

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ।
IN THE INCOME TAX APPELLATE TRIBUNAL,
"A" BENCH, AHMEDABAD
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

1.	ITA.No.2634/Ahd/2011 Asstt.Year : 2008-09	ACIT, Cent.Cir.1(1) /Cir.5, Ahmedabad Vs. Navratna Organizers & Developers P. Ltd. 2nd Floor, Kaycrest Opp: Gujarat Gas Company Ltd. Nr. Parimal Crossing Ahmedabad.PAN : AAACN 5181 E
2.	ITA.No.1875/Ahd/2013 Asstt.Year : 2009-10	-do-
3.	ITA No.2183/Ahd/2016 Asstt.Year : 2012-13	-do-
4.	IT(SS)A.NO.577/Ahd/2011 Asstt.Year : 2002-03	-do-
5-6	ITA No.895 and 896/Ahd/2017 Asstt. Year: 2008-09 and 2009-2010	Navratna Organizers & Developers P. Ltd. 2nd Floor, Kaycrest Opp: Gujarat Gas Company Ltd. Nr. Parimal Crossing Ahmedabad. Vs. ACIT, Cir.5 Ahmedabad.
7-9	ITA No.339, 340 and 342/Ahd/2017 Asstt.Years : 2001-02, 2002-03 and 2004-05	-do-

(Applicant)		(Responent)
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Revenue by :	Shri O.P. Vaishnav, CIT-DR
Assessee by :	Shri Tushar Hemani, with Shri P.B. Parmar, AR

सुनवाई की तारीख/Date of Hearing : 31/10/2018
घोषणा की तारीख /Date of Pronouncement: 23 /01/2019

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER:

These appeals are by the Revenue and the assessee. ITA No.2634/Ahd/2011 and 1875/Ahd/2013 for the Asstt.Years 2008-09 and 2009-10 are directed at the instance of the Revenue against orders of the Id.CIT(A)-I dated 5.9.2011 and 4.4.2013. Assessments have been reopened in both these years by issuance of notice under section 148 of the Act. Additions have been made by the AO, which were confirmed by the Id.CIT(A), and therefore, ITA No.895 and 896/Ahd/2017 are directed at the instance of the assessee against separate orders of the Id.CIT(A)-7 dated 28.2.2017 passed in both these years. Similarly, IT(SS)A.No.577/Ahd/2011 and ITA No.2183/Ahd/2016 are Revenue's appeal for the Asstt.Year 2002-03 and 2012-13 against order of the Id.CIT(A)-1 dated 30.8.2011 and order of the Id.CIT(A)-9 dated 20.6.2016.

2. ITA Nos.339, 340 and 342/Ahd/2017 are filed by the assessee against orders of the Id.CIT(A)-9, Ahmedabad of even dated i.e. 26-12-2016 for the Asstt.Years 2001-02, 2002-03 and 2004-05. In these appeals for the Asstt.Years, issues raised are common i.e.(a) the Id.CIT(A) has erred in confirming estimation of profit on WIP at 8% of the various projects.

3. In the Asstt.Year 2009-10, the Revenue has raised identical issues viz. (a) the Id.CIT(A) has erred in deleting addition of Rs.4,84,35,702/- which was added by the AO on account of income from Kalhar Project ; (b) The Id.CIT(A) has erred in deleting the addition of Rs.4,34,90,414/- which was added by the AO by estimating profit at Rs.8% of WIP of various projects. Similar common issue is raised by the assessee in ITA Nos.339, 340 and 342/Ahd/2017, and by the Revenue in ITA No.2183/Ahd/2016. First we take appeals of the Revenue against first round of CIT(A)'s order.

4. There are only two issues agitated by the Revenue in the Asstt.Year 2008-09; they are (a) the Id.CIT(A) has erred in deleting addition of Rs.10,54,50,250/- added by the AO on account of income from Kalhar Project; (b) the Id.CIT(A) has erred in deleting addition of Rs.3,67,86,220/- which was added by the AO on account of estimation of profit at the rate of 8% on work-in-progress of various projects. The issues raised in the Revenue's appeal for the Asstt.Year 2008-09 are concerned, they common with the grievances of the Revenue in the Asstt.Year 2009-10 also, wherein the Revenue has pleaded that the Id.CIT(A) has erred in deleting the addition of Rs.4,34,90,414/- which was added by the AO by estimating profit at 8% of work-in-progress of various projects, and (b) deletion of Rs.4,84,35,702/- with respect to Kalhar project. We take all these grounds of appeal together.

5. Facts on all vital points are common. Rather in the Asstt.Year 2009-10, the Id.CIT(A) has reproduced order of the Id.CIT(A) in the Asstt.Year 2008-09, and thereafter concurred with the order. Therefore for the facility of reference, we take up the facts from the Asstt.Year 2008-09.

6. Brief facts of the case are that the assessee-company at the relevant time was engaged in the development of various projects and earning certain amount of development fees. It has filed its return of income on 29.9.2008 declaring total income at Rs.5,90,43,875/-. Similarly, in the Asstt.Year 2009-10, it has filed its return of income on 30.9.2009 declaring total income at Rs.78,75,584/-. The assessments in both the years were selected for scrutiny assessment and notices under section 143(2) were issued and served upon the assessee. On scrutiny of the accounts, the Id.AO harboured a belief that a sum of Rs.11,66,91,326/- was received as booking amount in respect of Kalhar Project. The total work done during the year is of Rs.1,12,41,076/-. Thus, according to him excess of collection over expenditure i.e.

Rs.10,54,50,250/- deserves to be assessed as income of the assessee. He confronted the assessee as to why this should not be treated as its business income. In response to the query of the AO, assessee filed detailed submissions which have been reproduced by the AO, and such submissions read as under:

“2.1 We have very carefully considered the contents of item No.(1) and we have to state that there is no justification in the proposal that excess of collection over expenses in respect of Kalhar Bunglows and other projects should be treated as business income of our company. It is submitted that said proposal could have been said to have lawful force if the projects - were completed and all the units -were handed over to the members and all other legal formalities -would have concluded without any farther obligation on part of either company or the owner of the projects. It is asserted that till completion of all the formalities and till construction of the units.and till handing over of the units the collections are always in nature of liability have no characteristics of income. It is most respectfully submitted that under provisions of the Income tax Act, 1961 only income chargeable to tax can be considered as part and parcel of total income. It is submitted that any collection or any amount received by an assessee which does not have characteristic of an income cannot be considered as income in computation of the total income.

2.2 We have to state that our company has collected the booking amounts, from the various members in respect of the various projects owned by the other entities and such collection in fact are towards a liability on part of our company and are embedded with an obligation for constructing a house and have no characteristic of income at all. It may be appreciated that if a person has booked bungalow of Rs. 50 lacs our company will make an advance collection from the said party of a certain amounts of the agreed sales consideration The collections will be utilized towards construction of the units and thereafter the collection will be made by our company from the said members as and when the construction work made a progress. It is submitted that if our company has made collections ofRs. 20. lacs till 31st March, 2008 and if expenditure has been incurred on the bungalow till 31st March, 2008 of Rs. 10 lacs the amount of Rs. 10 lacs is being reflected as excess collection over expenses which in fact is towards a liability on the part of our company in as much as we have to spend substantial amount out of this excess collection of Rs. 10 lacs towards the construction of the bungalow. It may be appreciated that every year the necessary entries of the profits are being made by way of development fees and every year the necessary entries are being made on handing over of the constructed property and on execution of all the legal formalities. It may be appreciated that as on 31st March, 2007 the collection for Kalhar booking was Rs. 21.88 Crores as against which as on 31st March, 2008 collection has been reflected at Rs7.30 Crores. The reduction in Kalhar booking amount is on account of transfer of booking amounts to the respective societies on completion of the bungalows and on execution of all the legal documents. The

loans and advances under the head details of project reflects expenditure incurred on construction and also advances made towards the construction. It may be appreciated that as on 31st Mar.ch, 2007 the aggregate debit was Rs. 16.65 crores as against which aggregate debit as on 31st March, 2008 was Rs. 4.61 lacs. It may be appreciated that the reduction is on account of transfer of cost of the construction to the respective societies on completion of the bungalows and on handing over the possession of the bungalows to the members. It may be appreciated that each and every income derived by our company from the business operations has been correctly considered and there is no income which has not been considered by our company. The excess collection is in fact not in the nature of income but it is a difference between the amounts collected and the amount expended on the project and in fact substantially represents amounts to be expended on construction of the bungalows. It may be appreciated that there may be an instance where the expenditure incurred by our company may be more than the amount collected. Such excess expenditure can never be considered as our expenditure deductible in computation of the total income. Such contingency may not be repetitive -where the scheme is for development and construction and development of apartments. It is submitted that the collection is in nature of liability and therefore the question of any income does not arise.

2.3. It may be appreciated that as on 31st March, 2008 the excess of expenditure towards credit/collection in respect of Kollanade Central Project was Rs. 40.69 Crores. It is submitted that the said project -was constructed and developed by our company. However, unfortunately our company could not realize the targeted collection on account of recessionary trend in commercial premises and therefore Rs. 40.69 Crores have been reflected as excess of expenditure over the collection in respect of Kollanade Project. It may be appreciated that said excess expenditure has been reflected by our company as a capital cost and cannot be considered as the deductible expenditure on computation of the total income. It is respectfully submitted that if the proposition stated by your goodself is accepted that the said proposition will have to be applied for all the projects and all the excess expenditure over the collections will have to be allowed as deduction in computation of the total income. The complete details in respect of all the projects have been placed on your records. It is submitted that Rs. 365000/- under the head booking Kalhar represents miscellaneous booking collected towards commercial project proposed to be developed. However, the collection has been reflected as such as hitherto no construction work has been yet started and if the commercial project is found unviable or even if refund of booking amount is demanded in that event Rs. 365000/- will have to be refunded back by our company. It may therefore, be appreciated that Rs. 365000/- is in nature of liability and can never be considered as our income.”

7. The Id.AO was not satisfied with the explanation of the assessee, and he treated the collection over the expenditure as income of the assessee. In

this way, he made addition of Rs.10,54,50,250/-. Dissatisfied with this addition, the assessee carried the matter in appeal before the Id.CIT(A). The Id.CIT(A) has deleted this addition by observing as under:

“4.5 It is an undisputed fact that the appellant is a developer and therefore, providing its services to various entities for which development agreements are executed and accordingly development fees is charged. Simply for the reason that the appellant is associated with the projects since beginning or it has overall control over the projects, it cannot be treated as owner of the projects. .

4.6 The appellant in the paper book has provided complete details and break up of Rs.10,54,50,250/- which were filed during assessment proceedings also. It is observed that the major liabilities inter alia are consisting of "Kalhar Bunglow booking amount". The other credit balances are in respect of creditors for expenses, creditors for goods and creditors for labour as on 31st March, 2008. The appellant has provided the statements giving names and complete details of booking amounts, names and complete details of creditors for expenses, names and complete details of creditors for goods, names and complete details for creditors for labour which were also placed on the records of the assessing officer. It is contended that each and every individual credit entry has been accepted by the assessing officer as genuine and duly supported by documentary evidences acceptable in the eyes, of law. It is therefore asserted that since each and every individual entry has been accepted as a genuine liability the balance of Rs.10,54,50,250/-is also a genuine liability on the part of the appellant company.

4.7 It is submitted by the appellant company that on completion of the construction and on allotment of bungalows, the booking amount and the cost of the construction are being transferred to the respective societies. The appellant has provided a statement showing the details of Kalhar Booking as at 31st March, 2007, 31st March, 2008, 31st March, 2009 and 31st March, 2010. It is observed that Kalhar booking amount which was Rs. 21,87,62,854/- as on 31st March, 2007 had stood substantially reduced to 'Rs. 7,30,81,763/- as on 31st March, 2008 and amount also stands reduced thereafter. The reduction in booking amount is attributable to transfer of booking amounts in favour of the societies on allotment of the bungalows. The project cost also stands reduced on transfer . of project cost to the respective societies. The various sundry creditors are reflecting the business liabilities on the part of the appellant company duly supported by documentary evidences viz. invoices, professional bills, debit notes etc. The representative of the appellant company has explained that the appellant is engaged in the business of development and construction and on the basis of the services provided by the appellant debit notes have been raised upon the societies and the" fees received by the appellant company have been credited to the Profit and Loss account and have been considered in computation of the total income. In my opinion having regard to all the facts Rs. 10,54,50,250/- is legally existing liability on the part of the appellant company and therefore it is not in nature of income. Addition of Rs.10,54,50,250/- made by the assessing officer is therefore deleted. This ground of appeal is accordingly disposed off.”

8. The Id.DR relied upon the orders of the AO, whereas, the Id.counsel for the assessee put reliance upon the order of the Id.CIT(A).

9. With the assistance of Id.representatives, we have gone through the record carefully. A perusal of the assessment order would indicate that the Id.AO has treated the assessee as owner of Kalhar Project whereas the case of the assessee is that it is a developer. It used to develop housing project on behalf of the cooperative societies and charges development fees for carrying out such development work. According to the assessee, cooperative societies provide material for carrying out development activity. The assessee used to collect booking amount on behalf of the society and its development work is being shown under the head work-in-progress on asset side of the balance sheet. Similarly, collections taken from the members are being shown as liability in the balance sheet. Thus, stand of the assessee before the AO was that being a developer, its rights were limited to receive development fees on completion of project. The society is owner and has right, title and interest on work-in-progress. This stand of the assessee has been accepted by the Id.CIT(A) in both the assessment years. Contrary to this stand, nothing has been brought to our notice. The assessee has demonstrated that it was working only as a developer and alleged collection over expenditure cannot be treated as its business income, rather, it was a liability in the balance sheet. Therefore, we are of the view that the Id.CIT(A) has rightly deleted this addition and, no interference is called for. Similarly, in A.Y.2009-10 an addition of Rs.4,84,35,702/- was made on account of excess of collection over expenses. It was deleted by CIT(A). We do not find any error in the order of the Id.CIT(A). Thus, this ground is rejected in both years.

10. As far estimation of profit at 8% of the WIP in both these years is concerned, we have gone through the record with the assistance of the

ld.representatives. In the Asstt.Year 2008-09, WIP of Rs.45,98,27,752/- was noticed by the AO. He estimated 8% profit on such WIP and made addition of Rs.3,67,86,220/-. On similarly analogy, he noticed WIP of Rs.54,36,30,173/- in the Asstt.Year 2009-10 and estimated profit at Rs.4.34 crores. These additions have been deleted by the ld.CIT(A). Similar addition was made in the case of the assessment in the Asstt.Year 1997-98 which was deleted by the ld.CIT(A). Dispute travelled up to the Tribunal vide ITA No.1114/Ahd/2005 and the Tribunal has upheld the deletion. Copy of the Tribunal's order has been placed on record.

11. On due consideration of all the materials, we are of the view that the assessee was working as a developer. It was not owner of work-in-progress. Moreover, on completion of project, it used to offer receipt received in the shape of development fees and such receipts have been recognized on completion of project. Consistently, this has been shown by the assessee. The AO has made an addition on hypothetical basis by treating the WIP belonged to the assessee. It has been contended before us that the AO has invoked Accounting Standard-7 which otherwise applicable on contractor. The assessee is a developer, and AS-7 is not applicable. After going through the finding of the ld.CIT(A) and relying upon the order of the ITAT in the assessee's own case for the Asstt.Year 1997-98, we are of the view that 8% profit on alleged WIP cannot be estimated in the case of the assessee. Hence, the ld.CIT(A) has rightly deleted this addition in both the years. No other ground has been agitated by the Revenue in the Asstt.Year 2008-09. Hence, its appeal is rejected.

12. In the Assessment Year 2009-10, there is one more ground of appeal, wherein the Revenue has pleaded that the ld.CIT(A) has erred in deleting the addition of Rs.1,97,04,844/-

13. Brief facts of the case are that in the Asstt.Year 2009-10, the AO has made addition of the above amount on relying upon alternative submissions made in the Asstt.Year 2008-09. The AO has observed that from perusal of ledger account of various parties of Kalhar project for the Asstt.Year 2009-10, it revealed that memorandum of satisfaction was signed by the assessee with these members in the Asstt.Year 2008-09, but it has received payment from certain members in F.Y.2008-09 relevant to the Asstt.Year 2009-10. The AO was of the view that once memorandum of satisfaction was signed between the assessee-company and the ultimate buyers, and thereafter if some amount was received, then it should be the income of the assessee. He took note of details of such sum received by the assessee in the assessment order, and thereafter made addition of Rs.1,97,07,844/-.

14. Dissatisfied with this addition, the assessee carried the matter in appeal before the Id.CIT(A). The assessee contended that submissions made by the assessee in the Asstt.Year 2008-09 have been considered by the AO partly. The Id.AO did not appreciate the submission *in toto*. It was emphasized that the assessee company had made collection from various members for and on behalf of the respective societies. The collections were always in the nature of liability on the part of the assessee, as the collection was made in the capacity of a trustee for and on behalf of the society. The collections have been utilized towards the cost of construction and cost of land. The assessee-company has enclosed copies of accounts of various members referred to by the AO, before the Id.CIT(A) and submitted that collections have been appropriated in favour of the society towards cost of land and cost of construction. The Id.First Appellate Authority has appreciated these contentions of the assessee and deleted the addition. The finding recorded by the Id.CIT(A) in this regard reads as under:

“11. The AO has held that the sum of Rs.1,97,07,844/- which is received from the members after the memorandum of satisfaction was signed with them is the income of the appellant. The AO has relied on the contention of the appellant and held that once all the liabilities cease then the surplus received from booking of the units becomes the income of the appellant. The above contention of the AO is not correct. AM that the appellant has stated in the submission quoted by the AO is that the appellant does not account for the receipts from the unit owners as his income. He rather treats these amounts as liability which is discharged by carrying on the development work and constructing the units. Once the units are complete then the liability of the appellant is discharged the shortage or surplus would belong to the owner of the project. What the appellant is entitled to is the Development fees and the construction fees. This Development fee and construction fees is the only income of the appellant. Whether any surplus arises in the booking and expenses account is not the income or loss of the appellant. Thus the question of taxing the amount received against booking from members would not arise because these amounts cannot be the income of the appellant.

11.1 Further, the contention of the appellant that the customers had requested that the memorandum of satisfaction be signed and that the appellant signed the memorandum of satisfaction only to accommodate such members who had been cooperative and out of business expediency and that the memorandum of satisfaction was signed after receiving post dated cheques from them appears to be logical. It is not understood why any person would pay the appellant anything to the appellant or the owner after the appellant had signed the memorandum of satisfaction saying that all the dues payable had already been paid. The money has come from such persons despite their having received the memorandum of satisfaction from the appellant discharging them from all liabilities because the appellant had already received post dated cheques from them which the appellant deposited in its bank accounts on the stipulated dates.

11.2 It is also seen that the total payment including the payments received after the signing of memorandum of satisfaction from these persons is the same as shown to be received from these persons in the memorandum of satisfaction. Thus the extra amounts collected after the signing of memorandum of satisfaction from these 19 person actually represents the money received from them at the time of signing the memorandum of satisfaction in the form of post dated cheques.

11.3 In view of the above, it is clear that the amount of Rs.1,97,07,844/- was part of the total consideration to be received from these persons against units allotted to them. The total consideration received from these persons is exactly the same as was to be received from them. Thus the contention of the AO that this constitutes income of the appellant is not correct. In fact, the amounts have the same character as money received from other person to whom units are allotted and with whom no memorandum of satisfaction has been signed as yet. These amounts also constitute liability of the appellant towards the owner of the project to whom the entire receipts of units sold have to be transferred. As already discussed the income of the appellant is only development fees and construction fees. In view of the above the addition made by the AO is not justified.”

15. With the assistance of the Id.representatives, we have gone through the record carefully. A perusal of the record would indicate that this issue is also a by-product of other two issues. Efforts at the end of the AO are to somehow to make the assessee the owner of the project and assess any type of receipts by the assessee. In his first attempt, he assessed gross collection over expenditure out of booking amount. In that effort also he treated the assessee as an owner of the project. Thereafter, the second outcome of his understanding is estimation of profit at 8% of the work-in-progress. In both these issues, the Id.CIT(A) has held that the assessee is not owner of the project nor WIP related to it. Hence, excess of collection over the expenditure or estimation of profit in the WIP cannot be assessed in the hands of the assessee. In the third set, he construed that if after signing memorandum of satisfaction between the ultimate buyer vis-à-vis the assessee, who developed the project, any receipt is being received, then it will be income of the assessee. The assessee again emphasised that whatever amount has been received, it was in fiduciary capacity of trustee of these co-operative societies for whom it has been worked out development activity. The Id.DR failed to bring any material to our mind which can demonstrate that these receipts were meant for the assessee, and income *qua* this receipt accrued to the assessee.

The assessee has filed copy of the accounts demonstrating how the amounts received were appropriated towards construction or land cost. Surplus if any would be given to the society. Its right is confined to the development fees only. Therefore, no alternative addition could be made. The Id.CIT(A) has rightly deleted the addition.

16. Now we take appeal of the assessee in the second round of assessment proceedings. The grounds of appeal taken by the assessee are not in consonance with Rule 8 of the Income Tax (Appellate Tribunal) Rules, 1963. They are descriptive and argumentative in nature. In brief, the grievances of the assessee in both years pertained to two fold issues, viz. (a) the Id.CIT(A) has erred in upholding reopening of the assessment, and (b) the Id.CIT(A) has erred in confirming the addition of Rs.11 lakhs on substantive basis in the Asstt.Year 2008-09 and Rs.98.80 lakhs on protective basis in the Asstt.Year 2008-09. Similarly, the Id.CIT(A) has erred in confirming the addition of Rs.98.80 lakhs in the Asstt.Year 2009-10 on substantive basis.

17. The facts on all vital points are common. Therefore, for the facility of reference, we take up the facts from the Asstt.Year 2008-09.

18. Brief facts of the case are that search under section 132 of the Income Tax Act was carried out on 8.12.2009 at 44, Yogeshwanagar, Opp: Kalindi Bungalow, Thaltej, Ahmedabad. During the course of search, a diary was found which was inventorised as Annexure AS-13. It revealed to the AO that Shri Arvindbhai Govindbhai Dalwadi had purchased a plot bearing No.151, whose details have been recorded in this diary. Revenue formed an opinion that this plot was purchased from Navratna Organizers & Developers P.Ltd. Diary disclosed cash payment of Rs.1,09,80,000/-, and therefore, reasons were recorded for reopening of the assessment of the assessee. The reasons are reproduced in the assessment order in para 3.1.

19. As far as reopening of the assessment is concerned, we have heard both parties and we do not find any merit in this ground of appeal in both years. The Id.AO harboured a belief that income has escaped assessment in the case of assessee on the basis of material found during the course of search at the premises of vendee who alleged to have purchased the plot from the assessee, and disclosed cash payment over and above one stated in the sale deed. Revenue was possessing statement of vendee recorded under section 132(4) and a diary showing details of payment. Thus, there was information possessed by the AO for harbouring a belief that income has not been rightly accounted for by the vendor. The AO has to only form a *prima facie* opinion which has formed on the basis of information came to the notice on account of search at the vendee's premises. Therefore, this ground of appeal is rejected in both the years.

20. Next dispute is that a plot bearing no.151 of Kalhar Project was purchased by Shri Arvindbhai Govindbhai Dalwadi. In the sale deed, sale consideration was mentioned as Rs.10.32 lakhs, whereas on the basis of narration recorded in the diary as well as loose papers total consideration has been worked out at Rs.1,65,12,000/-. According to the AO, Shri Dalwadi has admitted that a sum of Rs.1,09,80,000/- was paid by him by way of a cash. This payment according to the AO was made in two years i.e. the Asstt.Years 2008-09 and 2009-10. Therefore, he made addition of Rs.11.00 lakhs *qua* the payment in the Asstt.Year 2008-09 and balance Rs.98.80 lakhs has been added in the Asstt.Year 2009-10. The AO has added Rs.98.80 lakhs on protective basis in the Asstt.Year 2008-09 also. Appeal to the Id.CIT(A) did not bring any relief to the assessee.

21. The Id.counsel for the assessee, at the very outset, submitted that the AO has used two sets of evidences viz. statement of Shri Arvind Dalwadi and

narration recorded by him in his diary. The AO failed to note that the assessee is not vendor. It was only a developer. He drew our attention towards copy of the sale deed available on page no.29 to 48 of the paper book. Thus, if any cash payment was being made, then that is to be assessed in the hands of the vendor and not the assessee. The Id.DR, on the other hand, submitted that Shri Dalwadi has alleged payment to the assessee, and the assessee is the real owner of the plot in dispute, therefore, it has rightly been assessed in the hands of the assessee.

22. We have duly considered rival submissions and gone through the record carefully. Copy of the sale deed is available on page no.28 of the paper book. A perusal of the sale deed would indicate that Ashwamegh Cooperative Hsg. Society Ltd., has been shown as vendor no.1; Secretary, Shri Jignesh Ranjibhai Patel has been shown as vendor no.2. Shri Sanjaybhai Chimanlal, self and constituted attorney of Smt.Satyavatiben Jaigopal, and Shri Nandlal Jaigopal has been shown as vendor no.3. Name of the assessee is being mentioned as an organizer and developer. The sale deed thereafter disclosed that vendors have three pieces of land "A", "B" and "C" aggregating to 2,54,385 sq.meters. Its permission was obtained for development of this land. The details have been mentioned in clause-7 of the sale deed. The total area, which was available to the vendor for use was 1,98,283 sq.meters. Out of this, vendors have carved out 157 plots to be marketed by way of sale. This will consume an area of 1,74,655 sq.meters. Eight plots were used for common open lands, common service area and this will consume an area of 10,429.84 sq.meters. Thereafter, 13199 sq.meters area was referred for internal sanctioned roads. Thus, out of these 157 plots, plots no.151 were sold by these three vendors to Shri Arvindbhai Dalwadi. At this stage, two conditions of the sale deed deserve to be noted, which read as under:

AND WHEREAS the Vendor No.3, as recommended by the Developer, and transaction finalized by Developer and Purchaser, have agreed to execute necessary Conveyance for the said Plot in favour of the Purchaser, being thee presents. Though, the said Plot No.151 and undivided share in land of internal roads and common open lands belongs to the Vendor No.3, and sale consideration also will be received by Vendor No.3, to pass legal, proper and perfect title to the Purchaser, the Vendors have agreed to execute the Conveyance jointly.

NOW THIS INDENTURE WITNESSETH THAT IN CONSIDERATION of the premises and IN FURTHER CONSIDERATION of the sum of Rs.10,32,000/- (Rupees Ten Lac Thirty Two Thousand Only) said by the Purchaser to the Vendor No.3, being the full consideration or sale price for the said Plot (payment and receipt whereof the Vendor No.3 doth/do and each of them doth hereby admit and”

23. It appears that the ld.AO, has not analyzed the sale deed found during the course of search. Under what circumstances, it could be alleged that the assessee was owner of the plot purchased by Shri Arvindbhai Dalwadi. Narrations have been recorded by Shri Dalwadi. These are the entries of third person. He may record anything at his instance. On that basis, the assessee cannot be put to liability of tax, unless a nexus is proved, and some material is available for corroboration. As far as statement of Shri Dalwadi is concerned, assessee has specifically requested for an opportunity cross-examine, but that cross-examination was not provided by the AO, hence, his statement cannot be relied upon for putting the assessee under taxability. A reference to the decision of Hon’ble Supreme Court in the case of M/s.Andaman Timber Industries Vs. Comm. Of Central Excise, in Civil Appeal No.4228 of 2006 can be made, where the Hon’ble Apex Court held as under:

“”

According to us, not allowing the assessee to cross-examine the witnesses 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 inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.”

24. Taking into consideration all these facts and circumstances, we are of the view that addition made in the hands of assessee in both the years are not sustainable. They are deleted.

25. In the result, both the appeals of the Revenue are dismissed; whereas the appeals of the assessee are partly allowed.

26. Now we take three appeals of the assessee i.e. ITA Nos.339, 340 and 342/Ahd/2017.

27. In these three appeals, the first common ground is that the Id.CIT(A) has erred in confirming the addition made by the AO on the basis of accrual of income at 8% of the work-in-progress. The AO has estimated the business income at 8% of the WIP. We have considered this aspect in the Asstt.Year

2008-09 and 2009-10, wherein we have held that projects were not owned by the assessee. They did not belong to the assessee. It was entitled for development fees which will accrue to it on completion of project. On the basis of WIP done by the assessee, its income cannot be estimated. Therefore, relying upon our finding in the Asstt.Year 2008-09 (supra), we allow this fold of grievance of the assessee and delete the addition made in all three years.

28. In the Asstt.Year 2001-02 and 2002-03, the assessee pleaded that the Id.CIT(A) has erred in upholding computation of refund at Rs.5,51,120/- and Rs.1,89,830/- in the Asstt.Years 2001-02 and 2002-03 respectively. According to the assessee, these are short refund, and this should be increased.

29. With the assistance of the Id.representatives, we have gone through the record carefully. Neither any discussion is available in the assessment order nor in the CIT(A)'s order. Though the assessee has raised grounds of appeal before the Id.CIT(A) in form no.35, but grounds with regard to these issues were not being adjudicated. In the absence of any details available on record, it cannot be recorded any finding that whether refunds are rightly been computed or not. We remit this issue to the file of the AO. The Id.AO shall adjudicate this issue afresh after giving an opportunity of hearing to the assessee.

30. In the result, ITA Nos.339 and 340/Ahd/2017 are partly allowed for statistical purpose, whereas ITA No.342/Ahd/2017 is allowed.

31. Now we take ITA No.2183/Ahd/2016 for Asstt.Year 2012-13.

32. First issue agitated by the Revenue is that the Id.CIT(A) has erred in deleting the addition of Rs.6,02,89,356/- which was added by the AO by estimating the profit at 8% of WIP. There is no disparity of facts. We have already considered this issue in the Asstt.Year 2008-09 and 2009-10. We have observed that the assessee is not owner of the project. Therefore, respectfully following our order in those years (supra) we do not find any merit in this ground of appeal. It is rejected.

33. In the next ground of appeal, grievance of the Revenue is that the Id.CIT(A) has erred in deleting the addition of Rs.2,93,430/- which was added by the AO with aid of section 14A of the Income Tax Act.

34. Brief facts of the case are that the assessee has received exempt income amounting to Rs.9,13,205/-. The AO has confronted the assessee to show reason as to why expenditure attributable to earning of such exempt income should not be disallowed under section 14A of the Income Tax Act. After hearing the assessee, the Id.AO has worked out disallowance with help of Rule 8D at Rs.2,93,430/-. On appeal, the Id.CIT(A) has deleted disallowance by holding that investment made by the assessee as on 31.3.2013 was of Rs.2,74,32,264/- whereas it has reserves and surplus of more than Rs.21 crores. The assessee has share capital, reserves and surplus as on 31.3.2011 at Rs.48 crores. Considering the investment of Rs.2.73 crores only, the Id.CIT(A) has deleted the disallowance worked out by the AO.

35. With the assistance of the Id.representatives, we have gone through the record carefully. A perusal of the assessment order would indicate that the AO has worked out interest expenditure at Rs.1,56,494/-. No doubt, this expenditure cannot be worked out, once the assessee has demonstrated the availability of more interest free funds, then investment made by it. But the Id.AO further worked out a sum of Rs.1,36,936/- at the rate of 0.5% of the

average value towards administrative expenditure under Rule 8D. The Id.CIT(A) has not given any justification for deleting this amount. The AO has reproduced submissions made by the assessee, wherein it has submitted that interest expenditure was not incurred by the company for the purpose of deriving exempt income, but it has not given any explanation *qua* expenditure attributable towards administrative purpose. Considering the above aspects, we allow this ground of appeal partly and confirm addition of Rs.1,36,936/- out of Rs.2,93,430/- made by the AO. This ground of Revenue is partly allowed.

36. In the result, appeal of the Revenue for the Asstt.Year 2012-13 is partly allowed.

37. Now we take up IT(SS)A.No.577/Ahd/2011. This appeal is at the instance of the Revenue against the order of the Id.CIT(A) dated 30.8.2011. Revenue has taken four grounds of appeal, out of which, ground nos.3 and 4 are general grounds, which do not call for recording of any specific finding.

38. In the ground no.1 the Revenue has pleaded that the Id.CIT(A) has erred in admitting additional fresh evidence in violation of Rule 46A of the Income Tax Rules. In ground no.2, Revenue has pleaded that the Id.CIT(A) has erred in deleting addition of Rs.2,82,96,734/- which was added by the AO on account of unexplained cash credit.

39. Brief facts of the case are that a search and seizure action was conducted at the premises of Navranta Group on 10.5.2006. An assessment order in the Asstt.Year 2002-03 was passed on 31.12.2008 under section 153A r.w.s. 143(3) of the Income Tax Act. The Id.AO has made an addition of Rs.2,82,96,734/-. Dissatisfied with this addition, the assessee carried the matter in appeal before the Id.CIT(A). It was contended by the assessee that

the AO has made the above addition on account of cessation of liability or non-genuineness of the liability available in the accounts. The assessee has demonstrated that on account of regrouping and re-classification in the accounts, such a figure has been worked out which has been reconciled. The details submitted by the assessee before the Id.CIT(A) in this connection reads as under:

“19. During the course of appellate proceedings, the appellant has furnished the details of regrouping / reclassification made in respect of balance-sheet of A.Ys.2002-03 and 2003-04. The appellant has furnished the following reconciliation.

BALANCE SHEET AS ON 31.03.2002

1.	Unsecured loan	(Cr.) 96,82,506	
2.	Booking	(Cr.) 33,53,41,540	
3.	Contribution	(Cr.) 70,47,495	
4.	— do —	(Dr.) 95,000	
	A	(Cr.) 35,19,76,541	
5.	Loans and Advances (Dr.)	(Dr.) 22,66,16,091	
		(Dr.) 10,53,95,420	
	B	(Dr.) 33,20,11,511	
6.	Project Cost (Dr.)	NET	
	C		(Cr.) 1,99,65,030
	<u>Balance Sheet as on 31.03.2003</u>		(Cr.) 1,32,63,421-
	Regrouped balance of unsecured loans as per balance sheet (balance as on 31.03.2002) (NET)_____		
	Reduction in CR Difference D		(Cr.) 67,01,609
	Sundry creditors for goods as on 31.3.2002		(Cr.) 1,58,76,642
	Sundry creditors for goods as on 31.03.2002 as per balance sheet for 31.03.2003		(Cr.) Nil
	Reduction in CR Difference E		(Cr.) 1,58,76,642
	Sundry creditors for expenses as on 31.03.2002		(Cr.) 7,59,600
	Sundry Creditors for expenses as on 31.03.2002 as per Balance sheet as on 31.03.2003		(Cr.) 7,59,600
	Reduction in CR F		(Cr.) 57,18,483/-

BREAK UP OF ADDITION (CR)

(C) 67,01,609 + (O) 1,58,76,642 + (E) 57,18,483 = Total CR 2,82,96,734

REGROUPING

Current Assets etc. as on 31.03.2002 as per balance sheet (31.03.2002)	DR 4,38,88,863
Current Assets as on 31.03.2002 as per balance sheet (31.03.2003)	<u>DR 2,95,50,871</u>
Reduction in DR on account of regrouping	1,43,37,992

Contributions for Karma etc. reflected in schedule A as on 31.03.2002 In balance sheet as on 31.03.2003 on account of regrouping	CR1,09,24,084
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Contributions for-Karma etc. reflected in schedule A as on 31.03.2002 Increase in credit balance on account of regrouping	<u>-Nil</u> CR 1,09,24,084
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Contributions for Kalhar etc. reflected in schedule A as on 31.03.2002 In balance sheet as on 31.03.2003 on account of regrouping	CR 30,34,658
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Contributions for Kalhar etc. reflected in schedule a as on 31.03.2002	<u>Nil</u>
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Increase in credit balance on account of regrouping CR	<u>30,34,658</u>
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Break up of Regrouping (DR) 1,43,37,992 + 1,09,24,084 + 30,34,658 = 2,82,96,734

40. The Id.CIT(A) has called for remand report from the AO, but inspite of its best efforts, the AO failed to verify the claim of the assessee thoroughly. Hence, under compelling circumstances, the Id.CIT(A) granted one more opportunity to the AO. The relevant finding of the Id.CIT(A) in the order dated 23.3.2010 reads as under:

“20. I have considered the remand report of the Assessing Officer as well as appellant's further submission dated 15.03.2010, reproduced above. As the regrouping/reclassification of the balance-sheet figures has been carried out by the appellant company, therefore, onus to explain the same with plausible reasons lies with the-appellant. However, to my mind, the Assessing Officer in the remand report, reproduced above, has failed to carry out the relevant verifications as per directions issued vide this office letter dated 08.01.2010 (reproduced above), wherein, Assessing Officer was required to verify the assessee's contention that no liability has been reduced or increased in both the balance-sheets and it was because of the regrouping / reclassification, there appears to difference of Rs.2,82,96,734/- in two balance-sheets. In view of the above, the Assessing Officer is directed that while giving effect to this appellate order, reverify as to whether the appellant has merely carried out regrouping / reclassification of certain liabilities and whether such an exercise has given rise to any income due to cessation of any liabilities.

The Assessing Officer is directed to make addition only if any cessation of the liabilities has taken place. The Assessing Officer is further directed to pass the speaking order on this point.”

41. The Id.AO has passed an order giving effect to the order of the Id.CIT(A) dated 13.7.2010. Again AO did not verify the details and made addition. The order of the AO reads as under:

: ORDER GIVING EFFECT TO THE ORDER OF THE CIT(A)s ORDER :

In view of the Ld.CIT(A)-I, Ahmedabad's order No.CIT(A)-I/CC-1(1)/256/2008-09 dtd.23/3/2010, the total income of the assessee company is computed as under:

<i>Total income as per order u/s.153A(1)(b) rws 143(3) of the I.T. Act dtd.31/12/2008</i>	<i>Rs.3,48,06,040/-</i>
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Less: Addition deleted by the Ld.CIT(A)

(1) Business income Rs. 404140/-

(2) Unexplained cash credit Rs. 225000/-

(3) Unexplained liability Rs.5817422/-

Rs. 64,46,562/-

Revised total income

Rs.2,83,59,478/-

i.e. Rs.2,83,59,480/-

In respect of addition of Rs.2,82,96,734/- made on account of unexplained cash credits, the Ld.CIT(A) has directed the A.O. to verify whether the appellant has merely carried out regrouping/reclassification of certain liabilities and whether such an excise has given rise to any income due to cessation of any liabilities. In this circumstances, the assessee was requested vide letter dtd.18/5/2010 to discharge its onus with supporting evidence as per the direction of Ld.CIT(A). The date of hearing was fixed on 8/6/2010. On the said date, the assessee failed to comply. Hence, on the basis of material available on records, it is held that the assessee is not eligible for any relief on this issue.

Issue demand notice and challan. Recalculated tax and interest, if applicable.

Sd/-

(Abhishek Kumar)

Asstt. Commissioner of Income-tax Central Circle-1 (1),

Ahmedabad

Date: 13/07/2010

42. Dissatisfied with this, the assessee came in appeal and filed detailed submissions. The Id.CIT(A) has noticed these submissions, and thereafter deleted the addition. Relevant finding of the Id.CIT(A) is worth to note, which reads as under:

“6.3 The appellant company in the paper book has provided inter alia photocopies of the balance sheet as at 31st March, 2002/1st April, 2002 and the balance sheet as on 31st March, 2003 wherein on account of regrouping unsecured loans have been reflected at Rs. 1,99,65,030/- and Rs.1,32,63,421/-. The appellant company has also provided photocopies of audited balance sheets wherein current liabilities have been reflected at Rs. 2,24,53,679/- and Rs.14,81,72,926/- which has also reflected current assets at Rs. 4,38,88,863/- and Rs. 2,95,50,871/-. The company has also placed on records a statement showing . complete details, and break up of current liabilities and provisions and also current assets, loans and advances for both the years. The company has also placed on records a statement showing complete break up in respect of addition of Rs. 2,82,96,734/- and its .detailed reconciliation. On careful consideration of all the accounting documents it is observed that the various accounts have been regrouped and reclassified on account of which there is a matching reduction in the account of the assets and also in the account of the liabilities. It is observed due to regrouping the aggregate balance of assets and aggregate balances of liabilities have been reduced. Each and every reduction under liability is matched with the reduction in the assets merely on account of regrouping and therefore the question of any benefit does not arise.

6.4 The appellant has also provided closing balance in respect of each and every party, as on 31st March, "2002/1st April, 2002 and" 31st March, 2003. and it is noticed-that the closing balances have been carried forward on 1st April, 2002 without any change in figures. The company on reconsideration of the relevant facts merely regrouped and reclassified the accounts. Amounts collected by way of booking from members were reflected as unsecured loans as on 31st March, 2002 were regrouped and reclassified as contribution from members as on 1st April, 2002 and was shown under the head project cost. On account of this exercise of regrouping there was reduction in aggregate of unsecured loans on liability side and reduction in project cost on asset side. It is also observed that certain accounts reflected as unsecured loans which in fact represented creditors for expenses were regrouped as sundry creditors from the unsecured loans and thereby reducing

balance of unsecured loans and increasing balance in group of sundry creditors. This exercise of regrouping and reclassification stands proved and established on examination of exhaustive details and accounting records. It is observed that accounts in respect of certain parties namely Asim Studio, Manubhai Patel, Rajnibhai Popatlal which were reflected as unsecured loans as on 31st March, 2002 have been reclassified as sundry creditors and/or contribution from members on the correct analysis of facts. The aggregate collection of Rs. 33,53,41,540/- from various schemes which was reflected as liability/unsecured loans independently in the balance sheet has been transferred to booking account from members and accordingly reflected in the head cost of the project. The appellant has placed on the records name of each and every creditor, amount of each and every creditor as on 31st March, 2002/1st April, 2002, 31st March, 2003 details of regrouping and reclassification on basis of which it becomes evident that there is no reduction in liability nor there was any cessation of liability. On account of regrouping of balances from unsecured-loans to booking amounts the question of generation of any income and addition thereof does not arise. Contentions raised by the appellant are duly, supported by exhaustive accounting details. The breakup of each and every closing balance,- complete details of regrouping etc. have been filed. Admittedly neither there is any income nor any benefit nor any cessation of liability and under the circumstances addition to Rs.2,82,96,734/- is deleted. This ground of appeal is accordingly allowed.”

43. With the assistance of the Id.representatives, we have gone through the record carefully. The first issue raised by the Revenue is that the Id.CIT(A) has entertained additional evidence in violation of Rule 46A. To our mind, this ground is misplaced. In the first round of litigation, the assessee has submitted details before the AO as well as Id.CIT(A). A remand reports were called from the AO, but the Id.AO did not provide complete reconciliation or verification of the claim made by the assessee. Thus, under compelling circumstances, the Id.CIT(A) has observed that while giving effect to his order, the AO will again verify. What steps have been taken by the AO, we have noticed while extracting his order dated 13.7.2010. The Id.AO merely submitted that the assessee was requested to discharge its onus. All these

details were already submitted to the AO during the appellate hearing also, when remand report was called for. The difficulty is that the AO does not want to apply his mind and does not want to carry out the exercise directed by the higher authority. He on lame excuse of assessee failing to give supporting evidence again made addition. The Id.CIT(A) again verified it and deleted. Before us, nothing has been produced by the AO as to how reconciliation, regrouping and reclassification of the liabilities in the accounts are wrong. No report from the AO has been called for by the CIT(Admn.) who authorizes for filing of appeal. Even before us, the Id.DR unable to demonstrate how the liability has ceased and this addition deserves to be made. Taking into consideration the details submitted by the assessee, discussion made by the Id.CIT(A) in the quantum order i.e. dated 23.3.2010 and re-appreciated again by the Id.CIT(A) in the impugned order, we do not find any merit in this appeal. It is dismissed.

44. In the result, appeals are disposed of as under:

- i) ITA No.2634/Ahd/2011, 1875/Ahd/2013 and IT(SS) A. No.577/Ahd/2011 are dismissed;
- ii) ITA No.2183/Ahd/2016 is partly allowed;
- iii) ITA No.895 and 896/Ahd/2017 and ITA No.339 and 340/Ahd/2017 are partly allowed;
- iv) ITA No.342/Ahd/2017 is allowed

Order pronounced in the Court on 23rd January, 2019 at Ahmedabad.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 23/01/2019