finding no merit therein, the grievance sought to be raised by the Department is rejected and the well reasoned order of the Id. CIT(A) is confirmed.

10. In the result, the appeal is dismissed.

Order pronounced in the open court on 16/11/2017.

Sd/-

**(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER**

Sd/-

**(A.D. JAIN)
JUDICIAL MEMBER**

Dated 16/11/2017

AKV

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR