

आयकर अपील अाधिकरण, अहमदाबाद ढयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"C" BENCH, AHMEDABAD

BEFORE, SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
And

SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1361/AHD/2017

ढथाषण वष/Asstt. Year: 2011-2012

D.C.I.T, Circle-1(1)(1), Ahmedabad.	Vs.	Amba Township Pvt. Ltd., 05, Mamta Park Society, B/h. Nav Gujarat College, Ushmanpura, Ahmedabad-30014. PAN: AAFCA1933J
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(Applicant)	(Respondent)
Revenue by :	Shri M.S.A Khan, D.R
Assessee by :	Shri A.C. Shah & Bhadreshbhai, A.Rs

सुनवाई का तारख/Date of Hearing : 08/03/2019

घोषणा का तारख /Date of Pronouncement: 29/03/2019

आदेश/O R D E R

PER MAHAVIR PRASAD, JUDICIAL MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax,(Appeals)-1, Ahmedabad [Ld.CIT(A) in short], dated 29/03/2017 arising in the matter of assessment order passed under s.143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 25/03/2015 relevant to Assessment Year (AY) 2011-12.

2. The issue raised by the Revenue is that the Ld. CIT (A) erred in deleting the addition made by the AO for a sum of Rs. 12,31,12,000/- on account of unexplained cash credit u/s 68 of the Act.

3. Briefly stated facts are that the assessee in the present case is a Private Limited Company and engaged in the business of development of the township. The assessee during the year under consideration received a sum of Rs. 12,31,12,000/- from six NRIs as a booking advance against the sale/allotment of residential accommodation in a scheme known as "Plotting Scheme-II". The details of the parties stand as under:

<i>Sr.No.</i>	<i>Name</i>	<i>Amount received</i>	<i>Country of Resident</i>
1.	<i>Dr.Dilip Patel</i>	<i>2,16,12,000</i>	<i>UK</i>
2.	<i>Harshad Desai</i>	<i>50,00,000</i>	<i>UK</i>
3.	<i>Pankachalal M. Shah</i>	<i>4,50,00,000</i>	<i>Kenya</i>
4.	<i>Nalin M. Shah</i>	<i>1,65,00,000</i>	<i>Kenya</i>
5.	<i>Piyush Mehta</i>	<i>2,50,00,000</i>	<i>Mauritius</i>
6.	<i>Vrajlal Mehta</i>	<i>1,00,00,000</i>	<i>Kenya</i>

4. However, the AO observed that the assessee did not start the project even after the long period and there was also no progress towards the allotment of the plots/ residential accommodation to the said parties.

4.1 Thus the AO during the assessment proceedings made the reference under the Exchange of Information Article of DTAA to UK, Kenya, and Mauritius to verify the source and nature of such advances deposited in NRE/NRO account.

4.2 The gist of reply from the competent authorities from the respective countries has been reproduced on the pages 5 to 7 in the order of the AO.

4.3 The AO on perusal of the replies received from the Competent Tax Authorities of the respective countries made certain observations as detailed under:

The observation about the UK Parties

Dr. Dilip Patel and Harshad Desi could not establish their creditworthiness adequately by the documentary evidence.

The observation about the Mauritius Parties

Piyush Mehta and Harshad Kumar Desai do not have any bank account with Bank One Ltd. at Port Luis.

The observation about the Kenya Parties

There was no reply received on the reference made to Kenya.

4.4 The AO further observed that advance received from the following parties has been refunded in the subsequent year.

- | | |
|-------------------------------|----------|
| a) Dr. Dilip Patel | UK party |
| b) Pankachalal Meghjibai Shah | Kenya |
| c) Nalinkumar Meghjibai Shah | Kenya |

4.5 In view of the above, AO issued to notice to the assessee for further explanation. The assessee in reply of the said notice made the submission

along with the documentary evidence to explain the source and nature of such advances as detailed under:

"5. We again give even at the cost of repetition all the evidences regarding identity, genuineness and creditworthiness of all the six parties as under:

1. Dr. Dilip Shantiial Pate/,-

1.1 Dr. Shri Dilip S. Patel resides at Hockley House, 48 High Road, Hockley, Essex, UK SS 5 4TA.

1.2 He has transferred Rs. 2,16,12,0001 from his N-RE Account to NRO Account on 25-08-2010. He has issued a cheque dated 05-09-2010 in favour of assessee from his NRO Account of Rs. 2,16,12,000 and received by the assessee in his bank account on 16-09-2010. The copy of bank statement of NRO account and Xerox copy of cheque is also enclosed.

1.3 The Declaration / Confirmation from Dr. Dilip Shantiial Patel is enclosed.

1.4 He holds PAN. The PAN is AVRPP2753 K.

1.5 The Xerox copy of Booking Form signed by him is enclosed.

1.6 Comments on your observation in your letter dated 26-02-2015:

As per the information he has submitted the return of 64703 pound [INR 51.76 lacs]. It may please be noted that what is to de-seen is the balance in the account from which he has remitted and that the income of one particular year does not conclude anything. It is already stayed that it is not possible for the assessee to inquire about the source of funds in 1 le NRE Account of nonresident

1.7 The booking advance is cancelled by him and therefore the booking advanced of Rs. 2,16,12,000 is refunded on 19-12-2013.

2. Harshadkumar Desai:

2.1 Harshadkumar Desai resides at 53, Bute Avenue, Off Derby Road, Lenton [Nr. QMC], Nottingham, UK-NG 71QB.

2.2 He has paid Rs. 50,00,000 by Cheque No. 31901 dated 09-11-2010 drawn on . Union Bank, Adalaj Branch out of his NRE Account. The copy of bank statement and FIRC certificate is enclosed.

2.3 The Declaration / Confirmation from Harshadkumar Desai is enclosed.

2.4 The Xerox copy of Pass Port is enclosed.

2.5 The Xerox copy of Booking Form signed by him is enclosed.

2.6 Comments on your observation in your letter dated 26-02-2015:

He has paid Rs. 50,00,000 on 12-11-2010 from his NRE Account in which he has remitted Rs. 53,74,022 on 11-11-2010. The copy of bank statement and FIRC certificate is enclosed.

As per the information he has submitted the return of 20490 pound [INR 16.39 lacs]. It may please be noted that what is to be seen is the balance in the account from which he has remitted and that the income of one particular year does not conclude anything. It is already stated that it is not possible for the assessee to inquire about the source of funds in the NRE Account of nonresident

3. *Pankachalal Meghji Shah:*

3.1 *PankachalalMeghji Shah resides at PO Box 930-20100, Nakuru, Kenya.*

3.2 *He has remitted Rs. 4,50,00,000 by Demand Draft dated 06-12-2010 drawn on Union Bank, Adalaj Branch out of his NRE Account. The copy of bank statement and FIRC certificate is enclosed.*

3.3 *The Declaration / Confirmation from PankachalalMeghji Shah is enclosed.*

3.4 *. The Xerox copy of Pass Port is enclosed.*

3.5 *The Xerox copy of Booking Form signed by him Is enclosed.*

3.6 *Comments on your observation in your letter dated 26-02-2015:*

He has paid Rs. 4,50,00,000 on 06-12-2010 from his NRE Account in which he has remitted Rs. 4,59,61,275 on 02-12-2010. The copy of bank statement and FIRC certificate is enclosed.

As per the information the Kenyan authorities have not responded. It is already stated that no adverse inference can be drawn in the absence of any information. It is a/ready stated that it is not possible for the assessee to inquire about the source of funds in the NRE Account of nonresident.

The booking advance is cancelled by him and therefore the booking advanced of Rs. 4,50,00,000 is refunded on 08-01-2015.

4. *NatinkumarMeghji Shah:*

4.1 *NalinkumarMeghji Shah resides at PO Box 930-20100, Nakuru, Kenya.*

4.2 *He has paid Rs. 1,65,00,000 by Cheque No. 35504 [Rs. 71,00,000] dated 03-01-2011 and Cheque No. 35508 [Rs. 94,00,000] dated 23-02-2011 drawn on Union Bank, Adalaj Branch out of his NRE Account. The copy of bank statement and FIRC certificate is enclosed.*

4.3 *The Declaration / Confirmation from NalinkumarMeghji Shahis enclosed.*

4.4 *The Xerox copy of Pass Port is enclosed.*

4.5 *The Xerox copy of Booking Form signed by him is enclosed.*

4.6 *Comments on your observation in your letter dated 26-02-2015:*
He has paid Rs. 1,65,00,000 on 03-01-2011 and 23-02-2011 from his NRE Account. The copy of bank statement and FIRC certificate is enclosed. As per the information the Kenyan authorities have not responded. It is already stated that no adverse inference can be drawn in the absence of any information, ft is already stated that it is not possible for the assessee to inquire about the source of funds in the NRE Account of nonresident.

4.7 *The booking advance is cancelled by him and therefore the booking advanced of Rs. 1,65,00,000 is refunded on 08-01-2015.*

5. *Piyush Mehta:*

5.1 *Piyush Mehta resides at Brook House School, Mauadi Road, Langata, PO Box 24987, Nairobi, Kenya.*

5.2 *He has paid Rs. 2,50,00,000 by Cheque No. 4070 dated 19-01-2011 drawn on Union Bank of India, Adalaj Branch out of his NRE Account as mentioned in the cheque. The copy of bank statement and FIRC certificate is enclosed.*

5.3 *The Declaration / Confirmation from Piyush Mehtais enclosed.*

5.4 *He holds PAN. The PAN is APUPM 5025 J.*

5.5 *The Xerox copy of Booking Form signed by him is enclosed.*

5.6 *Comments on your observation in your letter dated 26-02-2015:*

He has paid Rs, 2,50,00,000 on 09-01-2010 from his NRE Account. The copy of bank statement and FIRC certificate is enclosed.

As per the information Piyush Mehta does not hold any account with Bank One, Mauritius. However, there is opening balance of Rs. 9.25 Crore as on 18-01-2011 in the account of Piyush Mehta as per the bank statement and from the opening balance he has paid Rs. 2.50 Crore on 24-01-2011 It may please be noted that the Mauritius authorities informed about the account of Harshad Desai and not Piyush Mehta. In fact it is Piyush Mehta who has remitted the amount. In the absence of any information, no adverse conclusion should be drawn. This shown that there is some discrepancy somewhere. However, so far as the assessee is concerned, he ' has received from the NRE Account of Piyush Mehta. All documentary evidences are given, it is already stated that no adverse inference can be drawn in the absence of any incomplete information. It is already stated that it is not possible for the assessee to inquire about the source Of funds in the NRE Account of nonresident.

6. *Vrajlal Chandulal Mehta:*

6.1 *Vrajlal Chanduial Mehta resides at Brook House School, Mauadi Road, Langata, PO Box 24987, Nairobi, Kenya.*

6.2 *He has paid Rs. 1,00,00,000 by Cheque No. 439756 [Rs. 98,00,000] dated 23-11-2010 drawn on Standard Chartered Bank, MG Road Mumbai Branch and Cheque No. 482 [Rs. 2,00,000] dated 23-11-2010 drawn on IDBI Bank, out of his NRE Account'as mentioned in the cheque. The copy of bank statement enclosed.*

6.3 *The Declaration / Confirmation from Vraj/alChandulai Mehtais enclosed.*

6.4 *He holds PAN. The PAN is BEHPM 6532 B.*

6.5 *The Xerox copy of Booking Form signed by him is enclosed.*

6.6 *Comments on your observation in your letter dated 26-02-2015:*

He has paid Rs. 1,00,00,000 on 23-11-2010 from his NRE Account. The copy of bank statement is enclosed.

As per the information the Kenyan authorities have not responded. It is already stated that no adverse inference can be drawn in the absence of any information. It is already stated that it is not possible for the assessee to inquire about the source of funds in the NRE Account of nonresident.

From the above, it may please be seen that the assessee has established the identity, genuineness, and credit-worthiness. It is not possible to find-out the sources of the booking parties who have given the booking advance to the assessee company."

5. The assessee further submitted the details with the reasons to justify the refund of the fund to three parties as detailed under:

S.No.	Name of the Party	Amount of Advance Received	Date and amount of refund of advance	Reasons For Refund
1.	Dilip S Patel	2,16,12,000/-	2,93,45,219/- (19-12-2013) <i>Refer note 1</i>	Shri Patel sought permission to carry out commercial activity on

				the plot which was denied and cancel the booking by the company.
2.	Pankachalal Shah	4,50,00,000/-	4,50,00,000/- (08-01-2015)	Project not initiated by the company. Hence Party cancel the booking
3.	Nalinbhai Shah	1,65,00,000/-	1,65,00,000/- (08-01-2015)	Project not initiated by the company. Hence Party cancel the booking

Note 1.

As per bank statement, the assessee paid along with the interest @ 12%.

6. However, AO disagreed with the submission made by the assessee on the following reasons recorded as under:

- I. Assessee failed to prove the capacity of the parties to advance the money.
- II. There was not any transaction in NRE account of NRIs other than the amount of advances given to assessee.
- III. The assessee failed to prove the genuineness because there was not any progress in scheme and sale deed/MOU does not represent the strong evidence to prove its genuineness.
- IV. Payment through banking channel is not sufficient to prove the identity, genuineness, and creditworthiness.

- V. The assessee did not furnish the confirmation letter from the respective parties.
- VI. The assessee could not produce the evidence regarding the source of deposit in NRE account by NRIs.

6.1 Accordingly, the AO treated the impugned advances as unexplained cash credit under section 68 of the Act. Therefore the AO added such advance to the total income of the assessee.

7. Aggrieved assessee preferred an appeal before the Ld. CIT (A). The assessee before the Ld. CIT (A) reiterated the submission as made before the AO.

8. The Ld. CIT (A) during the proceedings observed certain facts as detailed under:

- i. The assessee proved the identity in respect of three NRIs by furnishing the PAN, and in respect of balance three NRIs, the assessee furnished the NRE account details to prove their Identity.
- ii. The assessee has proved the creditworthiness of the parties by furnishing bank statement of NRE/NRO account and also found that there was sufficient balance for making the booking.
- iii. All the transaction was carried through the banking channel, therefore it is deemed to be genuine to prove the genuineness of the transaction.
- iv. The assessee in the subsequent year refunded the advances to the certain parties in their NRE account as such the project did not initiate.

- v. The information received by the AO from the respective countries was incomplete. Accordingly, these pieces of informations were unreliable.

Accordingly, in view of the above facts, the Ld. CIT (A) deleted the addition made by the AO.

9. Aggrieved Revenue by the order of the Ld. CIT (A) is in appeal before us.

10. The Ld. DR before us submitted that the assessee failed to establish the credit worthiness of the parties. Accordingly the ld. DR vehemently supported the order of the AO.

11. On the other hand the Ld. AR submitted that all the details of the parties who have given advances were duly filed during assessment proceedings. The advances were disclosed in the balance sheet and the same were refunded in the subsequent year. Thus the advances cannot be treated as unexplained cash credit under section 68 of the Act. The ld. AR vehemently supported the order of the ld. CIT-A.

12. We have heard the rival contentions and perused the materials available on record. The dispute in the instant case relates to the advances received by the assessee in the year under consideration from certain parties who are NRI~~s~~ against the booking of the plot/ residential accommodation which was treated as unexplained cash credit under section 68 of the Act.

12.1 The assessee in the instant case claimed to have received the booking amount for Rs. 69,00,86,959/- only in connection with the residential project under a scheme known as "Plotting Scheme-II" situated near Amba Township sector- 1 behind Simandhar City Adalaj, Gujarat.

12.2 The AO during the assessment proceedings found that the assessee has received a sum of Rs. 12,31,12,000/- as booking advance in connection with the aforesaid project from the parties based outside India. The AO for the reasons discussed in the preceding paragraph treated the same as unexplained cash credit under section 68 of the Act.

12.3 However, from the preceding discussion we note that the AO did not doubt the existence of the project against which the assessee received such aforesaid sum. In our view if the project had been doubted, then the AO would have treated the entire amount of advances of Rs. 69,00,86,959/- only as an unexplained cash credit.

12.4 As such the AO treated an amount of Rs. 12,31,12,000/- out of total booking advance of Rs. 69,00,86,959/- as unexplained cash credit on the ground that the assessee failed to meet the conditions as specified under section 68 of the Act.

12.5 The sole basis for treating the aforesaid amount as unexplained cash credit was on account of the report received by the AO under the exchange of information as per the relevant article of DTAA with UK, Kenya, and Mauritius. The reasons for treating the aforesaid amount as unexplained cash credit have been duly explained in the preceding paragraph. Therefore we are not inclined to repeat the same for the sake of brevity and convenience.

12.6 The provision of section 68 of the Act fastens the liability on the assessee to provide the identity of the lenders, establish the genuineness of the transactions and creditworthiness of the parties. These liabilities on the assessee were imposed to justify the cash credit entries under section 68 of the Act by the Honøble Calcutta High Court in the case of CIT Vs. Precision finance (p) Ltd reported in 208 ITR 465 wherein it was held as under:

“It was for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions. On the facts of this case, the Tribunal did not take into account all these ingredients which had to be satisfied by the assessee. Mere furnishing of the particulars was not enough. The enquiry of the ITO revealed that either the assessee was not traceable or there was no such file and, accordingly, the first ingredient as to the identity of the creditors had not been established. If the identity of the creditors had not been established, consequently, the question of establishment of the genuineness of the transactions or the creditworthiness of the creditors did not and could not arise. The Tribunal did not apply its mind to the facts of this particular case and proceeded on the footing that since the transactions were through the bank account, it was to be presumed that the transactions were genuine. It was not for the ITO to find out by making investigation from the bank accounts unless the assessee proved the identity of the creditors and their creditworthiness. Mere payment by account payee cheque was not sacrosanct nor could it make a non-genuine transaction genuine.”

12.7 Admittedly the assessee has discharged its onus by furnishing the necessary details such as a copy of PAN, passport, bank details, etc. in support of identity of the parties.

12.8 There is also no dispute that all the transactions were carried out through the banking channel and NRE accounts of the parties. Therefore, we are conscious of the fact that the assessee has discharged onus regarding the genuineness of the transactions.

12.9 There is no doubt that the transaction of the loan was carried out through the banking channel. Therefore there cannot be any doubt about the genuineness of the transactions. In this regard, we find support and guidance from the judgment of Honøble High court of Bombay in the case of CIT Vs. Green Infra Ltd reported in 78 taxmann.com 340 wherein it was held as under:

'So far as the genuineness of the transaction of share subscriber is concerned, it concludes as the entire transaction is recorded in the books of account and reflected in the financial statements of the assessee since the subscription was done through the banking channels as evidenced by bank statements which were examined by the Tribunal. With regard to the capacity of the subscribers the impugned order records a finding that 98 per cent of the shares is held by IDFC Private Equity Fund-II which is a Fund Manager of IDFC Ltd. Moreover, the contributions in IDFC Private Equity Fund-II are all by public sector undertakings. The Tribunal has examined the case of the revenue on the parameters of section 68 and found on facts that it is not so hit. Therefore, section 68 cannot be invoked. The revenue has not been able to show in any manner the factual finding recorded by Tribunal is perverse in any manner.

13. Now coming to the 3rd condition, i.e. creditworthiness of the parties, regarding this we note that the assessee has refunded the amount through banking channel to all the aforesaid parties as detailed under:

- a) Shri Dilip Kumar S. Patel
- b) Harshad Kumar Desai
- c) Pankachalal Meghjbai Shah
- d) Nalinkumar Meghjbai Shah
- e) Piyush Kumar V. Mehta
- f) Vrajlal C Mehta

13.1 It is also important to note that the assessee refunded the money to the parties in the same bank account through which the money was received by it.

This fact can be verified from the details submitted by the appellant and available in the paper book on pages 17-19, 27-28, 38-39, 48-49, 57-58 And 66 & 68.

13.2 It is also important to note that the assessee in respect of its party namely Dilip S Patel refunded the amount of the loan along with the interest amounting to Rs. 2,93,45,219. However, the AO did not make the disallowance of the interest. Thus it is transpired that the amount of interest paid by the assessee on such advance has been accepted.

13.3 The repayment of the loan amount by the assessee was duly accepted by the Revenue. In this regard, we find support and guidance from the judgment of Honøble Gujarat High Court in the case of the CIT Vs. Rohini builders reported in 256 ITR 360 wherein it was held as under:

“The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques.”

13.4 Thus there remains no doubt that the transaction of the advance received by the assessee from the parties was genuine.

13.5 We also note that the assessee has furnished the source of the income in the hands of the following parties:

- a. Dilip S Patel
- b. Harshad Kumar Desai

13.6 We also note that the assessee has also placed the certificate issued by the bank regarding the payment made to the assessee in its òPlotting Scheme-IIö. The details stand as under:

S.No.	Name of the Party	Name of the Bank	Submission Book
1	HarshadKumar Desai	Union Bank	Page No.29
2	NalinKumar M Shah	Union Bank	Page No.40
3	Pankachalal M Shah	Union Bank	Page No.40
4	Piyush Mehta	Union Bank	Page No.59

13.7 In our considered view, once the assessee is able to prove that the money received by it was returned in the subsequent assessment year in the account of the party, then there remains no doubt that the advances received by the assessee were unexplained cash credit.

13.8 Similarly, we also note that the assessee in respect of all the parties out of the parties as discussed above has furnished the sufficient documentary pieces of evidence including the details of the income of the parties which has been elaborated in the preceding paragraph. Therefore in our considered view, the assessee has discharged its onus imposed under section 68 of the Act.

13.9 The assessee in the present case has duly explained the source of money received in its hands. The assessee is not answerable to justify the source of the source of the money received by it. In this connection, we place our reliance on the judgment of Honøble Gujarat High Court in the case of DCIT Vs. Rohini builders reported in 256 ITR 360 wherein it was held as under:

“It has also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from bank accounts of the creditors and the assessee is not expected to prove the genuineness of the cash deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source as held by the Bombay

High Court in the case of Orient Trading Co. Ltd. v. CIT [1963] 49 ITR 723. The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques.”

13.10 It is also important to note that, the AO failed to furnish the report obtained under the DTAA in respect of the parties as discussed above to the assessee. As such the AO has used the information against the assessee which was collected behind its back. The principles of natural justice require that the AO is under the obligation to share the information with the assessee which he is going to use against the assessee. Regarding this we find support and guidance from the judgment of Honøble Gujarat High Court in the case of CIT vs. Mahendra N. Shah reported in 280 ITR 462 wherein it was held as under:

“The Tribunal has also noted the fact that the bank official had been summoned and examined by the Assessing Officer, but behind the back of the assessee and in the circumstances, the said evidence could not be considered.”

13.11 It is also important to note that the AO has not received any information under the DTAA with Kenya, therefore the question of making any addition in their hands in the absence of any adverse documentary evidence does not arise.

In view of the above, we do not find any infirmity in the order of Ld. CIT (A). Hence the ground of appeal of the revenue is dismissed.

14. The next issue raised by the Revenue is that the Ld. CIT (A) erred in deleting the addition made by the AO for a sum of Rs. 1,44,88,000/- on account of premium expenses.

14.1 The facts of the case are that the assessee claimed premium expenses of Rs. 1,44,88,000/- which was paid on account of the conversion of land from agriculture to non-agriculture to Dinesh Natwarlal Prajapati. The assessee in support of the above facts relied on its earlier submission which is reproduced hereunder.

"With reference to the ongoing assessment proceedings, we beg submit on the query regarding land acquisition cost including premium for permission of the Revenue Department of Government of Gujarat for non agricultural use as under

As you are aware, we are engaged in the business of construction for which the land is acquired and is treated as our stock in trade. Under the prevalent

laws in the State of Gujarat, agricultural land cannot be used for construction without converting the agricultural land in to non-agricultural land for being used for construction of houses under the permission of the Government.

As already submitted, we had purchased land under various survey numbers by making payments towards the same and this is evident from audited accounts and notes thereto. The land so acquired is debited and grouped under the account head land Acquisition Expenses as per consistent method adopted and accepted practice. At the end of the accounting year, the Work in progress is valued which includes such land acquisition expenses and the same is credited to the Profit and Loss account as closing Work in progress till actual sales. The said land acquisition expenses include payment made for acquiring land at Block No: 511 land adms 18110 sq.meteres which is debited to Land acquisition expanses with corresponding credit to work in progress in respective year of payment.

A statement showing the Land Acquisition Expenses of Rs. 10,32,62,361/- is already furnished by us in response to Point No: 4 of your notice u/s 142 (1) dated 24.09.2013. With regard to the amount of Rs. 1,44,88,000 being amount of premium paid by us by cheque No: 351944 dated 27.07.2010, we hereby enclose the permission letter dated 22.07.2010 of District Collector Gandhinagar (EXHIBIT-A) which relates to land at Block No: 511 adms. 18110 sq. metres and under which the premium for conversion of said agricultural land in to building site is calculated at rs. 1,44,88, 000/-. After receipt of the same, we have paid the said amount which relates to the land at Block No: 511 adms 18110 sq. meters the cost of which is already

accounted for in the accounts and also considered as work in progress as stated above. After payment of the said premium which obviously had to be paid and borne by us since the same related to the said land which is acquired by us for the purpose of construction and such construction cannot be done without above permission and payment as per the laws of the Government.

15. From the above facts of the case, AO observed that the premium expenses were not paid to the director. The assessee explained that the company purchased the agriculture land in the name of the director and Dinesh Natwarlal Prajapati was not the director of the company. Hence it should not be allowed.

15.1 The assessee further stated that the said expenditure has not affected the profit because the same is added in the value of the work in progress.

The assessee in addition also mentions that for the A.Y.2010-11 the Ld. CIT (A) has allowed the appeal on the same ground of appeal.

15.2 The AO further observed that the assessee could not furnish any agreement in support of the premium expenses given to the farmer. The AO also disagreed with the contention of the assessee by observing that the Revenue has gone into an appeal for the A.Y.2010-11 against the order of the Ld. CIT (A)

15.3 Therefore AO disallowed the premium expenses and added to the total income of the assessee.

16. Aggrieved assessee preferred an appeal before the Ld. CIT (A).

17. The assessee before the Ld. CIT (A) reiterated the submission as made before the AO.

18. The Ld. CIT (A) on perusal of the submission made by the assessee observed that the assessee had not claimed any deduction on account of such expenses. Therefore the question of the disallowance/addition does not arise. Accordingly, the Ld. CIT (A) deleted the addition made by the AO.

19. Aggrieved Revenue by the order of the Ld. CIT (A) is in appeal before us.

20. The ld. DR and AR both relied on the order of authorities below as favorable to them.

21. We have heard the rival contentions and perused the materials available on record. At the outset, we note that the identical issue was raised in the own case of the assessee by the Revenue in the immediately preceding assessment year 2010-11 in ITA No. 1340/AHD/2014 which was decided in favour of assessee vide order dated 9-4-2018. The relevant extract of the order is reproduced as under:

9. The undisputed fact is that the lands were shown in the balance sheet of the assessee since past years. It is also not in dispute that the agricultural land cannot be purchased by a body corporate. Because of this, the land were purchased in the name of directors of the company. It is true that some lands were not in the name of the directors of the company but, at the same time, we find that the owners of the land had given power of attorney in the name of one directors of the company. Even, the order of the District Collector knowledge this fact that the premium has been paid by the power of attorney holder i.e director of the company. The p;ower of attorney I exhibited at pages 1 to 3 of the paper book. We find that the land acquisition expenses have been added to the opening work in progress as per the exhibits 5 & 53 of the paper book. This means that the assessee has never

charged the land premium expenses to its profit and loss account. Be that as it may, the land conversion premium expenses have been incurred by the assessee company and therefore the same has to be allowed. We decline to interfere.

21.1 As the facts in the present case are identical to the facts as discussed above, therefore respectfully following the same, we do not want to deviate from the view taken by the Ld. CIT (A). Hence the ground of appeal of the revenue is dismissed.

22. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Court on 29/03/2019 at Ahmedabad.

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

**-Sd-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

(True Copy)
Ahmedabad; Dated 29/03/2019
manish

आदेश का सत्य प्रमाण पत्र/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. वित्तीय प्रमाण, आयकर अपील आधिकरण / DR, ITAT,
6. गार्डफाइल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपील आधिकरण, अहमदाबाद / ITAT, Ahmedabad