

**IN THE INCOME TAX APPELLATE TRIBUNAL,
SURAT BENCH, SURAT**

**BEFORE SHRI RAM LAL NEGI, JUDICIAL MEMBER
AND SHRI O. P. MEENA, ACCOUNTANT MEMBER**

I.T.A. No.2376/AHD/2014: Assessment Year: 2006-07

Shri Mukesh N. Desai, 2.4381, Chappra Street, Sangrampura, Surat - 395004.	Vs.	Deputy Commissioner of Income-Tax, Circle -2, Surat.
[PAN: AATDP 0728 R]		
Appellant		Respondent

Assessee by	Shri Rasesh Shah, CA
Revenue by	Shri O. P. Singh CIT (D.R.)
Date of hearing	29.03.2019
Date of pronouncement	30.04.2019

ORDER

PER O. P. MEENA, AM

1. This appeal by the Assessee is directed against the order of learned Commissioner of Income tax (Appeals)-II, Surat (in short “the CIT (A)”) dated 01.07.2014 pertaining to Assessment Year 2006-07, which in turn has arisen from the assessment order passed under section 143 (3) read with section 147 dated 28.12.2011 of Income Tax Act, 1961 (in short ‘the Act’) by the Deputy Commissioner of Income-Tax, Circle-2, Surat (in short “the AO”).

2. The grounds of appeal raised by the Revenue are as under:

- 1. On the facts and in the circumstances of the case as well as law on the subject, the ld. CIT (A) has erred in sustaining addition of Rs.74,54,250 made by the A.O. for alleged suppressed sales value of the land shown by the assessee.*

2. *On the facts and in the circumstances of the case as well as law on the subject, the ld. CIT (A) has erred in sustaining the addition of Rs.24,50,000 made by the Assessing Officer for alleged unexplained cash credit.*
3. *On the facts and in the circumstances of the case as well as law on the subject, the ld. CIT (A) has erred in sustaining the addition of Rs. 66,71,000 made by the A.O. for alleged unexplained cash credit.*
4. *On the facts and in the circumstances of the case as well as law on the subject, the ld. CIT (A) has erred in sustaining the addition of Rs. 17,90,000 made by the AO for alleged unexplained cash credit.*

3. Ground no. 1 relates to sustaining of addition of Rs.74,54,250/- on account of suppression of sales value of land.

4. Briefly, stated the facts of the case are that the assessee has carried on business of land developer and also shown construction and brokerage income during the year under consideration. During the assessment year under consideration, the assessee has purchased land admeasuring 31,263 at Sachin for Rs.4,50,000/- and debited Rs.5,00,000/- towards it. This land was sold for Rs.11,00,000/-. However, Stamp Duty Valuation was at Rs.1,25,45,600. The AO further noted that the assessee has paid Rs.17,90,000/- to land owners Mr. P. J. Sachinwala for development of land. The verification of land development account showed that the assessee has paid Rs.17.90 Lakh by cheques and received back said amount by cash as it was sold out. It was explained that the assessee is carrying on business in purchase and sale of land, hence, Jantri rate is not applicable. The AO also observed that he is fully agree that Jantri rate is not applicable under section 50C in his case. However, the assessee has not furnished corroborating evidences to indicate that the assessee has sold land at documented

value but not at a higher value, so it is required to estimate market value of land. The AO noted that how can be land, which is, acquired for Rs. 5 lacs and on which development expenses Rs. 17.90 Lakh given can be sold for Rs.11 Lakhs. The land, which required compound wall cost of Rs. 17.90 Lakh and the assessee, has claimed that it is received back as refund in cash. However, the AO observed that no evidence of refund of these amounts shown by the assessee. Therefore, the fact is that the assessee has paid Rs. 22.90 Lakh by cheque for purchase of land at Rs. 17.90 Lakh refund is only cover up the real transaction. If the claim of the assessee is accepted that real sale value is Rs. 11 lakhs paid to Mr. Natverlal N Patel, gives the rate of Rs. 35.18 Lakh per sq. meter, which is impossible considering sale price of land located in Sachin area. The rate as per Jantri value comes to Rs.3500 per sq. meter. In view of these facts and circumstances, the AO made addition of Rs.74,54,250 i.e. [Rs.85,54,250/- being reduced stamp duty valuation Less Rs.11,00,000/- transaction value] as suppression of sale in land transaction.

5. Being aggrieved, the assessee filed an appeal before the Id. CIT (A). Wherein, it was contended that the provisions of section 50C are not applicable as the assessee is a dealer in land. There is no evidence that a sum of Rs.74,54,250/- is suppressed sale consideration received by the Appellant. However, the CIT (A) observed that the fixed assets for assessment year 2004-05, 2005-06, and 2005-06 shows only few lands, flats and shops. This land has been not shown as stock-in trade; hence, this single land transaction should have

been assessed under section 50C as long-term capital gain. Even if the contention of the assessee is accepted that section 50C is not applicable, which has been accepted by the AO, even in that case, there is strong evidence of receipt of unaccounted sale consideration in the form of unexplained cash credit in bank account for which the AO has made separate addition as discussed in Ground No. 3 to 5. The CIT (A) further observed that the stamp duty valuation at Rs.1,25,45,520/- was reduced to Rs. 85,54,520/- in appeal, hence, it was not determined in routine manner. Hence, addition made by the AO was came to be confirmed. The AO has also made separate addition of Rs.66,71,000/- on account of opening cash balance as on 01.04.2005. However, CIT(A) has deleted this addition as he confirmed the addition of Rs.74,54,250/- in respect of ground no. 1 being sale consideration received on suppression of sale of land transaction, which is shown as opening cash balance.

6. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that the assessee has purchased land for Rs. 4.90 Lakh and paid an amount of Rs. 17.90 Lakh for construction of compound wall. The land is different and construction of compound wall is different. The assessee has received back the amount given for construction of compound wall, as the land in question was sold out. Further, the AO has accepted that it was business transaction attributable to business income. This is a finding of facts. However, Ld. CIT (A) observed that it should have been assessed as capital gains by considering other facts, which are not relevant. Nor the CIT (A)

has given an opportunity of being heard to the assessee on this point. However, ultimately CIT (A) has accepted the land transaction as business transactions, therefore, finding given by the CIT(A) in para 9.4 of his order are not relevant. Accordingly, provisions of section 50C is not applicable. Further, the cash deposits in bank account has no connection and relevance. The finding of CIT (A) in A.Y. 2009-10 in respect of purchaser of land, on the contrary, supports the case of the assessee, as no addition has been made in assessment year 2006-07 in the case of purchasers, nor the CIT (A) has given any direction to the AO under section 250 of the Act to take action in the case of purchaser. During the course of assessment proceedings, the AO has issued notice to Shri Natverlal P Patel, from whom reply dated 31.10.2011[Placed at Paper Book Page No. 36] was received by which details of copy of accounts for A.Y. 2005-06 of Sachin Land from his books of accounts, Payment made in cash as per cash book, cash balance, copy of capital account and balance sheet for F.Y. 2005-06 and copy of acknowledgement receipts of return of income for A.Y. 2006-07 were filed. However, the AO has not discussed and mentioned these facts in his assessment order. Thus, the learned counsel for the assessee has contended that the amount of Rs. 17.90 Lakh paid for construction of compound wall was received back. The cash deposits in the bank account have been fully explained. Nor any addition has been made in the case of Mr. Natverlal P Patel. The AO has not referred the issue to DVO for valuation of property sold, even when Stamp Duty Authorities have determined higher market value. The AO has not made any enquiry. The

learned counsel for the assessee placing reliance in the case of K.P. Varghese v. ITO [1981] 131 ITR 597 (SC)/ 7 Taxman 13 (SC) wherein it was observed as “We must, therefore, hold that sub-section (2) of section 52 can be invoked only where the consideration for the transfer has been understated by the assessee or, in other words, the consideration actually received by the assessee is more than what is declared or disclosed by him and the burden of proving such understatement or concealment is on the revenue. This burden may be discharged by the revenue by establishing facts and circumstances from which a reasonable inference can be drawn that the assessee has not correctly declared or disclosed the consideration received by him and there is understatement or concealment of consideration in respect of such transfer. Sub-section (2) has no application in case of an honest and *bona fide* transaction where the consideration received by the assessee has been correctly declared or disclosed by him, and there is no concealment or suppression of the consideration. Thus, it was observed that whether understatement of consideration in transfer of property is necessary condition for attracting applicability of section 52(2) and it is not enough for revenue to show that fair market value of property as on date of transfer exceeds full value of consideration declared by assessee in respect of transfer by an amount of not less than 15 per cent of value so declared. Therefore, it was argued that the AO should have referred the property for valuation if he was of the view that fair market value of property was higher than disclosed in sale deed.

7. The learned counsel for the assessee further relied on the judgement of Hon'ble Gujarat High Court in the case of ACIT v. Rajendrabhai Sugamchand Shah [I.T.A.No. 1328 of 2010 of Hon'ble Gujarat High Court 21.09.2011] wherein it was observed that **the assessee has contended before the Authorities that he had paid nothing further then sale consideration indicated in the sale deeds. Additional stamp duty paid to avoid litigation and to get clear title of the property. Tribunal additionally noted that the rates adopted by Stamp Valuation Authority could not by itself be taken as the price for which the property was purchased. We may further add that other than the valuation of the stamp authorities on the basis of Jantri rates, there was no iota of evidence to hold that any price in addition to the sale consideration indicated in the sale deed was made.** Therefore, it was contended that in the case of there is no iota of evidence that the assessee has received more consideration shown in sale deed. The learned counsel for the assessee further relied in the case of CIT-I, v. Berry Plastic Pvt. Ltd. [2013] 35 taxmann.com 296 (Gujarat) wherein it was held **"We are of the opinion that CIT(Appeals) as well as the Tribunal committed no error in deleting the additions made by the Assessing Officer. It is undisputed that the sole basis for making the addition was the DVO's report. DVO's report may be a useful tool in the hands of the Assessing Officer, nevertheless it is an estimation and without there being anything more, cannot form basis for additions under Section 69B of the Act. In absence of any other material on record, addition was correctly deleted. Tax**

Appeal is, therefore, dismissed.” Thus, it was contended that no addition can be made even on the basis of valuation report whereas in a case where no reference to DVO was made.

8. The learned counsel for the assessee further relied in the case of Goodluck Automobiles (P) Ltd. v. ACIT [2012] 359 ITR 0306 (Guj) **“Whether rejection of books of account should precede reference to DVO and, therefore, report of DVO cannot form foundation for rejection of books of account - Held, yes - Assessee constructed a building for offices, showrooms, service centres, etc. - Assessing Officer made reference to DVO to ascertain cost of construction and, on basis of report of DVO, certain addition was made - It was apparent from records that while making reference to Valuation Officer, Assessing Officer had not recorded any defect in books of account nor had he rejected same - Whether reference made to DVO, not being in consonance with provisions of law, was invalid - Held, yes - Whether, therefore, impugned addition made by Assessing Officer under section 69 was to be set aside - Held, yes [In favour of assessee]**

9. The learned counsel for the assessee relied in the case of Amara Das v. ITO Ward- 1(3) Durgapur (PB-25-34) I.T.A.No. 306/Kol/2017 dated 13.07.2018 of Kolkata Tribunal wherein it was held that provision of section 50C are not applicable where the assessee has held capital asset as stock-in trade. Hence, the value adopted by stamp duty valuation authority is not to be considered for making unexplained investment. The learned counsel for the assessee further

supported his view by relying in the case of ITO v. Smt. Sejal D Shah [I.T.A.No. 3400/Ahd/2014 dtd. 10.01.2018 of Ahmedabad Tribunal] [copy filed and placed at Paper Book Page No. 35 to 43]

10. *Per contra*, the Ld. CIT (DR) submitted that the learned counsel for the assessee stated that no addition has been made in the case of purchaser, but no record is made available in support of this contention. There is no case of the AO as well as CIT (A) that provision of section 50C are applicable. The CIT (A) has examined the surrounding circumstances that the assessee has sold land at Rs. 11 lakhs whereas the cost of compound wall was at Rs. 17.20 lakhs. The Ld. CIT (DR) referred para 3.6 of assessment order and claimed that the rate of sale of land comes to Rs. 35.18 per sq. meter whereas sale rate as per Jantri rate comes to Rs. 3500 per sq. meter . This clearly established that how much value has spring to the assessee, hence, the AO has rightly adopted Jantri value at Rs. 85 Lakh. The Ld. CIT (DR) further referred para 11.4 and 11.5 of appellate order and submitted that return of income was filed belated under section 139 (4). The cash withdrawals does not correlate hence, cash might have been given before the sale deed of land. Further, how the opening cash balance of Rs. 66.71 Lakh has been arrived is not supported as brought forward cash balance as on 01.04.2002 was at Rs.24,34,973/-. There is no sanctity for filing of return of income. The case laws of K.P. Varghese v. ITO [1981] 131 ITR 597 (SC)/ 7 Taxman 13 (SC) was on capital gains hence, not applicable. Further, all decision are based on capital gains

hence, not applicable. The AO was not required to refer for valuation to DVO where the assessee has not filed any valuation report.

11. In rejoinder to above, the learned counsel for the assessee submitted that land was purchased for Rs. 4.90 Lakh and sold for Rs. 11 lakhs. The assessee has shown more than 100% gross profit on sale of land. If the AO had rejected the books of accounts, then only Gross Profit could be estimated for making addition, which in the case of the assessee comes 55% only on land business. Further, the plot of land was disputed property; hence, the land was sold as distress sale. The learned counsel for the assessee has drawn our attention to Paper Book Page No. 89 and submitted that the assessee has shown cash withdrawals of Rs.40,40,000/- as per cash flow statement as on 31.03.2003. The assessment was made under section 143 (3) read with section 147 of the Act on 27.1.2.2007, [Paper Book Page No. 133-134], wherein books of accounts were before the AO who had examined the same. Hence, the balance sheet and capital account as filed by the assessee are authentic and reliable and supported by scrutiny assessment order passed by the AO. Similarly, assessment for the assessment year 2002-03 was also passed under section 143 (3) read with section 147 of the Act on 21.12.2007 (PB-135). Therefore, the argument of the learned CIT (D.R.) that no records available is not correct. Further, reference to DVO was mandatory and was required to be made as per provisions of section 142(2A) of the Act as the amendment made was effective with effect from 01.04.2004.

12. We have heard the rival submissions and perused the relevant material on record. We find that the assessee has purchased land for Rs. 4.90 Lakh and paid an amount of Rs. 17.90 Lakh for construction of compound wall. The copy of can filed by the assessee shows that the amount of Rs. 17.90 Lakh given for construction of compound wall has been received back as there was no construction of compound wall made. Further, we are of the view that value of land is different, amount spent for construction of compound wall is also different, and there is no co-relation between land value and amount to be spent for construction of compound wall. We also observed that the AO has accepted the transaction as business transactions. Hence, applicability of provision of section 50C are not applicable. The Ld. CIT (DR) has rightly pointed out the applicability of provision of section 50C is neither case of the AO nor of CIT (A). If that is the case then, sale consideration for business transactions cannot be estimated based on the stamp duty valuation of the property sold by the assessee. Further, the land in question was sold vide registered sale deed dated 19.10.2005. Then how the opening cash balance as on 01.04.2005 can be attributed to receipts of cash on account of sale of land. Therefore, the cash deposits in bank account has no connection and relevance. We also observe that observation of CIT (A) in A.Y. 2009-10 in respect of purchaser of land, has also no relevance as no addition has been based on such observation and no direction were given any direction to the AO under section 250 of the Act to take action in the case of purchaser for the assessment year 2006-07. It is also noticed the AO has

examined and called for details from purchaser Shri Natverlal P Patel of which reply dated 31.10.2011 is placed at Paper Book Page No. 36, wherein he has submitted copy of accounts for A.Y. 2005-06 of Sachin Land from his books of accounts, Payment made in cash as per cash book, cash balance, copy of capital account and balance sheet for F.Y. 2005-06 and copy of acknowledgement receipts of return of income for A.Y. 2006-07 were filed. Hence, the purchaser has also confirmed the sale consideration paid by him to the assessee. The detail accounts also established that the amount of Rs. 17.90 Lakh paid for construction of compound wall was received back. We also find that the AO has failed to make reference to DVO as required under section 142(2A) nor made any enquiry in support of claim that the AO has received over and above the sale consideration shown in the registered sale deed. The learned counsel for the assessee placing reliance in the case of K.P. Varghese v. ITO [1981] 131 ITR 597 (SC)/ 7 Taxman 13 (SC) claimed that where understatement of consideration in transfer of property is necessary condition for attracting applicability of section 52(2) and it is not enough for revenue to show that fair market value of property as on date of transfer exceeds full value of consideration declared by assessee in respect of transfer by an amount of not less than 15 per cent of value so declared. Therefore, the AO ought to have referred the property for valuation if he was of the view that fair market value of property was higher than disclosed in sale deed. Further the cash balance and cash withdrawals of Rs.40,40,000 during the assessment year 2003-04 and cash balance as on 31.03.2003 has been duly established as the

assessment was made under section 143 (3) read with section 147 of the Act under scrutiny on 27.12.2007 (PB-133). Similarly assessment for the assessment year 2002-03 was also made under scrutiny on 27.12.2007 under section 143 (3) read with section 147 of the Act (PB-135). Therefore, where books of accounts showing brought forward cash balance has been examined under scrutiny; the same are to be relied upon for explaining the brought forward cash balance. Our view is also supported from the decision of Hon'ble Gujarat High Court in the case of CIT-I, v. Berry Plastic Pvt. Ltd. [2013] 35 taxmann.com 296 (Gujarat) wherein it was held **“We are of the opinion that CIT(Appeals) as well as the Tribunal committed no error in deleting the additions made by the Assessing Officer. It is undisputed that the sole basis for making the addition was the DVO's report. DVO's report may be a useful tool in the hands of the Assessing Officer, nevertheless it is an estimation and without there being anything more, cannot form basis for additions under Section 69B of the Act. In absence of any other material on record, addition was correctly deleted. Tax Appeal is, therefore, dismissed.”** Thus, it was contended that no addition can be made even on the basis of valuation report whereas in a case where no reference to DVO was made. Similarly the Hon'ble Gujarat High Court in the case of ACIT v. Rajendrabhai Sugamchand Shah [I.T.A.No. 1328 of 2010 of Hon'ble Gujarat High Court dated 21.09.2011] observed that **the assessee has contended before the Authorities that he had paid nothing further then sale consideration indicated in the sale deeds. Additional stamp duty paid to**

avoid litigation and to get clear title of the property. Tribunal additionally noted that the rates adopted by Stamp Valuation Authority cannot by itself be taken as the price for which the property was purchased. We may further add that other than the valuation of the stamp authorities on the basis of Jantri rates, there was no iota of evidence to hold that any price in addition to the sale consideration indicated in the sale deed was made. Relying on above decision, we hold that rates adopted by the Stamp Duty Authorities cannot be taken at which price the land was sold. Further, in the instant case, there is no iota of evidence that the assessee has received sale consideration over and above as shown in document. The learned counsel for the assessee has claimed that land was disputed property hence; it was sold as distress sale. Similarly, Co-ordinate Bench of Kolkata Tribunal in the case of Amara Das v. ITO Wd-1 (3) Durgapur [I.T.A.No. 306/Kol/2017 dtd. 13.08.2019 has held value adopted by the Stamp Duty Authorities cannot be taken for making addition as unexplained investment. Considering these facts and judicial pronouncements as discussed above, we are of the considered opinion that addition of Rs. 74,54,250 has been made without any basis and any evidence bringing on record, by merely relying on stamp duty valuation is not sustainable in law particularly when the provision of section 50C are not applicable. Accordingly, we delete the said addition. This ground of appeal is allowed.

13. Ground No. 2 related to sustaining addition of Rs. 24,50,000 as unexplained cash credit, which is not pressed before us. Hence, it is treated as dismissed as not pressed.

14. Ground No. 3 relates to sustaining addition of Rs. 66,71,000 being unexplained cash credit by not accepting opening cash balance.

15. Facts apropos of this ground are that the AO has made addition of Rs.66,71,000/- as opening cash balance claimed by the assessee. The AO has rejected the claim of opening cash balance. The AO observed that the assessee has large number of transaction of credits and debits of cash in his cash book and in the bank account. The books of accounts of the assessee were not audited. In respect of cash deposits of Rs.1,52,59,500/-, the assessee has submitted explanation which has been reproduced by the AO in para 5 of assessment order. While explaining the deposits, the assessee has claimed opening cash balance of Rs.66,96,000/- as on 01.04.2005, whereas the AO has allowed credit of opening cash balance at Rs. 25000 only and the remaining amount of Rs. 66,71,000 was added. The AO has also linked this addition with addition on account of suppression of sales for which separate addition to the extent of Rs. 74,54,250 was made, which has been contested in ground no. 1 above.

16. Being aggrieved, the assessee filed an appeal before the Id. CIT (A). During the course of appellate proceedings, the assessee has filed copies of cash book for the year ending on 31.03.2004, 31.03.2005 and 31.03.2006. The closing balance of Rs.66,91,001/- has been shown as on 31.03.2005 and corresponding cash

balance was shown at Rs.65,22,716/- as on 31.03.2004. However, as on 31.03.2006, it has shown closing cash balance at Rs. 26,655. In the cashbook, there are substantial deposits and withdrawals in cash in several lakhs whereas profit is shown ranging between Rs. 65,642/- to Rs. 23,86,00/- during the assessment year 2004-05 to 2006-07. The assessee has claimed that he is entitled to opening cash balance in the cash-book. However, CIT (A) observed the assessee has shown income from brokerage, commission profit of sale of land and profit @8% on construction profit beside miscellaneous income. However, the CIT (A) was of the view that return of income was filed under section 139 (4) and the nature of deposits are such which cannot be set-off against opening cash balance. Hence, addition made on account of opening cash balance of Rs.66,71,000/- was upheld. However, the AO has held that suppression of sales on land is added at Rs.74,54,250/- hence, no separate addition is required to be made. Therefore, CIT (A) observed that addition of Rs.66,71,000/- leads to double addition as the addition in respect of suppression of sales of Rs.74,54,250/- has been confirmed. Hence, this addition was deleted as it was allowed to be telescoped against the said addition Rs.74,54,250/-.

17. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee referred the finding of Ld. CIT (A) in para 11 of appellate order. The learned counsel for the assessee claimed that opening cash balance details were filed which are appearing at Paper Book Page No. 77 to 91. Paper Book Page No. 92 is balance sheet and capital account. Paper Book Page

No.104 is a copy of return of income filed for the assessment year 2005-06. Paper Book Page No. 113 is balance sheet as on 31.03.2005 showing opening cash balance of Rs. 66,96,000/-. The learned counsel further referred copies of assessment order for the A.Y. 2002-03 and A.Y. 2003-04 which were made under section 143 (3) read with section 147 of the Act wherein all details were filed before the AO who has examined and no adverse view has been drawn. Further, return of net wealth (PB128) has shown cash balance of Rs.26,655/- whereas the assessee has shown cash balance of Rs.66,96,001/- as on 01.04.2005 as per Paper Book Page No. 113. The CIT (A) has picked up closing cash balance as on 31.03.2006, instead of opening cash balance. Therefore, on the facts of the case the assessee has explained the availability of cash balance as per documentary evidence filed during the course of assessment proceedings as well as appellate proceedings.

18. *Au contraire*, the Ld. CIT (DR) referred para 11.4 and 11.5 of appellate order and submitted that return of income was filed belated under section 139 (4). The cash withdrawals does not correlated, hence, cash might have been given before the execution of sale deed of land. Further, how the opening cash balance of Rs. 66.71 Lakh has been arrived shown is not supported as brought forward cash balance as on 01.04.2002 was at Rs. 24,34,973/-. There is no sanctity for filing of return of income.

19. We have heard the rival submissions and perused the relevant material on record. The perusal of details filed for opening cash balance appearing at Paper

Book Page No. 77 to 91 shows opening cash balance at Rs.66,96,000/- as on 01.04.2005. The entries in cashbook are reflected for the period from 01.04.2004 to 31.03.2005 (PB-107-110) Paper Book Page No. 92 is balance sheet and capital account. Paper Book Page No.104 is a copy of return of income filed for the A.Y. 2005-06. Paper Book Page No. 113 is balance sheet as on 31.03.2005 showing cash on hand of Rs.66,96,000/-. It is discernible from the copies of assessment order for the A.Y. 2002-03 and A.Y. 2003-04 which were finalised under section 143 (3) read with section 147 of the Act wherein all details were filed before the AO who has also examined the same. Therefore, authenticity of these evidences cannot be doubted. The assessee has shown cash balance at Rs. 26,655 in income tax return as on 31.03.2006 and also shown same cash in hand in net wealth tax (PB-128) of Rs.26,655/- as on 31.03.2006, Which are tallied. The assessee has shown opening cash balance of Rs.66,96,001/- as on 01.04.2005 as per Paper Book Page No. 113, Hence, closing cash balance as on 31.03.2006 is not comparable with opening cash balance shown in cash book as on 01.04.2005. In view of these facts and circumstances, we are of the considered view that the assessee has explained the availability of cash balance as per documentary evidence filed during the course of assessment proceedings as well as appellate proceedings. Therefore, addition of Rs.66,71,001/- made by the AO is therefore, deleted, even though the CIT (A) has allowed it as telescoping against addition of sale consideration sustained by him. This ground of appeal is accordingly, allowed.

20. Ground No. 4 relates to sustaining addition of Rs. 17,90,000 in respect of amount returned back being development expenses.

21. Briefs, facts are that the assessee has given a sum of Rs.17,90,000/- to one Shri Sachinwala from whom the land sold was purchased. The assessee has claimed that development expenses were given to Shri Sachinwala from the month of May 2005 to September 2005 and the amount was received back in October 2005. As per the assessee, this amount was given to Shri Sachinwala for construction of compound wall before receiving possession of the land by the assessee. However, Mr. Schinwala did not construct the compound wall. Later on, the said land was sold to Mr. Natverlal P. Patel & Others on 19.10.2005 and therefore, this amount was recovered from Mr. Sachinwala. However, in respect of this transaction, there is no written agreement or evidence and everything is claimed on oral understanding. Therefore, the AO had treated it as unexplained cash credit.

22. The assessee has carried the matter in appeal before CIT (A). The CIT(A) observed that the assessee has reiterated the same contention as made before the AO but could not submit any evidence. Consequently, the addition made by the AO was confirmed. However, the cash credits were telescoped against the addition of Rs.74,54,250/- as sustained by the CIT (A) in ground no. 1 on account of suppression of sales of land transaction. Accordingly, after allowing telescoping of Rs.66,71,000/- and Rs.17,90,000/- out of Rs.74,54,250/- balance

addition of Rs.10,06,750/- [74,54,250- 66,71,000+ 17,90,000= 10,06,750] was confirmed.

23. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee contended that the amount of Rs.17,90,000/- given for construction of compound wall was received back by the assessee as the said land was sold to one Mr. Natverlal P Patel in October 2005. The amount of Rs.17,90,000/- was paid by three cheques of Rs.5 Lakh dtd. 04.05.2005, Rs.8 Lakh by cheque dated 28.05.2005 and Rs.4,90,000/- by cheque dtd. 28.09.2005 and same has been received back as refund by cash on 18.10.2005, 24.10.2005 and 31.10.2005 as per land development account given and placed at Paper Book Page No. 76. The corresponding entries have been duly reflected in cash book for the relevant period. The AO has not brought any evidence on record and disbelieved the cash-book of the assessee nor made any enquiry in this regard with concerned parties. Therefore, the addition was made without any basis. Hence, it is not sustainable in the light of evidence brought on record in the form of cashbook, (PB- 120-123) ledger account of Vaibhav land development (PB- 76). Therefore, the addition sustained by the Ld. CIT (A) needs to be deleted.

24. Per contra, the Ld. CIT (DR) relied on the orders of lower authorities and submitted that cashbook submitted is not reliable. Hence, lower authorities were right in their action.

25. We have heard the rival submissions and perused the relevant material on record. We find that the amount of Rs.17,90,000/- given for construction of

compound wall was received back by the assessee as the said land was sold to one Mr. Natverlal P Patel in October 2005. The amount of 17,90,000 was paid by three cheques and same was received back as refund by cash on 18.10.2005, 24.10.2005 and 31.10.2005. These details are appearing in the land development account given and placed at Paper Book Page No. 76. The corresponding entries have been duly reflected in cash book for the relevant period. The AO has not brought any evidence on record and disbelieved the cash book of the assessee. The AO has not made any enquiry in this regard to concerned parties. Therefore, the addition was made without any basis. Hence, it is not sustainable in the light of evidence brought on record in the form of cashbook, (PB- 120-123) ledger account of Vaibhav land development (PB-76). Therefore, the addition of Rs.17,90,000/- is accordingly, deleted. This ground of appeal is allowed.

26. In the result, the appeal of the assessee is partly allowed.

27. The order pronounced in the open Court on 30.04.2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

Surat: Dated: 30th April, 2019/opm

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / **TRUE COPY** / /

Assistant Registrar, Surat