

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'एस.एम.सी' अहमदाबाद ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“ SMC ” BENCH, AHMEDABAD**

सर्वश्री एन.के. बिल्लैया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।  
**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER And**  
**SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 3045/AHD/2015  
(निर्धारण वर्ष / Assessment Year : 2009-10)

ACIT, Cir.4(2), Ahmedabad	<u>बनाम/</u> Vs.	Shri Harshadbhai Keshavlal Prajapati, 20, Shivam Tenaments, K.K. Nagar Road, Ghatlodia, Ahmedabad.
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Cross Objection No.02/AHD/2016  
(arising out of ITA No.3045/AHD/2015)  
(निर्धारण वर्ष / Assessment Year : 2009-10)

Shri Harshadbhai Keshavlal Prajapati, 20, Shivam Tenaments, K.K. Nagar Road, Ghatlodia, Ahmedabad	<u>बनाम/</u> Vs.	ACIT, Cir.4(2), Ahmedabad.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGCPP 6870 H</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

<b>Assessee by :</b>	Shri Uma Shankar Prasad, Sr.D.R.
<b>Revenue by :</b>	Shri Ketan Shah, A.R.

सुनवाई की तारीख / <b>Date of Hearing</b>	09/02/2018
घोषणा की तारीख / <b>Date of Pronouncement</b>	22/02/2018

आदेश / ORDER

**PER MAHAVIR PRASAD, JUDICIAL MEMBER :**

This is an appeal by the revenue alongwith cross objection by the assessee against the order of the Commissioner of Income Tax

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(Appeals)-4, Ahmedabad, dated 15/09/2015 for Assessment Year (AY) 2009-10.

2. The assessee has taken following grounds of appeals:

- “1. Whether the learned CIT(A) has erred in law and on facts in deleting the addition of Rs.38,55,600/- made on account of unaccounted income.
2. On the facts and in the circumstances of the case, the ld. CIT(A) ought to have upheld the order of the Assessing Officer.
3. It is therefore, prayed that the order of the Ld.CIT(A) may be set aside and the order of the Assessing Officer be restored.”

3. The relevant facts as culled out from the materials on record are as under:-

During the search operation conducted in the case of Shri Govindbhai Muljibhai Prajapati on 08.12.2009 at his premises situated at M. K. House Gandhinagar Highway, Sabaramati, Ahmedabad a 'Samjauti Karar' dated 26.02.2008 between M/s Westwing Infrastructure Pvt. Ltd. Shaileshbhai Dungarbhai Prajapati, Jayesh Dungarbhai Prajapati, Govindbhai Dungarbhai Prajapati, Suresh Muljibhai Prajapati on the one part and Shri Harshad Keshavlal Prajapati and Shri Sunil Babubhai Modi on the other part, was seized at Page No.110 to 118 of Annex BS-1. In the said agreement it was recorded that the second party Shri Harshad Keshavlal Prajapati and Shri Sunilbhai Babubhai Modi had agreed to sale the land located at Revenue Survey No. 211 admeasuring 3743 sq mtrs NA at Chandkheda for a total consideration of Rs 3,09,77,400/- and accordingly Rs 64,26,000/- was to be paid to them being profit. From the

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Samjauta Karar, it was further inferred that Shri Harshad Keshavlal Prajapati was a 60% partner in the said transaction. Therefore the taxability of the receipt of Rs.38,55,600/- (60% of Rs 64,26,000) was to be examined in the hands of Shri Harshad Keshavlal Prajapati.

4. In view of the above the case of the assessee was taken up for reassessment for the reasons as mentioned in the reasons recorded by the then Assessing officer as under:

*“2. On verification of records maintained in this office, it has come to the notice that an agreement has been made by M/s West Wing Infrastructure Pvt. Ltd, Shri Shalieshbhai D Prajapati, Jayesh D Prajapati, Govind D Prajapati, Suresh Mitichand Prajapati with Shri Harshad Keshavkil Prajapati and Shri Sunil Babulal Modi. In the said agreement , Shri Harshad Keshavlal Prajapati and Shri Sunil Babubhai Modi have agreed to sale land to above mentioned persons at the rate of Rs 9,111/- per square yard and total consideration of Rs.3,09,77,400/- and accordingly Rs 64,26,000/- was to be paid to them being profit. It has been further noticed that one of the parties to the agreement has accepted to have made payment of Rs 64,26,000/- to Shri Harshad Keshavlal Prajapati and Shri Sunil Babubhai Modi in cash.*

*Based on these facts I have reasons to believe that the above named assessee Shri Harsahd Keshavlal Prajapati has received profit in cash and has not shown in his return of income. I have therefore reasons to believe that the income of Shri Harshad Keshavlal Prajapati chargeable to tax has escaped assessment within the meaning of provisions of Section 147 of the IT Act. I am therefore satisfied that it is a fit case for reopening of assessment by issuing notice U/s.148 of the IT Act.”*

5. Thereafter notice u/s.142(1) was issued on 18.10.2013 whereby the assessee was requested to provide the explanation of receipts as under:

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*"As per your submission dated 29.07.2013, you have submitted that out of the cash receipt of Rs.64,26,000/- disclosed by Shri Shailesh D Prajapati, your share is 60% as per the Banakhat dated 26.2.2008. You have also accepted that the cash has been given to you as confirming party. However you have not submitted further details and your explanation for treating the same as undisclosed receipts for the relevant year as also mentioned in reasons recorded for reopening in your case. If you fail to offer explanation in this regard the above receipts in your had will be treated as your income for A. Y. 2009-10.*

In response to the above notice, assessee did not submitted anything and in its reply dated 18.10.2013 it asked for more time to file its explanation. Simultaneously notice U/s.133(6) had also been issued to the purchaser of the property as per the Samjauta Karar i.e. West Wing Infrastructure Pvt. Ltd. and in its response vide letter received on 27.12.2013. it has confirmed the transactions as per the agreement above. The evidence from the said party also supports the facts mentioned in the Ba akhat Agreement that the assessee along with Shri Sunil Modi have definitely received the cash amounting to Rs 64,26,000/- which has not been returned back by these persons subsequent to the cancellation of the deal.

6. It is pertinent to mention that assessee has failed to offer any explanation regarding not taking into account the above amount received in cash in its books of accounts as clearly mentioned in the agreement dated 26.02.2008. Therefore vide order sheet dated 26.02.2013, the A.R. of the assessee was given a show cause in this regard, the same is reproduced as under

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*"Please explain the cash payment received by you against the sale of land at Chandkheda at survey no.211 vide Banakhat dated 26.02.2008. You are asked to show cause as to why the amount not reflected in the books of account should be added to your total income."*

In its response vide reply dated 14.03.2014, the assessee has submitted as under:

- "1. This MOU is not signed by all the parties to the agreement not witness so there is no evidentiary value in law as it is not a registered deed but only a MOU that to unsigned.*
- 2. Even otherwise that it is mentioned in the MOU that Amount of Rs.38,65,600/- i.e. 60% Share of Rs.64,26,000/- is to be paid on or before 04.05.2008 and there is no evidence, actual payment of an assessee.*
- 3. Further the statement of acceptance of the other parties not supplied to assessee till to today you are requested kindly supply all adverse material to assessee and also give us opportunity to cross examine the relevant parties."*

7. The reply of the assessee has been carefully considered and it is clear from the reply that the assessee has nothing to substantiate that it has shown the amount in the books of account or any documentary proof that the said amount has been returned back subsequent to cancellation of the deal. It is pertinent to mention here that the other party Shri Shailesh D. Prajapati in its submission dated 10.12.2011 accepted that payment of Rs.64,26,000/- in cash was made in consequent to the agreement referred above.

8. But learned Assessing Officer was not satisfied with the plea of the appellant and he hold that onus is on the assessee to counter the evidence

clearly indicating amount of cash received by him and which was not subsequently accounted for in the books of accounts. Therefore, he made an addition of Rs.38,55,600/-.

9. Against the said order appellant preferred first statutory appeal before the Id. CIT(A) who partly allowed the appeal of the appellant.

10. We have gone through the relevant record impugned order. We have heard both the parties. In this case, the ‘Samjauta Karar’ was found at the residence of Shri Govind M. Prajapati. Same was between the parties without any date. The date i.e. 26.02.2018 mentioned by the AO is the date of buying of stamp paper not the date of agreement.

11. As per said ‘Samjauta Karar’ the first party is M/s. West Wing Infrastructure Ltd and authorized person to sign this ‘Karar’ on behalf of company was Shri Kalpeshbhai D. Prajapati but it has not been signed by Shri Kalpeshbhai D. Prajapati. The ‘Karar’ has not been signed by any one from the first party. It is signed as “Vati” (on behalf of) Shri Shailesh D. Prajapati. Moreover, This ‘Samjauta Karar’ was not signed by any witness.

12. As per ‘Sarat’ of the ‘Samjauta Karar’, Rs.64,26,000/- was paid to the appellant and Shri Sunil Modi by 04.05.2008, but as mentioned by the AO in remand report, only Rs.14 lakhs were paid by that date. This

shows the contradiction between contents of the 'Samjauta Karar' and other documents found from the same premises and relied by the AO for making additions, but did not reconcile.

13. As per the other pages, found and seized, which shows payments of Rs.5 lakhs to the appellant on 01.04.2008 and rest Rs.34 lakhs to Shri Sunil Modi. Again prove that if the appellant had 60% of share, he should have paid 60% of the money. In case of Shri Sunil Modi, 40% is Rs.25,70,400/- (40% of Rs.64,26,000) but as per this paper, Shri Sunit Modi had been paid Rs.39 lakhs, which is more than his share. This page has not been discussed in the assessment order and first time mentioned in remand report.

14. Sale deed of the said land was made on 22/03/2008 in which parties to the transaction are different. Name of the appellant and Shri Sunit Modi are not there even as confirming party, which prove that the 'Samjauta Karar' was not executed.

15. As mentioned in the remand report, the appellant sought copies of documents used against him on 14/03/2014 but same were not provided. The assessment order was passed on 26.03.2014. The AO should have provided the documents or other evidences which are going to be used against the appellant. This is required as per the principle of natural justice.

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16. In view of the above discussion, we hold that 'Samjauta Karar' was not valid karar. It is held in the case of CIT vs. Vivek Agrawal, Delhi High Court that the said used paper was undated and unsigned and therefore, no cognizance can be taken.

17. In my opinion, AO should have given the copies of the documents which were used against the appellant and same is amount to miscarriage of justice. As it is held by the Co-ordinate Bench in Prarthna Construction case, documents seized from the third parties and statements recorded at the back of the assessee without opportunity to interrogate and therefore, no addition can be made based on so called admission and seized material.

18. In our considered opinion, ld. CIT(A) has passed detailed and reasoned order and we are not incline to interfere in the order passed by the ld.CIT(A).

19. In the result, appeal filed by the department is dismissed.

20. So far as Cross Objection is concerned. Assessee does not want to press the same. Therefore, same is dismissed as not pressed.

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21. In the result, appeal filed by the department is dismissed and cross objection filed by the assessee is also dismissed as not pressed.

<b>This Order pronounced in Open Court on</b>	<b>22/02/2018</b>
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Sd/-  
एन.के. बिल्लैया  
(लेखा सदस्य)  
( N.K. BILLAIYA )  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 22/02/2018

*Priti Yadav, Sr.PS*

Sd/-  
महावीर प्रसाद  
(न्यायिक सदस्य)  
( MAHAVIR PRASAD )  
**JUDICIAL MEMBER**

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad