

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'ए' अहमदाबाद।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
AND SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 2384/Ahd/2016

Assessment Year : 2012-13

Harjivanbhai C. Patel, C/o. Mehta Lodha & Co., Chartered Accountants, 105, Sakar-I, Ashram Road, Ahmedabad-380009 PAN : ABUPP 1238 N	Vs	Deputy Commissioner of Income-tax, Circle 3(2), Ahmedabad
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आयकर अपील सं./ ITA No. 2460/Ahd/2016

Assessment Year : 2012-13

Deputy Commissioner of Income-tax, Circle 3(2), Ahmedabad	Vs	Harjivanbhai C. Patel, C/o. Mehta Lodha & Co., Chartered Accountants, 105, Sakar-I, Ashram Road, Ahmedabad-380009 PAN : ABUPP 1238 N
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri PD. Shah, AR
Revenue by :	Shri Rajdeep Singh, Sr DR

सुनवाई की तारीख/Date of Hearing : 03/04/2018

घोषणा की तारीख /Date of Pronouncement: 27/04/2018

**आदेश/ORDER**

**PER PRADIP KUMAR KEDIA, AM:**

The captioned cross appeals have been filed at the instance of the Revenue and the assessee against the order of the CIT(A)-3, Ahmedabad dated 21<sup>st</sup> July, 2016 arising in the assessment order dated 27.02.2015 passed by the Assessing Officer under Section 143(3) of the Income-tax

Act, 1961 (hereinafter referred to as "the Act") concerning Assessment Year 2012-13.

2. Both Revenue as well as the assessee are aggrieved by the action of the CIT(A) in the common issue concerning addition on account of Short Term Capital Gains.

3. The substantive grievance of the Revenue is that the CIT(A) has wrongly deleted the addition of Rs.1,22,23,795/- out of total addition of Rs.1,71,72,895/- towards Short Term Capital Gains. The assessee, on the other hand, in its appeal has impugned the order of the CIT(A) in confirming the balance addition of Rs.49,49,100/- by confirming the disallowance of cost of improvement while computing the chargeable Short Term Capital Gains.

4. Briefly stated, the assessee, an individual, filed his return of income for the Assessment Year 2012-13, *inter alia*, declaring Short Term Capital Gains on sale of certain parcel of lands. The return filed by the assessee was subjected to scrutiny assessment. In the course of this scrutiny assessment, the Assessing Officer found that the assessee sold two land parcels situated at Village Maflipur-Dholka and Village Bidaj. The Assessing Officer observed that the assessee claimed cost of improvement in these land properties while computing the capital gains at the time of sale during the year. The cost of improvement stated to be incurred by the assessee towards land filling and construction of compound wall was disputed by the Assessing Officer to the extent of Rs.1,71,72,895/-. The Assessing Officer observed that the bills produced towards land filling and compound wall construction expenses are

supported by the corroborate evidences in this regard. The Assessing Officer issued summons under Section 131 of the Act to all the three parties involved in land filling, compound wall construction etc.. It was observed by the Assessing Officer that Shri Dharmendra R. Patel summoned in connection with land filling denied having carried out any work of land filling on behalf of the assessee. The Assessing Officer further observed that two other parties namely Shri Ravi Patel and Shri Vijay L. Darbar concerning land filling and compound wall construction respectively did not appear in response to the summons served to support their bills for expenses incurred by the assessee in this regard. The Assessing Officer accordingly concluded that the expenditure claimed by the assessee on account of land filling and compound wall construction is not allowable expenditure on account of cost of improvement for the purposes of determination of Short Term Capital Gains arising on sale of land at Village Bidaj and Village Maflipur-Dholka as noted above. The Assessing Officer accordingly enhanced the Short Term Capital Gains arising on sale of land parcels to the extent of Rs.1,71,72,895/- by denying the costs claimed towards improvement of capital assets.

5. Aggrieved, the assessee preferred appeal before the CIT(A). The assessee contended before the CIT(A) that the Assessing Officer has misconstrued the facts and circumstances of the case and misdirected itself in law in coming to the conclusion towards non-acceptability of cost of improvement in question. The assessee filed detailed written submissions before the CIT(A) (abstract of which has been reproduced by the CIT(A) in his order) and, *inter alia*, submitted that the sole basis for

coming to adverse conclusion against the assessee is a denial statement of one third party namely Shri Dharmendra R. Patel, who raised bills towards land filling through his proprietorship concern. It was contended before the CIT(A) that the copy of the statement recorded behind the back of the assessee was never provided to the assessee despite specific request in gross transgression of natural justice. The assessee further contended that the witness of the Department (Shri Dharmendra R. Patel) was nursing hostility against the assessee on account of non-payment of his invoice and, therefore, has given such untruthful statement. The assessee further contended before the CIT(A) that summons under Section 131 was duly served upon the other two parties also and, therefore, failure of these parties to respond to the statutory summons does not call for any adverse view in law. The assessee further contended before the CIT(A) that neither the statement of Shri Dharmendra R. Patel allegedly recorded by the Assessing Officer was provided nor was the cross-examination thereof granted inspite of specific mention on this. The CIT(A), in the light of these submissions, called for the remand report from the Assessing Officer; however, the Assessing Officer failed to respond to the requisition of the CIT(A) despite several reminders in this regard. Consequently, the CIT(A) relied upon several judicial precedents has noted in his order and analyzed the facts placed before him. On the basis of the facts available on record, the CIT(A) found merit in the plea of the assessee towards bonafides of the expenditure to the extent of Rs.1,22,23,795/- relating to land filling expenses and compound wall construction expenses *qua* Shri Ravi Patel and Shri Vijay L. Darbar where summons were served and not responded. However, the cost of services provided by Shri

Dharmendra R. Patel concerning land filling was denied owing to incriminating statement given by the supplier of the services before the Assessing Officer. The CIT(A), in conclusion, admitted the claim towards cost of improvement of land under sale to the extent of Rs.1,22,23,795/- and confirmed the rejection made by the Assessing Officer of such expenses to the extent of Rs.49,49,100/-.

6. The relevant operative paragraphs of the order of the CIT(A) are reproduced hereunder for ready reference:-

*“4.2 Decision: I have gone through the facts in assessment order and submission of appellant carefully. The additional evidence as per Rule 46A were sent to the AO on 02.02-2016 for the report within 20 days. A reminder to AO was sent on 04-04.2016 saying that there was no progress in the appellate proceedings in this case for want of remand report with the request to submit the same by 21.04.2016. The reminder-2 was sent to AO on 03.05.2016 but neither remand report nor any communication received from AO till date. The matter was brought to the notice of seniors. However, the evidences submitted are considered to be necessary for the decision in the matter and ratio laid down by following case laws on the subject is considered:-*

- i) ITO vs. Modi Rubber Limited 43 ITD 396 (ITAT - Del)*
- ii) PrabhavatiS, ShahVs. CIT231 ITR 1 (Bom.)*
- iii) K. Mohammed Vs. ITO 107 ITR 808 (Ker.)*
- iv) Dwarka Prasad Vs. ITO 63 ITD 1 (ITAT - Pat)*
- v) B.L. Choudhury Vs. CIT 105 ITR 371 (Ori.)*
- vi) ITO Vs. Industrial Roadways (2007) 19(I) ITCL 460 (ITAT-Mum).*
- vii) CIT vs. Kanpur Coal Syndicate 53 ITR 225 (SC).*
- viii) CIT vs. Nirbheram Daluram 224 ITR 610 (SC)*

*In view of ratio laid down in above case laws, the additional evidences so submitted are decided to be admitted. The jurisdictional directions laid down by Hon'ble Supreme Court in the case of Jute Corporation of India Ltd. 187 ITR 688 (SC) are also being relied. As there is no response from the AO, the appeal is being decided as per facts on record.*

The ground No.2 has four parties to whom certain expenses have been paid. There is non-reconciled figures figuring in assessment order and in certain submission of the appellant. The bills for land development expensed have been seen and for further analysis the total amount is reconciled as under:

	Bill		
Name of the party	No.	Amount	Settled at
Khodal Transport	21	2700000	2430000
Khodal Transport	29	2799000	2519100
Sub Total (A)		5499000	4949100
Om Roadways - Ravi Patel	62	2375000	2375000
Om Roadways - Ravi Patel	63	2505000	2254500
Sub-Total (B)		4880000	4629500
Vijay L. Darbar	3	2714250	2442825
Vijay Darbar	14	2766100	2489490
Sub Total (C)		5480350	4932315
MayurC. Patel	5	2661980	2661980
Sub Total (D)		2661980	2661980
Others			0
Grand Total A to D		18521330	17172895

Therefore, it is total of last column i.e. Rs.1,71,72,895/- which has been disallowed by the AO. Further the ground is being bifurcated into two parts.

(a) As regards Shrt Dharmendra R. Patel, following payments have been claimed:

1. Khodal Corporation (Land filling) Bill No.21 dated 18.10.11 Rs.27,00,000/-
2. Khodal Corporation (Land filling) Bill No.29 dated 25.10.11 Rs.27,99,000/-

Total Rs.54,99,000/-

However, actual claim by Shri Dharmendra R. Patel is of Rs.49,49,100/-.

The assessing officer in the assessment order at para 4.3 has mentioned as under:

"4.3 To verify the genuineness of the assessee's claim, summons u/s.131 of the IT Act dated 08.01.2015 was issued to all the three parties mentioned above. The witness was requested to attend on 19.01.2015 and depose before the undersigned. However, out of the three parties only Shri Dharmendra R. Patel, Proprietor Khodal Transport attended. The statement of Shri Dharmendra R. Patel was recorded on oath. In response to the questions Shri Dharmendra R. Patel clearly stated that he has not done any work for and behalf of the assessee of land filling. He also submitted in response to Question No.8 that he has only two small Tata Truck with small loading capacity of three tons. In response to Question No. 12 he categorically denied knowing Shri Harjivanbhai Patel assessee. In response to Question No. 15 he categorically stated that Bill No.21 & 29 submitted by the assessee was not issued by him. He also stated that it is not practically possible to conduct 900 and 933 trips with the small trucks he has. The Income Tax return filed by Shri Dharmendra R. Patel with ITO, Ward 3(2)(1), Ahmedabad for A. Y.2012-13 has also been verified. On verification of copy of return of Shri Dharmendra R. Patel for A.y.2012-13, it is observed that the gross receipts from the business is Rs.4,58,513/- only. Whereas, the assessee claims payment of Rs. 54,99,000/- to Shri Dharmendra R. Patel."

The appellant in the grounds of appeal as well as subsequent submission has repeated the contention that neither cross examination of Shri Dharmendra R. Patel was allowed nor a copy of his statement was provided, therefore, the addition has been made behind the back. The relevant portion of submission dated 12.07.2016 is reproduced below:

"2.01 That the learned Assessing Officer has erred in law and facts by making disallowance of cost of improvement and construction of compound wall of Rs. 1,71,72,895/- and therefore, the learned Assessing Officer be directed to allow the same in full, while computing the total income.

2.02 That the Copy of the Statement recorded u/s 131 of Shri Dharmendra R Patel was not given to the Appellant and therefore the statement given by the said person cannot be relied upon for the disallowance. Since the payment of his invoice was not made, he has denied for the invoice issued by me and if required he may be called upon by your good office, as he is not cooperating with us.

2.03 Without prejudice to the said facts, in the interest of justice and having done the work of Mati Pura and Wall Construction and relying on the Judgment of the Hon'ble ITAT, Ahmedabad in the case of Bholanath Poly Fab Pvt Limited Vs ITO (ITA No. 137/Ahd/2009 dated 26/11/2011) and other orders of the Hon'ble ITAT, utmost 12.50% of the amount of Shri Dharmendra R. Patel can be disallowed by the learned AO or necessary direction for the cross examination of the said person may be given by your good office to the learned AO. Here we would also like to submit that the judgment of the Hon'ble ITAT in the case of Bholanath Poly Fab Pvt Limited (Supra) has been approved by the Hon'ble Gujarat High Court also. Reported in (355 ITR 290)(Guj)"

As can be seen above the appellant has tried to shift the onus to the Department and the attempt to allow cross examination of Shri Dharmendra R. Patel (Prop. Khodal Corporation) to the appellant has not been made by the AO even during remand proceedings. Notwithstanding this fact, startling positive evidences have been brought on record by the AO during the assessment proceedings itself and same are forming part of para No.4.3 of assessment order. Shri Dharmendra R. Patel has not only denied having done any such work as claimed by appellant but also categorically justified his statement with the fact that he did not have capacity to undertake such big work with limited transport vehicles at his disposal. The alternative plea of the appellant of taxing only 12.5% of such questioned expenditure by the appellant as per ITAT judgment in the case of Bholanath Poly Fab Pvt. Ltd. (approved by Gujarat High Court -355 ITR 290 - Guj.) is not accepted as per evidence on record. The AO has recorded statement u/s. 131, therefore, the instant case can be distinguished especially when the story has ended only with the statement. No further analysis of sales or total project or asset has been recorded. In view of these facts, the expenditure claim of Rs.49,49,100/- in relation to Dharmendra R. Patel (Prop. Khodal Corporation) is hereby confirmed.

(b) The second portion of ground No.2 is relating to expenditure disallowance in relation to following parties:-

1. Ravi Patel, Prop. Om Roadways(Land filling)Bill No.63 dt 30.10.11 Rs. 22,54,500/-
  2. Ravi Patel, Prop. Om Roadways(Land filling)Bill No.62 dt.31.05.11 Rs. 23,75,000/-
  2. Vijay L Darbar (Compound Wall) Bill No.3 dated 05.11.11 Rs. 24,42,825/-
  3. Vijay L. Darbar (Compound Wall) Bill No.14 dated 10.11.11 Rs. 24,89,490/-
  4. Mayurbhai C.Patel (Compound Wall) Bill No.5 dated 10.06.11 Rs. 26,61,980/-
- Total : Rs.1,22,23,795/-

*Shri Ravi Patel, Prop. Om Roadways has filed notarized affidavit, the main portion is reproduced below:-*

*I Ravi Patel of Om Roadways, Prantiya, Dist Gandhinagar do hereby confirmed that I have carried out the work of mati puran on behalf of Mr. Harjivanbhai Patel for his site at plot No.49D mouje Maflipur, Tal. Dholka, Dist. Ahmedabad from time to time. Total number of trips have been carried 1785 at agreed price and as per invoices issued by me.*

*Accordingly, I have issued two invoices bearing No.62 dated 31.05.2011 for Rs.23,75,000/- (Rupees Twenty Three Lakh Seventy Five thousand only) and Wo.63 dated 30.10.2015 for Rs.25,05,000/- (Rupees twenty five lakh five thousand only).*

*What I stated above is True  
Sd/-*

*Ravi Patel  
Om Roadways  
07.12.15*

*Shri Vijay L. Darbar has filed notarized affidavit, the main portion is reproduced below:-*

*I Vijay L. Darbar, 42/A Bhagwannagar, Near Ambica Tube, Vatva, Ahmedabad do hereby confirmed that I have carried out the work of compound Walls with material alongwith water tank and two Room (with material) as per invoices issued by me to Mr. Harjivanbhai Patel for his site at Block No. 49 d Mouje Maflipur, Ta. Dholka, District, Ahmedabad.*

*I hereby confirm that I have issued two invoices bearing No.3 dated 05.11.2011 for Rs.27, 14,250/- (Rs. Twenty seven lacs fourteen thousand only) and No. 14 dated 10.11.2011 for Rs.27,66,100/- (Rs. Twenty seven lacs sixty six thousand one hundred*

*What I stated above is True*

*Sd/-  
Vijay Darbar  
07.12.15*

*Shri Mayur C. Patel has filed notarized affidavit, the main portion is reproduced below:-*

*I Mayur C. Patel, B/35 Dhwani Tenament, Isanpur, Ahmedabad do confirm that I have carried out the work of Compound Wall with material alongwith water tank and two Room (with material) as per invoices issued by me to Mr. Harjivanbhai Pael for his site at Bidaj, Ta. Dist. Kheda.*

*I hereby confirm that I have issued one invoice bearing No.5 dated 10.06.2011 for Rs.26,61,980/- (Rs. Twenty six lacs sixty one thousand nine hundred eighty only).*

*What I stated above is True ,*

*Sd/-*

*Mayur C. Pate*

*Om Roadways*

*07.12.15*

*The affidavit filed by 3 parties above has been perused wherein bill No./Amount/work executed for appellant has been specifically detailed. The ledger accounts of these three parties are on record and it is seen that payments by appellant has been made through cheques.*

*The appellant has filed affidavits from the parties, full addresses with PA No. Therefore, it is claimed that the expenditure incurred is genuine through banking channel and the same has been done as it was necessity for the asset in question. The fact remains that the AO has not proved that this was non - genuine expenditure. The AO also could not extract positive evidences for revenue by recording statements u/s. 131 of the I. T. Act, 1961 of the vendors to prove that no such material was purchased by the appellant or no such services rendered to the appellant. There is also no evidence brought on record to prove that the money has been returned by the vendors to the appellant. The full details were on record and the AO could have done the same as he is bestowed with such powers which would have been very much within the realm of Departmental procedure. Once affidavits have been filed, further action, if any, is required to be taken in case of vendors and not in case of appellant.*

*In view of facts on record, I am not inclined to accept the findings of the A.O. which are prominently based on the fact that there was non attendance of vendors u/s 131 during assessment proceedings.*

*Appellant can't be punished for default of related party as it has been held in CIT Vs. CARBO IND HOLD LTD 244 ITR 0422 (Cal) such as "if share broker, even after issue of summons does not appear, for that reason, the claim of assessee should not be denied, specially in the cases when the existence of broker is not in dispute, nor the payment is in dispute. Merely because some broker failed to appear, assessee should not be punished for the default of a broker and on mere suspicion the claim of assessee should not be denied." The plethora of evidences on record cannot be ignored. The genuine expenditures is allowable as per guidelines laid down by Hon'ble Supreme Court in the case of Rajasthan State Warehousing Corpn. Vs. CIT 242 ITR 450 (SC).*

*Affidavits of the vendors have remained uncontroverted. The same were not disproved or found to be false. If that be so Hon'ble Gujarat High Court in the case of Glass Line Equipment 253 ITR 454 has held that when affidavit were not controverted, they have to be taken as accepted. The improvement expenditure (mati puran and Compound Wall) incurred by the appellant of Rs.1,22,23,795/- is hereby allowed. In other wands, disallowance of Rs,49,49,100/- is confirmed out of the total disallowance of Rs.1,71,72,895/-. The appellant gets relief of Rs.1,22,23,795/-. Hence the ground No.2 is partly allowed."*

7. Aggrieved by the aforesaid order of the CIT(A), both the Revenue as well as the assessee have contested the findings of the CIT(A) before the Tribunal.

8. Learned Authorized Representative for the assessee, at the outset, submitted that the action of the Assessing Officer in denying the claim towards cost of improvement is patently unjustified in view of the facts and circumstances of the case. Learned Authorized Representative pointed out that all the summons issued to three parties involved in land filling and construction of compound wall were duly served. Two parties have not appeared before the Assessing Officer despite admitted position of service of summons inspite of repeated attempts - both at the assessment stage and at appellate stage. Therefore, the CIT(A) has

rightly appreciated the facts in its perspective and held that there was no warrant for the Assessing Officer to take an adverse view for non-attendance of the summons by third parties unconnected to the assessee. Learned Authorized Representative next submitted that, notwithstanding the part relief granted by the CIT(A), as deserved, the CIT(A) also fell in error in holding a part addition to the extent of Rs.49,49,100/- on the basis of a statement of land filling contractor without providing a copy of the statement purportedly recorded. The assessee neither knows the contents of the statement to defend its case nor the assessee was provided with the remedy available to it in law seeking cross-examination of such alleged adverse statement. The learned Authorized Representative accordingly contended that placing blind reliance on the so-called statement of the supplier unilaterally without confronting the assessee in this regard is not judicially permissible. The learned Authorized Representative cited plausible reasons for the so-called adversarial statement of the supplier to be owing to non-payment against the bills raised triggering hostility. The learned Authorized Representative submitted that, in the absence of the cross-examination made available on statement recorded behind the back, the bills raised towards land filling/construction work before sale of land cannot be held to be unreal in any manner. Learned Authorized Representative next contended that no physical inspection of the land was carried out at any stage to appreciate the claim of the assessee. The learned Authorized Representative accordingly submitted that CIT(A) misdirected itself in law and on facts in placing sole reliance on unverified statement and in rejecting the claim of the cost of improvement to the extent of Rs.49,49,100/- corroborated by

documentary evidences in the form of bills etc.. The learned Authorized Representative consequently pleaded for reversal of the action of the CIT(A) upholding the disallowance to the extent of Rs.49,49,100/- and for dismissal of appeal of the Revenue seeking reversal of the action of the CIT(A) for the part relief granted by it.

9. Learned Departmental Representative, on the other hand, heavily relied upon the order of the Assessing Officer and in furtherance submitted that the summons issued to three parties does not inspire confidence in the documentary evidence placed on account of claim of cost of improvement. Learned Departmental Representative submitted that one of the parties have contended and categorically denied the claim of cost of improvement concerning bills towards land filling expenses aggregating to Rs.49,49,100/-. Therefore, no fault can be found with the order of the CIT(A) on this score. The learned Departmental Representative next submitted that it was the duty of the assessee to produce other two parties concerned for verification of documentary evidences and the assessee failed in doing so and therefore, the onus placed upon the assessee was not discharged at all. The learned Departmental Representative accordingly submitted that the CIT(A) has wrongly granted part relief on account of expenses claimed by the assessee attributable to these parties who failed to attend. The learned Departmental Representative accordingly submitted that the action of the Assessing Officer is required to be upheld in toto.

10. We have carefully considered the rival submissions and perused the material available on record. The short question for adjudication is whether the cost of improvement claimed by the assessee towards land

filling and constriction of wall expenses is maintainable in the facts and circumstances of the case or not? As noted in the preceding paragraphs, the assessee holds certain land parcels at Village Maflipur-Dholka and Village Bidaj. The land parcels were sold during the year and while computing the incidence of capital gains thereon, the assessee, *inter alia*, claimed cost of improvement as a part of cost of acquisition to the extent of Rs.1,71,72,895/-. The bills, payments made etc. towards such cost incurred were found to be attributable to three parties (i) Dharmendra R. Patel (land filling) (ii) Shri Ravi Patel (land filling) and (iii) Shri Vijay L. Darbar, Civil Contractor (compound wall construction). The Assessing Officer issued summons for verification of the expenses to all the three parties. The first party named above have appeared and purportedly made assertion contradicting the claim of the assessee. The amount of Rs.49,49,100/- attributable to services rendered on account of land filling by the aforesaid witness was thus declined towards cost of improvement - both by the Assessing Officer and the CIT(A). As regards other two parties rendering services on account of cost of improvement to the extent of Rs.1,22,23,795/-, the Assessing Officer denied cost of improvement for the broad reasons of non-attendance of these two parties. The CIT(A), however, granted relief in respect of these two parties mainly on account of the fact that despite seeking remand report on the aforesaid issue the Assessing Officer has failed to bring any adverse material on record.

11. Adverting to the issue of disallowance of Rs.49,49,100/- on the grounds of incriminating statement obtained from the supplier of the bills towards land filling, it is claimed on behalf of assessee that the

principle of natural justice demands that the statement obtained from a third party requires to be confronted to the assessee. Failure to do so would vitiate the action of the Revenue in placing reliance on such statement and drawing adverse inference there from. The reference to the judgments of Hon'ble Supreme Court in the case of Kishanchand Chelaram vs. CIT [(1980) 125 ITR 713 (SC)] and Late Laxman S. Patel vs. CIT, 327 ITR 290 (Guj) was made in this regard. The Assessing Officer as well as the CIT(A) have categorically failed in discharging the obligation cast upon them as a quasi-judicial authority in this regard. The assessee has demanded the copy of the statement as well as the cross-examination of the witness which request cannot be brushed aside in view of the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries vs. CCE, 281 CTR 241 (SC) (2015) also. The action of the Revenue Authorities thus suffers from serious irregularities while drawing conclusion adverse to the assessee. Therefore, we consider it just and expedient to restore the action of the CIT(A) partly confirming the disallowance of cost of improvement to the extent of Rs.49,49,100/- to the file of the Assessing Officer for adjudicating afresh in accordance with the law after granting proper opportunity and following principles of natural justice in this regard. Needless to say that the copy of the statement so recorded shall be provided to the assessee for its necessary action at its end and cross-examination thereof be provided to the assessee if so demanded while deciding the issue. The onus will shift upon the assessee only after the cross-examination of Shri Dharmendra R. Patel (Prop: Khodal Corporation) is provided. Thus, the issue concerning cost of improvement arising in the assessee's appeal is set

aside and restored to the file of the Assessing Officer for adjudication afresh in accordance with law.

12. In the result, appeal of the assessee is allowed for statistical purposes.

13. Now, we shall advert to the remaining part of the cost of improvement amounting to Rs.1,22,23,795/- agitated on behalf of the Revenue. The afore-stated cost of improvement is attributable to the other two parties noted above where summons were served but the parties did not respond. It is trite that once the summons have been duly served upon the third party, the correct course open to the Assessing Officer was to obtain the desired information from such parties in exercise of its quasi-judicial powers. This is more so where assessee has no control over such parties. There can be many reasons for non-attendance to the summons including some kind of fear of detection of undisclosed income earned in the hands of the parties which may have gone unrecorded. We do not want to deliberate on this aspect any further. The CIT(A) has rightly, in our view, concluded the issue in favour of the assessee having regard to the documentary evidences. In the absence of any positive material adverse to the assessee, the disallowance/addition is not permissible on the basis of conjectures and surmises. The CIT(A) has thus rightly adjudicated the issue. We thus find little merit in the grievance of the Revenue as per its appeal and uphold the reasons adopted by the CIT(A) in toto. In the result, appeal of the Revenue is dismissed.

14. In the combined result, the appeal of the assessee in ITA No.2384/Ahd/2016 is allowed for statistical purposes and appeal of the Revenue in ITA No.2460/Ahd/2016 is dismissed.

*Order pronounced in the Court on 27<sup>th</sup> April, 2018 at Ahmedabad*

Sd/-

**(RAJPAL YADAV)  
JUDICIAL MEMBER**

Ahmedabad, Dated 27/04/2018

*SR*

Sd/-

**(PRADIP KUMAR KEDIA)  
ACCOUNTANT 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)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

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आदेशानुसार/ BY ORDER,

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