

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” Bench, Mumbai**

**Before Shri S. Rifaur Rahman, Accountant Member  
and Shri Ravish Sood, Judicial Member**

**ITA No. 1504/Mum/2017  
C.O. No. 255/Mum/2018  
(Arising out of ITA No.1504/Mum/2017)**

**(Assessment Year: 2013-14)**

A.C.I.T -13(3)(1)  
Room No. 229, 2<sup>nd</sup> Floor,  
Aayakar Bhavan, M.K.Road,  
Mumbai -20

M/s Windsor Realty Pvt. Ltd.  
Podium, Windsor, Off CST Road,  
Vs. Near BKC, Santacruz (East),  
Mumbai – 400 098

PAN – AAACE1883E

**(Appellant)**

**(Respondent)**

Appellant by: Shri V. Vinod Kumar, D.R  
Respondent by: S/shri Mayur Kisnadwala & Sunil Ramani A.R's  
Date of Hearing: 20.11.2019  
Date of Pronouncement: 27.11.2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-21, Mumbai, dated 27.12.2016, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 23.03.2016 for A.Y. 2013-14. The revenue has assailed the impugned order on the following grounds of appeal :

- “1. Whether on the facts and the circumstances of the case and in law, the id. CIT (A) erred in deleting the addition of Rs. 9,50,00.000/- made on account of unexplained investments u/s 69 of the IT Act, 1961.
2. Whether on the facts and in circumstances of the case and in law, the Ld.CIT(A) has failed to treat all the 9 entries found on loose paper at par. The natural presumption should have been that if 7 cheque entries on the loose paper are accepted by the assessee, the 2 cash entries on the same loose paper, should be accepted as assessee's transaction in cash. The entire record of the loose paper could be accepted or rejected only in full and not in parts in the absence of any clinching evidence to the contrary. This aspect has not been appreciated by the Ld. CIT (A).

3. Whether on the facts and in circumstances of the case and in law, the Ld.CIT(A) has erroneously arrived at the conclusion that there were no cash found during the survey, ignoring the fact that the addition on account of bogus purchases was confirmed by the Ld. CIT (A) which clearly points to the cash generation in the business. Also, documents found and statements taken during survey revealed unaccounted scarp sales in earlier years which clearly indicate cash generation by the assessee.
4. The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.
5. The appellant craves leave to add, amend or alter all or any of the grounds of appeal which may be necessary.”

Also, the assessee as a cross-objector has objected to the order of the CIT(A) on the following grounds:

“Being aggrieved by the order of the Learned Assessing Officer (AO) u/s 143(3) of the Income Tax Act, 1961, (the 'Act"), as confirmed by Learned Commissioner of Income Tax (Appeals)-21 [CIT (A)]. prefers an appeal against the same on following grounds. Which it is prayed, may be considered without prejudice to one another:

On the facts and circumstances of the case and in law, the learned CIT (A) erred in confirming the addition @12.5% made by the learned AO of Rs.1,11,84,319 on alleged unsubstantiated purchases disregarding the fact that summons under section 133(6)/131 of the Income Tax Act, 1961 were duly served on the alleged bogus parties.

The appellant craves leave to add, alter, amend, delete or modify any of the above-referred grounds of appeal.”

2. Briefly stated, the assessee company which is engaged in the business of real estate development & leasing of properties had e-filed its return of income for A.Y. 2013-14 on 30.09.2014, declaring its total income at Rs.74,69,54,160/-. Return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O, that as on 09.05.2014 survey proceedings were conducted on the assessee company under Sec.133A of the Act. It was noticed by the A.O, that during the course of the survey action certain incriminating documents/loose papers were found and impounded. On a perusal of the contents of a 'loose document' that was impounded during the course of the survey action viz. Annexure A-2 -Page-27, it was observed by the A.O, that the same apparently referred to certain payments/investments made by the assessee. Out of the total “09 entries” mentioned in the aforesaid impounded document, “07 entries” were with respect to certain payments which referred to the names of the persons and/or a concern to whom the same were made. In the

course of the assessment proceedings, it was gathered by the A.O that the “07 entries” were admittedly the payments which were made by the assessee vide ‘account payee’ cheques to certain persons viz. S/sh. Avinash Bhosale & Amit Bhosale towards consultation fees and advance for purchase of land. Accordingly, the payments stated against the aforesaid “07 entries” being in the nature of disclosed transactions are not in dispute before us. In fact, the controversy hinges around the remaining “02 entries” which though formed part of the aforesaid impounded document viz. Annexure A-2 – Page 27, but were therein separately mentioned. Against the said “02 entries”, though there was no mention of the persons to whom the payments were made, however, alike the aforesaid “07 entries”, there was a specific mention of amounts of Rs.7,50,00,000/- and Rs.2,00,00,000/- under the common head i.e “amount paid”, and also a reference to the respective dates of payments i.e 28/02/2013 and 25/06/2012 under the common head i.e “date of payment”. Apart therefrom, as in the case of the aforesaid “07 entries” there were calculations of interest on the said amounts at varying rates, though for a fixed period of days therein mentioned.

4. On a perusal of the contents of the impounded document, the A.O held a conviction that the aforesaid “02 entries” of Rs.7,50,00,000/- and Rs.2,00,00,000/- were in the nature of certain unaccounted payments made/amounts invested by the assessee. As is discernible from the order of the lower authorities, the directors of the assessee company viz. Sh. Akshay R. Raheaj and Sh. Gopal Narang, had in their respective statements recorded under Sec. 131 of the Act, both in the course of the survey proceedings and also the post-survey proceedings, on being confronted with the aforesaid “02 entries” aggregating to Rs. 9,50,00,000/- viz. (i). Rs.7,50,00,000/- dated 25.06.2012; and (ii). Rs.2,00,00,000/- dated 28.02.2013, appearing in Annexure A-2 and Page 27, had stated, that the same were the amounts which were to be paid to S/shri Avinash Bhosale & Amit Bhosale, as ‘advance’ for purchase of land by the assessee company at Village: Mundwa, Pune, which it proposed to acquire for setting up a residential-cum-commercial project, but, the said payments had not been made till date. However, the A.O held a conviction, that in the absence of any explanation or justification by the assessee, it was to be inferred that the aforesaid amounts mentioned against the “02 entries” in Annexure A-2 – Page 27 were the unexplained investments made by the assessee. Accordingly, on the basis of his aforesaid conviction the A.O made an addition Rs.9,50,00,000/- under Sec.69 of the Act.

5. Also, in the course of the assessment proceedings, it was observed by the A.O that the assessee company had purchased various items of furniture and fixtures and other decorative items aggregating to Rs.8,94,74,548/- from two concerns viz. (i) M/s Priya Exim Pvt. Ltd.: Rs.7,32,02,649/- and (ii) M/s Kotsons Impex Pvt. Ltd. : Rs.1,62,71,899/-. As observed by the A.O, the aforesaid items purchased by the assessee formed part of the work-in-progress of its project "Windsor Grande". Information was received by the A.O from the Sales tax department, Maharashtra, as per which the aforesaid supplier parties from whom the assessee had claimed to have made the purchases appeared in the list of the tainted dealers who were engaged in the business of providing accommodation entries/bills without actual supplying of the material in physical form. In the course of the assessment proceedings, the assessee in order to substantiate the genuineness of the aforesaid purchase transactions placed on record supporting documents/details viz. bills, invoices, trail of emails, copies of orders, bank statements, and the photos of all the items lying/fixd at the site of its project viz. Windsor Grande. In order to verify the genuineness of the aforesaid purchase transactions, the A.O issued notices under Sec. 133(6) to the aforementioned parties. One of the party, namely M/s Priya Exim Pvt. Ltd. complied with the said notice and submitted its reply. However, the summon which was thereafter issued by the A.O under Sec.131 of the A.O to M/s Priya Exim Pvt. Ltd. was not complied with by the latter. On the other hand, the other party namely M/s Kotsons Impex Pvt. Ltd. did not submit any reply. It was observed by the A.O that the assessee in the course of the survey proceedings had submitted that they had purchased the aforesaid items from M/s Sources Limited. It was the claim of the assessee, that the aforesaid concern had provided the bills of M/s Priya Exim Pvt. Ltd. and M/s Kotson Impex Pvt. Ltd. In order to verify the genuineness of the aforesaid purchase transactions, the A.O deputed his Inspector to physically verify as to whether the assessee was in possession of the various items at its project site, or not. As per the report dated 04.03.2016, it was submitted by the Inspector that he had physically seen and verified all of the items as per the list and the photo album that was submitted by the assessee. On the basis of the aforesaid facts, the A.O was of the view that the assessee had actually purchased the aforesaid goods which were put to use in its sample flats. However, the A.O held a conviction that the assessee would have procured the aforesaid items not from the abovementioned dealers but from the open/grey market. Accordingly, the A.O backed by his aforesaid conviction disallowed 12.5% of the aggregate value of the purchases

which were claimed by the assessee to have been made from the aforementioned parties and carried out a disallowance of Rs.1,11,84,319/- (i.e. 12.5% of the impugned purchases of Rs.8,94,74,548/-).

6. Aggrieved, the assessee assailed the assessment framed by the A.O before the CIT(A). Observing, that the payments mentioned in Annexure A-2 – Page 27 viz. (i) Rs.7,50,00,000/-, dated 25.06.2012; and (ii) Rs.2,00,00,000/-, dated 28.02.2013 were in the nature of proposed payments which were to be made on a future date, the CIT(A) deleted the addition made by the A.O. Also, while concluding as hereinabove, it was noticed by the CIT(A) that the claim of the assessee that it had not made any payments to S/sh. Avinash Bhosale & Amit Bhosale was duly endorsed by the said persons. Apart therefrom, it was observed by him that even otherwise there was no mention of any name, or the initials etc. of the persons to whom the aforesaid amounts aggregating to Rs. 9,50,00,000/- were alleged by the department to have been paid by the assessee. In sum and substance, taking cognizance of the fact that there was not even a shred of any corroborative evidence to support the presumption that the assessee had made the aforesaid payments, the CIT(A) found favour with the claim of the assessee and deleted the aforesaid addition. However, the CIT(A) was not inclined to dislodge the disallowance of 12.5% of the aggregate value of the impugned purchases aggregating to Rs.8,94,74,548/- which were claimed by the assessee to have been made from the aforementioned two parties viz. (i) M/s Priya Exim Pvt. Ltd.: Rs.7,32,02,649/-; and (ii) M/s Kotsons Impex Pvt. Ltd: Rs.1,62,71,899/-. Accordingly, the CIT(A) upheld the consequential disallowance of Rs,1,11,84,319/- made by the A.O.

7. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. Apart therefrom, the assessee is also before us as a cross-objector. However, the cross-objection filed by the assessee involves a delay of 36 days. The assessee explaining the reasons leading to the delay in filing of the cross-objection has filed an 'affidavit', dated 19.11.2018. It is the claim of the assessee, that the delay of 36 days in filing of the cross-objection was due to the prolonged differences and disputes between the promoters of the assessee company. It was submitted by the Id. A.R, that as the delay in filing the cross-objection had occasioned due to compelling and unavoidable circumstances, therefore, in all fairness the same may be condoned. Per contra, the Id. Departmental Representative (for short

'D.R') did not object to the seeking of condonation of the delay in filing of the cross-objection by the assessee. We have given a thoughtful consideration and find substantial force in the claim of the assessee company, that due to the differences and disputes between its promoters viz. S/sh. Gopal Narang and Akshay Raheja, the delay in filing of the cross-objections had arisen. In fact, the aforesaid factual position as had been canvassed before us is supported by 'affidavit' of the assessee company. In our considered view, there is substance in the claim of the Id. A.R that the delay involved in filing of the cross objection was not intentional but was backed by the aforesaid compelling circumstances. Accordingly, in the totality of the facts of the case before us, we are of the considered view that in all fairness the aforesaid delay of 36 days involved in filing of the cross-objection merits to be condoned.

8. We shall now first advert to the appeal of the revenue. The Id. Departmental Representative (for short 'D.R') has assailed the deletion of the addition of Rs.9,50,00,000/- that was made by the A.O under Sec. 69 of the Act, on account of alleged unexplained investments made by the assessee. It was averred by the Id. D.R, that now when the CIT(A) had accepted that the "07 entries" (out of 9 entries) appearing in the 'loose document' viz. Annexure A-2 – Page 27 were the actual payments made by the assessee, therefore, there was no reason for him to have differently construed the similarly placed remaining "02 entries" forming part of the said impounded document. It was averred by the Id. D.R that the CIT(A) was in error in differently construing the contents of the aforesaid "02 entries" in the absence of any justifiable reason. It was submitted by the Id. D.R, that the CIT(A) was in error in failing to appreciate that as the contents of a 'document' impounded in the course of the survey proceedings was either to be accepted or rejected in full, therefore, the half hearted approach adopted by him by allowing the claim of the assessee and reading the contents of the aforesaid "02 entries" in a manner contrary to that which was adopted by him for reading the contents of the remaining "07 entries" was not permissible. Also, it was submitted by the Id. D.R, that now when the "07 entries" admittedly referred to the amount of payments made by the assessee, alongwith the respective dates of making of such payments, therefore, going by the principle of preponderance of human probabilities, it could safely be gathered the contents of the "02 entries" were also in context of the payments that were actually made by the assessee. Accordingly, in the backdrop of his aforesaid contentions, it was the claim of the Id. D.R that

now when the remaining two entries forming part of Annexure A-2 – Page 27 viz. (i) 28.02.2013: Rs.2,00,00,000/-; and (ii) 25.06.2012: Rs.7,50,00,000/-, formed part of the impounded 'document' which admittedly referred to 7 transactions in respect of the payments made by the assessee to S/sh. Avinash Bhosale & Amit Bhosale, therefore, there was no justifiable reason for the CIT(A) to conclude that the aforesaid remaining "02 entries" did not represent the payments which had already been made by the assessee to the aforementioned persons. Accordingly, it was submitted by the Id. D.R, that as the CIT(A) had most arbitrarily vacated the addition of Rs.9,50,00,000/- that was made by the A.O by way of a reasoned order, therefore, his order may be 'set aside' and that of the A.O be restored.

9. Per contra, the Id. Authorized Representative (for short 'A.R') for the assessee relied on the order of the CIT(A). It was submitted by the Id. A.R, that admittedly the "07 entries" mentioned in the impounded document viz. Annexure A-2 – Page 27 referred to the payments which were made by the assessee to S/shri Avinash Bhosale & Amit Bhosale. Insofar the first "02 entries" (out of "07 entries") of Rs.2,75,75,000/- each were concerned, it was submitted by the Id. A.R, that the same were the payments which were made by the assessee to the aforesaid persons/their firm for the consultancy services which were rendered by them for resolving certain claims and dispute with M/s Jasani Reality Pvt. Ltd. as regards the Oshiwada project of the assessee company. As regards the remaining "05 entries" (out of "07 entries"), it was submitted by the Id. A.R, that the same were in the nature of 'advances' that were given by the assessee for purchase of land at Village: Mundwa, Pune, which the assessee had proposed to acquire for setting up a residential-cum-commercial project. In order to fortify the aforesaid factual position, it was submitted by the Id. A.R, that the said factual position was confirmed by both the directors of the assessee company i.e S/shri Akshay R. Raheja & Gopal Narang in their respective statements which were recorded under Sec. 131 of the Act, both at the time of the survey proceedings as well as post-survey proceedings. Also, it was submitted by the Id. A.R, that the said factual position was also confirmed by S/shri Avinash Bhosale & Amit Bhosale in their respective replies to the notices under Sec.133(6), which were issued by the A.O to them in the course of the assessment proceedings. In fact, it was averred by the Id. A.R that Shri Avinash Bhosale in his 'Statement' recorded by the A.O under Sec.131 on 03.03.2016, had categorically admitted the fact as regards the receipt of consultancy charges of Rs.

2,75,00,000, as well as the payments aggregating to Rs.25,00,00,000/- from the assessee company as 'advance' for the proposed purchase of agricultural land at Survey No. 83, Village Mundwa, Pune. Accordingly, it was submitted by the Id. A.R, that though Sh. Avinash Bhosale in his statement recorded under Sec. 131, dated 03.03.2016, had confirmed the receipt of amounts pertaining to all the "07 entries", however, there was no mention of receipt of the amount aggregating to Rs. 9,50,00,000/- [Rs. 2,00,00,000/- (+) Rs. 7,50,00,000/-] mentioned against the remaining "02 entries" stated in the impounded document viz. Annexure A-2 – Page 27. Accordingly, on the basis of his aforesaid contentions, it was the claim of the Id. A.R that the payments aggregating to Rs.9,50,00,00,000/- viz. (i) Rs.2,00,00,000/-; and (ii) Rs.7,50,00,000/- forming part of the aforesaid impounded document viz. Annexure A-2 – Page 27 were merely a tentative working of the payments which were yet to be made to the aforementioned persons i.e S/shri Avinash Bhosale & Amit Bhosale, and were not an authentic record of transactions evidencing any payments made to them. In order to fortify his aforesaid contention, the Id. A.R took us through the aforesaid impounded document viz. Annexure A-2 – Page 27 [as reproduced in the order of the CIT(A)]. On a perusal of the aforesaid impounded document, it stood revealed that on the extreme "right side"(on top) a date i.e "11.02.2013" was mentioned. It was averred by the Id. A.R, that the aforesaid date i.e "11.02.2013" had a strong bearing on adjudicating the import of the contents of the aforesaid impounded document i.e Annexure A-2 - Page 27. It was submitted by the Id. A.R, that the aforesaid date "11.02.2013" could safely or rather inescapably be construed as the date on which the print out of the aforesaid computerised sheet was taken by the assessee's accountant. Id. A.R took us through the contents of the impounded document viz. Annexure A-2 – Page 27 and submitted, that the second part of the aforesaid impounded document i.e Annexure A-2 – Page 27 referred to the impugned "02 entries" under consideration. Taking us through the first entry (of "02 entries"), it was submitted by the Id. A.R, that an amount of Rs.2,00,00,000/- with a corresponding date under the common head viz. "date of payment" was mentioned as "28.02.2013". It was submitted by the Id. A.R, that it was the claim of the revenue that the "02 entries" mentioned in the second part of the aforesaid impounded document viz. Annexure A-2 – Page 27 referred to the payments which were made by the assessee to the aforementioned persons i.e S/shri Avinash Bhosale & Amit Bhosale. It was submitted by the old. A.R, that if that would have been so, then it was impossible to comprehend as to how in the print out of the aforesaid impounded

document viz. Annexure A-2 – Page 27 that was taken as on “11.02.2013”, a payment of an amount of Rs. 2,00,00,000/- made on “28.02.2013” could have found a mention. It was averred by the Id. A.R, that a conjoint perusal of the contents of the aforesaid impounded document viz. Annexure A-2 – Page 27, therein conclusively proved to the hilt that the “02 entries” therein stated viz. (i) 28.02.2013: Rs.2,00,00,000/-; and (ii) 25.06.2012: Rs.7,50,00,000/- were the tentative payments which had yet not been made to the aforementioned parties. In the backdrop of his aforesaid submission, it was the claim of the Id. A.R, that the CIT(A) after duly appreciating the facts of the case had rightly vacated the addition of Rs.9,50,00,000/- made by the A.O.

10. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Admittedly, in the course of the survey proceedings conducted u/s 133A on 09.05.2014, the aforesaid document viz. Annexure A-2 – Page 27 (loose document) was found and impounded from the premises of the assessee company. The entire controversy involved in the case before us hinges around construing of the contents of the aforesaid impounded document viz. Annexure A-2 – Page 27. In order to appreciate the contents of the aforesaid document, in our considered view, it would be relevant to reproduce the said document, which reads as under:

Payment made to	Amount paid	Interest to be calculated from	Date of payment	No. of days	24%	21%	18%	15%	12%	6%
	Rs.				Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Amit Consultancy	2,75,75,000	01.01.2011	03.10.2011	275	49,86,164	43,62,894	37,39,623	31,16,353	24,93,082	12,46,541
Avinash Bhosale	2,75,75,000	01.01.2011	03.10.2011	275	49,86,164	43,62,894	37,39,623	31,16,353	24,93,082	12,46,541
Avinash Bhosale & Amit Bhosale	5,00,00,000	01.01.2011	27.12.2011	360	1,18,35,616	1,03,56,164	88,76,712	73,97,260	59,17,808	29,58,904
Avinash Bhosale & Amit Bhosale	5,00,00,000	01.01.2011	10.04.2012	465	1,52,87,671	1,33,76,712	1,14,65,753	95,54,795	76,43,836	38,21,918
Avinash Bhosale & Amit Bhosale	5,00,00,000	01.01.2011	10.04.2012	465	1,52,87,671	1,33,76,712	1,14,65,753	95,54,795	76,43,836	38,21,918
Avinash Bhosale & Amit Bhosale	5,00,00,000	01.01.2011	30.09.2012	638	2,09,75,342	1,83,53,425	1,57,31,507	1,31,09,589	1,04,87,671	52,43,836

Avinash Bhosale & Amit Bhosale	5,00,00,000	01.01.2011	30.12.2012	729	2,39,67,123	2,09,71,233	1,79,75,342	1,49,75,342	1,19,83,562	59,91,781
Total (a)	30,51,50,000				9,73,25,751	8,51,60,034	7,29,94,315	6,08,28,596	4,86,62,877	2,43,31,438
	2,00,00,000	01.01.2011	28.02.2018	789	1,03,75,890	90,78,904	77,81,918	64,84,932	51,87,945	25,93,973
	7,50,00,000	01.01.2011	26.06.2012	541	2,66,79,452	2,33,44,521	2,00,09,589	1,66,74,658	1,33,39,726	66,69,863
Total (b)	9,50,00,000				3,70,55,342	3,24,23,425	2,77,91,507	2,31,59,589	1,85,27,671	92,63,836
Total (C)					2,00,00,000	2,00,00,000	2,00,00,000	2,00,00,000	2,00,00,000	2,00,00,000
Total (a)+(b)+(c)	40,01,50,0000				15,43,81,093	13,75,83,459	12,07,85,822	10,39,88,185	8,71,90,548	5,35,95,274

We find that the aforesaid impounded document refers to two common dates viz. (i) date mentioned on the extreme left side (on top): 30.12.2010; and (ii) date mentioned on the extreme right side (on top): 11.02.2013. Insofar the date "30.12.2010 is concerned, we find that the same as therein stated, refers to the date of transaction i.e the date on which the transactions therein referred in the document were supposed to be entered into. Our aforesaid view is fortified by the very fact, that w.e.f. 01.01.2011 (in context of all the "09 entries") there are calculations of interest at variable rates with a common cut off date/base date of 01/01/2011 in each case. As regards the date mentioned on the extreme right side (on top) of the aforesaid impounded document, viz. Annexure A-2 – Page 27, we find, that the same i.e "11.02.2013" is the date on which the print out of the aforesaid document was taken by the assessee and/or its accountant (from whose table the aforesaid document was impounded during the course of the survey proceedings). Admittedly, the payments mentioned in the "first part" of the aforesaid document i.e the "07 entries" therein referred to the payments which were made by the assessee to the aforementioned persons, i.e S/shri Avinash Bhosale & Amit Bhosale or their concern. As for the "02 entries" (out of "07 entries") against which an amount of Rs. 2,75,00,000/- each is stated, the same are in context of the charges paid by the assessee company to S/shri Avinash Bhosale & Amit Bhosale or their concern for the consultancy services which were rendered by them for resolving certain claims and dispute pertaining to M/s Jasani Realty Pvt. Ltd. with regard to their Oshiwada project. As regards the remaining "05 entries" (out of "07 entries") aggregating to Rs. 25,00,00,000/-, we find, that the same were the payments which were made by the assessee to S/shri Avinash Bhosale & Amit Bhosale as 'advance' for purchase of land at Village Mundwa, Pune, which the assessee had proposed to

acquire for setting up a residential-cum-commercial project. Insofar the aforesaid “07 entries” are concerned (i.e “02 entries” + “05 entries”), there is no dispute as regards the payment of the amounts therein mentioned, which we find had admittedly been made by ‘account payee’ cheques by the assessee to the aforementioned persons. As noticed by us hereinabove, the controversy involved in the present appeal hinges around the construing of the nature of transactions pertaining to the remaining “02 entries” mentioned in the aforesaid impounded document viz. Annexure A-2 – Page 2. On a perusal of the aforesaid document, we find, that the same refers to two payments viz. (i) Rs.2,00,00,000/- (against which the date of payment mentioned is “28.02.2013”); and (ii). Rs.7,50,00,000/- (against which the date of payment mentioned is “25.06.2012”). It is the claim of the revenue, that alike the aforesaid “07 entries” which are admittedly the payments made by the assessee to S/sh. Avinash Bhosale & Amit Bhosale, the said “02 entries” are also to be similarly construed, and therein forming part of the same impounded document viz. Annexure A-2 – Page 27, has to be understood as the unrecorded cash payments that were made by the assessee to the aforementioned parties.

11. We have deliberated at length on the issue under consideration and are unable to persuade ourselves to subscribe to the view taken by the A.O. As is discernible from the orders of the lower authorities, we find, that the directors of the assessee company i.e S/shri Akshay R. Raheja & Gopal Narang had in their respective statements recorded under Sec. 131 of the Act, both at the time of survey proceedings as well as in the course of the post survey proceedings, had categorically stated that the amounts mentioned against the “02 entries” in the second part of the impounded document viz. Annexure A-2 – Page 27 were in the nature of the tentative payments which though were to be made to the aforementioned persons i.e S/shri Avinash Bhosale & Amit Bhosale, but had not been made till date. In fact, it was stated by them, that as the assessee company could not proceed further in respect of the aforesaid purchase of land on account of land acquisition issues and certain internal disputes that had emerged between the directors, therefore, the whole transaction had come to standstill. As observed by us hereinabove, the aforesaid ‘02 entries” in the second part of the impounded document viz. Annexure A-2 – Page 27 does not make any reference of the name and/or initials of the person/persons to whom the impugned payments aggregating to Rs.9,50,00,000/- pertained. Also, as observed by us hereinabove, both directors of the assessee company i.e

S/sh. Akshay R. Raheja & Gopal Narang had categorically stated in their respective 'statements' recorded under Sec. 131 of the Act, that the amounts mentioned against the "02 entries" in the second part of the impounded document viz. Annexure A-2 – Page 27 were the amounts which had yet not been paid to the aforementioned persons viz. S/sh. Avinash Bhosale & Amit Bhosale. As is discernible from the orders of the lower authorities, we find, that the aforesaid factual position had categorically been stated by Shri Akshay R. Raheja, director of the assessee company in his statement recorded under Sec.131 in the course of the survey proceedings conducted on 09.05.2014. It was categorically clarified by him that the amount of Rs.9,50,00,000/- [Rs.7,50,00,000/- (+) Rs.2,00,00,000/-] was to be paid on the dates mentioned in Annexure A-2 – Page 27, but the same had remained unpaid. Further, he had clarified that though the aforesaid amounts viz. (i). Rs.7,50,00,000/- and (ii). Rs.2,00,00,000/- were wrongly mentioned under the common head i.e "amount paid", however, no such payment was made. The relevant extract of the aforesaid statement of Shri Akshay R. Raheja recorded under Sec.131, dated 09.05.2014 is reproduced as under:

"Q.20 Please refer to your response to Q. No.18 and 19 above wherein you have stated that in the column "amount paid" reflects the amounts paid to Amit Consultancy, Amit Bhosale and Avinash Bhosale towards the advances of land. On the said page No.27, below the above said table, one more table is shown in which below the column "Amount Paid" an amount Rs.9,50,00,000/- (Rs.7,50,00,000 + Rs.2,00,00,000) is shown. Please explain the said transaction alongwith documentary evidence.

Ans. The amount of Rs.9,50,00,000/-. (Rs.7,50,00,000 + Rs.2,00,00,000) was to be paid to Avinash & Amit Bhosale but has not been paid till date.

Q.21 In response to Q.No.20 above you have stated that the amount of Rs.9,50,00,000 (Rs.7,50,00,000 + Rs.2,00,00,000) is yet to be paid, in this regard, you are required to explain that as to why the said amount of Rs.9,50,00,000/- is mentioned in the Amount paid column.

Ans. Sir, inadvertently the said amount of Rs.9,50,00,000/(Rs.7,50,00,000 + Rs.2,00,00,000) is mentioned in the paid column.

Q.22 Please refer to your response to Q. No.20 and 21 above wherein you have stated that the amount of Rs.9,50,00,000 (Rs.7,50,00,000 + Rs.2,00,00,000) shown below the "Amount paid" column is the amount which was yet to be paid. But it is seen against the said amount, the dates of payment are also mentioned and interest is also calculated showing the number of days for which the interest is to be paid. Please explain.

Ans. Sir, it is true that against the amount of Rs.9,50,00,000/- (Rs.7,50,00,000 + Rs.2,00,00,000) the dates of payment and interest is also calculated showing the number of days. In this regard, I wish to state that actually the said amount of Rs. 9,50,00,000/- (Rs.7,50,00,000 +Rs.2,00,00,000)

was to be paid on the dates mentioned on page no.27 which was to be on these dates, but the same remained unpaid /yet to be paid.

Q.24 Please refer to the page No.27 of the loose paper file found and impounded and marked as Annexure - A from your premise during the course of survey action wherein in reply to Q.No. 19 you have stated that column "date of payment" reflects the amounts paid on a particular date mentioned in the "Date of Payment". Further, in reply to Q.No.20 to 22 you have stated that the amount of Rs.9,50,00,000/- (Rs.7,50,00,000 + Rs.2,00,00,000) which are stated to be paid on the dates mentioned in column "date of payment", but you have replied that the same is yet to be paid and the same is inadvertently mentioned in column "date of payment". Please explain the contradiction that on the same sheet out of 9 rows in 7 rows the amount reflected in 'amount paid' column is paid on the date referred in the same sheet on the other hand in two rows the amounts mentioned in the same column i.e. 'amount paid' is not paid. However, the date is also mentioned against the amount paid. Please explain why two different stands taken by you in reply to Q. Nos. 19 to 22 should be believed to be true.

Ans. Sir, this is a mistake as no payment has been made.

Q.25 Please refer to the page No. 27 of the loose paper file found and impounded and marked as Annexure - A from your premise during the course of survey action, the gist of some of the entries are as under :-

Entry in row No.	Payment made to	Amount	Date of Payment
6	Avinash Bhosale & Amit Bhosale	5,00,00,000	30.09.2012
7	Avinash Bhosale & Amit Bhosale	5,00,00,000	30.12.2012
9		7,50,00,000	25.06.2012

It is seen that in row No.6 and 7 the payment made in September, 2012 and December, 2012 are duly recorded. This indicate that this sheet is prepared after December, 2012. In replies to questions mentioned supra, you have explained and confirmed that the payments of entries No.6 and 7 are made on the dates mentioned against them but the payment of entry No.9 is not yet paid. It is also seen that the interest, on payment of Rs.7,50,00,000/- (entry No.9) is also calculated on page No.27. As the page No.27 is prepared after December, 2012 how the interest is calculated when it was clear that the payment supposed to be made on 25.06.2012 is not made. Please comment on the above discrepancy.

Ans. Sir, the payment of Rs.7,50,00,000/- mentioned in row No.9 is actually not paid though the date of payment 25.06.2012 falls prior to 30.12.2012."

Again, during the course of the post survey proceedings, 'Statement' of Shri Akshay R. Raheja, director of the assessee company was again recorded by the A.O u/s 131 on 27.06.2014. On a specific query raised by the A.O as regards the aforesaid "02 entries" of Rs.7,50,00,000/- and Rs.2,00,00,000/- mentioned in the impounded document viz. Annexure A-2 – Page 27, it was

once again confirmed by him that though the aforesaid payments were to be made, but the same had not been made till date.

12. Also, the statement of Shri Gopal Narang, director of the assessee company was recorded in the course of the survey proceedings on 09.05.2014 under Sec.131 of the Act. It was categorically affirmed by him that the payments aggregating to Rs.9,50,00,000/- [Rs.7,50,00,000/- (+) Rs.2,00,00,000/-] were though to be made to S/sh. Avinash Bhosale & Amit Bhosale, however, the same had not been made till date. Relevant extract of the statement of Shri Gopal Narang recorded under Sec.131 on 09.05.2014, reads as under: .

“Q.19 Please refer to your answer in the above question related to the explanation of the page No.27 wherein you have stated that the amount has not been paid till date. But in the page No.27, it is clearly mentioned that the amount has paid and date of payment is 28.02.2013 (Rs.2,00,00,000/-) and 25.06.2012 (Rs.7,50,00,000/-). For Rs.30,51,50,000/- you have accepted amount paid to Avinash Bhosale and Amit Bhosale but in same page amount of Rs,9,50,00,000/- you answer that amount to be paid to Avinash Bhosale and Amit Bhosale. Please explain this contradictory statement.

Ans. Though the entries are appearing on the same page the payments were to be made have not been made up to date for amount of Rs.9,50,00,000/- (Rs.7,50,00,000 and Rs.2,00,00,000).”

Further, in the course of the post survey proceedings, the A.O had as on 30.06.2014 once again recorded the statement of Shri Gopal Narang, director under Sec.131 of the Act. Once again, Shri Gopal Narang, director of the assessee company, on being called upon to explain the “02 entries” viz. (i). Rs.7,50,00,000/-; and (ii). Rs.2,00,00,000/- mentioned in the impounded document viz. Annexure A-2 – Page 27 , had reiterated that the aforesaid payments were to be made but had not been paid till date. Relevant extract of the aforesaid statement of Shri Gopal Narang, that was recorded under Sec. 131 on 30.06.2014, reads as under:

“Q.6. I am showing you, your statement dated 10.05.2014. Kindly explain the two entries of Rs.7,50,00,000/- and Rs.2,00,00,000/- appearing in the Page No.27 marked as Annexure –A2 of statement of payments made to Mr. Amit Bhosale and Mr. Avinash Bhosale in which dated of payments mentioned as 25.06.2012 and 28.02.2013 respectively.

Ans. Sir, I confirm having seen may sworn statement dated 10.05.2014. In this regard, though the two entries are appearing on the same page, however, the payments were to be made but have not been made till date.”

13. The A.O in order to verify the genuineness and veracity of the aforesaid claim of the assessee, that though the payments viz. (i) Rs.7,50,00,000/-; and (ii). Rs.2,00,00,000/-

mentioned against the "02 entries" in the impounded document viz. Annexure A-2 – Page 27, were the amounts which were to be paid by the assessee to S/sh. Avinash Bhosale & Amit Bhosale for purchase of land at Village: Mundwa, Pune, that was proposed to be acquired by the assessee company for setting up a residential-cum-commercial project, but the same had actually not been paid to them, issued notices under Sec.133(6), dated 19.01.2016 to the aforementioned persons i.e S/sh. Avinash Bhosale & Amit Bhosale. As per the orders of the lower authorities, we find, that both of the aforesaid persons had confirmed their transactions with the assessee company, and had explained that what all amounts were received from the assessee were duly reflected in their 'books of accounts'. Also, the A.O recorded the statement of Shri Avinash Bhosale under Sec. 131 on 03.06.2016. In his aforesaid statement, Shri Avinash Bhosale had duly confirmed the "07 entries" aggregating to Rs.30,51,50,000/- [Rs.2,75,75,000/- (+) Rs.2,75,75,000/- (+) Rs.25,00,00,000/-]. Although Sh. Avinash Bhosale in his statement recorded under Sec. 131, dated 03.03.2016, had confirmed the receipt of amounts pertaining to all the "07 entries", however, there was no mention in his 'statement' of receipt of the amounts mentioned against the remaining "02 entries" stated in the impounded document viz. Annexure A-2 – Page 27. Also, it was stated by him that no interest payment was actually made by the assessee company to either of them.

14. We have deliberated at length on the issue under consideration, in the backdrop of the contentions advanced by the authorised representatives for both the parties, and the facts emerging from the orders of the lower authorities. Although, we are not oblivious of the fact that Sec.292C envisages a presumption that where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of search under Sec.132 or survey under Sec.133A, then it may in any proceedings under this Act, be presumed viz. (i) that, such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person; (ii) that, the contents of such books of account and other documents are true; and (iii) that, the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that persons handwriting, and in the case of a document stamped, executed or attested, that it

was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested. Although, the aforesaid Sec.292C inter alia envisages a presumption that the contents of such books of account and other documents found in the possession or control of any person in the course of the survey proceedings conducted under Sec.133A are to be taken to belong to such person, and the contents thereof are true, however, the said presumption is a rebuttal one. We find, that though "02 entries" of the impounded document viz. Annexure A-2 – Page 27 categorically makes a reference to amounts of Rs.2,00,00,000/- and Rs.7,50,00,000/- under the common head i.e "amount paid", alongwith a reference to the corresponding dates i.e 28.02.2013 and 25.06.2012, respectively, which are mentioned under a common head i.e "date of payment", however, the assessee had declined of having made any such payment. In fact, it has consistently been the claim of the assessee that the aforesaid amounts referred to the tentative payments which were to be made to the aforementioned parties viz. S/sh. Avinash Bhosale & Amit Bhosale, but had not been actually made to them.

15. We shall now test the maintainability of the claim of the revenue, that now when the remaining "02 entries" appearing in the impounded document viz. Annexure A-2 – Page 27 viz. (i) 28.02.2013: Rs.2,00,00,000/-; and (ii) 25.06.2012: Rs.7,50,00,000/-, formed part of a document which admittedly referred to "07 entries" where payments were actually made by the assessee to S/sh. Avinash Bhosale & Amit Bhosale, therefore, there was no justifiable reason for not presuming that the aforesaid "02 entries" also referred to the payments which were made by the assessee to the aforementioned persons. As observed by us hereinabove, the aforesaid impounded document viz. Annexure A-2 – Page 27 was in itself printed on "11.02.2013". Accordingly, in case, as canvassed by the revenue that the amount of Rs. 2,00,00,000/- was a payment that was made by the assessee on 28.02.2013, then it is difficult for us to comprehend that as to how such transaction could have been recorded in the impounded document, which as observed by us was printed as on 11.02.2013. As such, the aforesaid claim of the revenue is divorced of any logic and beyond comprehension. Apart therefrom, in the backdrop of the fact that the aforesaid impounded document viz. Annexure A-2 – Page 27 refers to calculation of interests at various rates, therein further fortifies the claim of the assessee that the amounts of Rs.2,00,00,000/- and Rs.7,50,00,000/- were though to be paid by the dates mentioned therein i.e 28.02.2013 and 25.06.2012, however, the same had

not been paid till date. We find that the aforesaid factual position had also been affirmed by the aforementioned persons i.e S/sh. Avinash Bhosale & Amit Bhosale, to whom as per the revenue the aforesaid payments were made by the assessee. In fact, we find that the revenue had not been able to place on record any 'material' which could dislodge or disprove the aforesaid claim of the assessee, and therein prove to the contrary that the aforesaid amounts aggregating to Rs. 9,50,00,000/- were actually paid by the assessee. Rather, we are also persuaded to subscribe to the reasoning given by the assessee for the failure on its part to make the aforesaid payments. It is the claim of the assessee that as it was passing through a financial crisis, and also there were certain internal disputes amongst the directors of the assessee company, therefore, the purchase transaction of the aforesaid land at Village : Mundwa, Pune, which was proposed to be acquired for setting up a residential-cum-commercial project had came to a standstill. The aforesaid claim of the assessee is also supported by the fact that an amount of Rs. 2,00,00,000/- had thereafter been received back by the assessee company from the aforementioned persons i.e S/sh. Avinash Bhosale & Amit Bhosale on 05.03.2013. In the backdrop of the aforesaid facts, we are of the considered view, that the CIT(A) after duly appreciating the facts of the case had by way of a very well reasoned order vacated the addition of Rs.9,50,00,000/- [Rs.7,50,00,000/- (+) Rs.2,00,00,000/-] that was made by the A.O. Accordingly, finding no infirmity in the order of the CIT(A) to the extent he had deleted the addition of Rs.9,50,00,000/-, we uphold his order.

16. The appeal of revenue is dismissed.

**C.O. No.255/Mum/2018  
(Arising out ITA No. 1504/Mum/2017)**

17. We shall now advert to the cross-objection filed by the assessee. As observed by us hereinabove, the assessee company had during the year claimed to have purchased various items of furniture and fixtures and other decorative items from two concerns viz. (i) M/s Priya Exim Pvt. Ltd. : Rs.7,32,02,649/-; and (ii) M/s Kotsons Impex Pvt. Ltd.: Rs.1,62,71,899/-. Information was received by the A.O from the Sales tax department, Maharashtra, that the aforesaid concerns were involved in the business of providing accommodation entries/bills without actually supplying the material in physical form. On the basis of the aforesaid information, the A.O in the course of the assessment proceedings called upon the assessee to

substantiate the genuineness of the aforesaid purchase transactions. It was submitted by the assessee, that the aforesaid items purchased formed part of the work-in-progress of its project "Windsor Grande". Further, in order to substantiate the genuineness of its aforesaid purchase transactions, the assessee placed on record supporting documents/details viz. bills, invoices, trail of emails, copies of orders, bank statements, and the photos of all the items lying/fixed at its project site viz. Windsor Grande. In order to verify the genuineness of the aforesaid purchase transactions, the A.O issued notices under Sec. 133(6) to the aforementioned parties. One of the party, namely M/s Priya Exim Pvt. Ltd. complied with the aforesaid notice and submitted its reply. However, the summon which was subsequently issued by the A.O under Sec.131 to M/s Priya Exim Pvt. Ltd. was not complied with by the latter. On the other hand, the other party namely M/s Kotsons Impex Pvt. Ltd. did not submit any reply. It was observed by the A.O, that the assessee in the course of the survey proceedings had submitted that they had purchased the aforesaid items from M/s Sources Limited. It was the claim of the assessee, that the aforesaid concern had provided the 'bills' of M/s Priya Exim Pvt. Ltd. and M/s Kotson Impex Pvt. Ltd. On the basis of the aforesaid facts, the A.O deputed his Inspector to physically verify as to whether the assessee was in actual possession of the various items at its project site, or not. As per the report, dated 04.03.2016, it was submitted by the Inspector that he had physically verified that all of the items as per the list and the photo album that was submitted by the assessee were available at the assessee's project site. On the basis of the aforesaid facts, the A.O was of the view that the assessee had actually purchased the aforesaid goods which were thereafter were put to use in its sample flats. However, at the same time, the A.O held a conviction that the assessee would have procured the aforesaid items not from the abovementioned dealers, but at a discounted value from the open/grey market. Accordingly, the A.O backed by his aforesaid conviction disallowed 12.5% of the aggregate value of the purchases which were claimed by the assessee to have been made from the aforementioned parties and carried out a disallowance of Rs.1,11,84,319/- (i.e. 12.5% of the impugned purchases of Rs.8,94,74,548/-). On appeal, the aforesaid addition/disallowance of Rs. 1,11,84,319/- was principally upheld by the CIT(A). At the same time, the CIT(A) directed the A.O to afford an opportunity to the assessee to demonstrate that the correct amount of purchases were debited by it in its profit & loss account. Also, the A.O was directed to re-compute the disallowance, if warranted, after carrying out necessary verification.

18. Aggrieved, the assessee has objected to the order of the CIT(A), wherein the latter had refrained from vacating the addition/disallowance of Rs. 1,11,84,319/- (12.5% of the aggregate value of impugned purchases of Rs. 8,94,74,548/-). As observed by us hereinabove, the fact that the assessee had claimed to have placed its order for the goods/material (which thereafter formed part of its work-in-progress) with M/s Sources Unlimited, but thereafter was in receipt of 'bills' from the aforesaid two tainted parties viz. (i). M/s Priya Exim Pvt. Ltd; and (ii). M/s Kotsons Impex Pvt. Ltd., in the absence of any plausible explanation of the assessee does not inspire much of confidence as regards the genuineness of the impugned purchase transactions. Admittedly, as per the verifications carried out by the A.O (through his inspector), the fact that the assessee had actually purchased the goods (forming part of its work-in-progress) stands proved and is not in dispute. In fact, in the backdrop of the peculiar purchase transactions, coupled with the fact that as per the information shared by the Sales tax department, Maharashtra, that the aforesaid two concerns viz. (i). M/s Priya Exim Pvt. Ltd; and (ii). M/s Kotsons Impex Pvt. Ltd., were involved in the business of providing accommodation entries/bills, without actually supplying the material in physical form, the A.O in our considered view taking cognizance of the fact that the assessee could not substantiate the genuineness of the impugned purchase transactions on the basis of irrefutable documentary evidence, had thus every good reason to conclude that the assessee had purchased the goods not from the aforesaid parties, but at a discounted value from the open/grey market. At the same time, we also cannot remain oblivious of the fact that one of the supplier party viz. M/s Priya Exim Pvt. Ltd. had complied with the notice issued by the A.O u/s 133(6) and had submitted its reply. But then, the aforesaid party had failed to put up an appearance before the A.O in compliance to notice issued under Sec. 131 of the Act. Insofar the other supplier party viz. M/s Kotsons Impex Pvt. Ltd. is concerned, we find, that the latter had not complied with the notice issued by the A.O under Sec. 133(6) of the Act. As is discernible from the orders of the lower authorities, the A.O had never directed the assessee to produce the aforesaid parties for necessary verification before him. Also, at no stage any verifications had been carried out by the A.O from M/s Sources Unlimited, on whom the assessee had claimed to have placed its purchase orders. In our considered view, neither the assessee had been able to substantiate the genuineness of the purchase transactions on the basis of any irrefutable documentary evidence, nor the

revenue has carried out the required extensive verifications for arriving at a fair conclusion as regards the genuineness of the purchase transactions. Accordingly, in all fairness, we 'set aside' the order of the CIT(A) in context of the issue under consideration and restore the matter to the file of the A.O for carrying out necessary verifications. Needless to say, the A.O shall in the course of the 'set aside' proceedings afford a reasonable opportunity of being heard to the assessee, who shall remain at a liberty to substantiate the genuineness of the impugned purchase transactions on the basis of fresh documentary evidence.

19. Resultantly, the cross-objection filed by the assessee is allowed for statistical purposes.

20. The appeal filed by the revenue is dismissed, and the cross-objection of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27.11.2019

Sd/-  
(S.Rifaur Rahman)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 27.11.2019  
PS. Rohit

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**

