



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

**BEFORE SHRI AMARJIT SINGH, JM & SHRI O.P.MEENA, AM**

**ITA No.370/SRT/2019  
(Assessment Year 2012-13)**

Shri Mukeshbhai B. dhameliya 13, Krishna Nagar Society, Varacha Road, Surat-395006.		ITO Ward (3)(3)(3) Aaykar Bhavan, Majura Gate, Surat.
<b>PAN/GIR No.ABQPD3554M</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Assessee by	Shri Sapnesh Sheth
Revenue by	Shri O. P. Singh (DR)
<b>Date of Hearing</b>	<b>26/09/2019</b>
<b>Date of Pronouncement</b>	<b>30/09/2019</b>

**ORDER**

**PER AMARJIT SINGH (J.M):**

The assessee has filed the present appeal against the order dated 07.06.2019 passed by the Commissioner of Income Tax (Appeals) -3 Majura Gate, Surat [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2012-13.

2. The assessee has raised the following grounds: -

1. On the facts and circumstances of the case as well as law on the subject, the Ld. Commissioner of Income-tax(appeals) has erred in passing ex-parte order without providing reasonable opportunity of hearing to assessee & without considering the fact that in another connected cas viz., Shri Kamlesh M. Dhameliya wherein similar addition is made, detailed submission was already filed.
2. On the facts and circumstances of the case as well as law on the subject, the Ld. Commissioner of Income-tax(appeals) has erred in confirming the action of assessing officer in reopening assessment by issuing notice u/s 148 of the I.T. act, 1961
3. On the facts and circumstances of the case as well as law on the subject, the Ld. Commissioner of Income-tax(appeals) has erred in confirming the action of assessing officer in making addition of Rs.4,92,87,500/- as unexplained investment u/s 69 of the Act. The Ld. AO has made above addition on protective basis.
4. It is therefore prayed that addition made by assessing officer & confirmed by Commissioner of Income-tax(appeals) may kindly be deleted.
5. Appellant craves leave to add, alter or delete any grounds either before or in the course of hearing of the appeal.”



3. The brief facts of the case are that a survey proceeding was initiated at the premises of Shri Vasudev Goplani 203-204, Liberty Chambers, Timaliyawad, Nanpura, Surat number of draft Satakhat were found and impounded. On verification of the impounded document, it was noticed that the Satakhat dated September, 2011 was executed between Shri Kamlesh Manubhai Dhameliya & Shri Mukeshbhai Bhikhabhai Dhameliya as purchasers and Smt. Fatima Mohmed Hazat and Shri Ishaq Mohmd as sellers for the plot at Baleshwar, Surat, Revenue Survey No.396, Block No.385 area admeasuring 21347 sq. mtrs. The total consideration agreed on for purchase of the land was Rs.10,58,75,000/- and an advance cash of Rs.11,00,000/- was paid to the seller by Shri Mukeshbhai Bhikhabhai Dhameliya & Shri Kamlesh manubhai Dhameliya up to the date of Satakhat. The payment schedule was also mentioned in the Satakhat. On the basis of information received from the DDIT(Inv.), Surat. The notice was issued to the seller as well as purchasers. The following person were found involved in Satakhat.:-

Sr. No.	Name of the Person	Seller/Purchaser
1	Kamlesh Manubhai Dhameliya	Purchaser
2	Mukeshbhai Bhikhabhai Dhameliya	Purchaser
3	Ishaq Mohmed Hazat	Seller
4	Ismail Mohmed Hazat	Seller
5	Fatima Mohmed Hazat	Seller
6	Amina Mohmed Hazat	Seller
7	Ahmed Saiseed Mohmed Hazat	Seller
8	Hawabibi Mohmed Hazat	Seller
9	Zukebibi Mohmed Hazat	Seller
10	Yusuf Mohmed Hazat	Seller

It was found that an amount of Rs.9,85,75,000/- out of sales consideration of Rs.10,58,75,000/- was paid in cash. After conducting the necessary inquiry and recording the statement of relevant persons an amount of Rs.4,92,87,500/-(i.e. 50% of the total cash payment of Rs.9,85,75,000/-) being 50% share of the assessee was added to the income of the assessee. Total income of the assessee was assessed to the tune of Rs.4,96,81,440/-/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.



4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. At the very outset, the Ld. Representative of the assessee has argued that the CIT(A) has decided the matter of controversy in absence of the assessee and without giving an opportunity of being heard to the assessee in accordance with law, therefore, in the said circumstances, the order of the CIT(A) in question is wrong and against law and facts and is liable to be set aside. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. On appraisal of the order of the CIT(A) dated 07.06.2019, we noticed that the CIT(A) decided the matter of controversy in absence of the assessee without giving an opportunity of being heard to the assessee. It is against the principle of natural justice. A proper and reasonable opportunity is required to be given to the assessee before the deciding the matter of controversy in accordance with law. Therefore, in the said circumstances, we are of the view that the order of the CIT(A) is not liable to be sustainable in the eyes of law, therefore, we set aside the finding of the CIT(A) on all the issues and restored the matter before the CIT(A) to decide the matter afresh by giving an opportunity of being heard to the assessee in accordance with law.

5. In the result, the appeal filed by the assessee is hereby ordered to be allowed for statistical purpose.

Order pronounced in the open court on this 30/09/2019

Sd/-

Sd/-

**(O. P. MEENA)**  
**ACCOUNTANT MEMBER**

**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**

सुरत/ Surat, दिनांक Dated: 30/09/2019/Vijay Pal Singh, Sr.PS

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

**By order**

**Assistant Registrar, Surat**