

आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.610/AHD/2017

निर्धारण वर्ष/Assessment Year: 2006-07

M/s.Pathik Develoeprs, 3/42-43, Velocity Auto Works, Chandrakala Bank Lane, Khatodara, Surat – 395002. [PAN: AAIFP 5808 R]	V s .	The Income Tax Officer, Ward-1(2)(4), Surat.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	Shri Rasesh Shah – A.R.
राजस्वकीओरसे /Revenue by	Shri Sreenivas T.Bidari – CIT-DR

सुनवाईकीतारीख/ Date of hearing:	10.12.2019
उद्घोषणाकीतारीख/Pronouncement on:	13.12.2019

आदेश /O R D E R

PER SANDEEP GOSAIN, JM:

1. This appeal by the Assessee is directed against the order of Ld.Commissioner of Income Tax(Appeals)-2, Surat dated 02.12.2016 for the assessment year 2006-07.

2. Grounds raised by the assessee read as under:

“1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of the assessing officer in making addition of Rs.3,50,000/- on account of alleged unexplained cash credit.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of the assessing officer in making addition of Rs.25,52,780/- on account of alleged unaccounted investment in land.

3. *It is therefore prayed that the above addition made by assessing Officer and confirmed by learned Commissioner of Income-tax (Appeals) may please be deleted."*

3. Brief facts of the present case are that the original assessment u/s.143(3) was passed on 31.12.2006 after making disallowances on account of cash credit of Rs.3,50,000/- of unaccounted investment of Rs.1,46,37,140/-. The order of ld.CIT(A) was set-aside by the Coordinate Bench of ITAT Ahmedabad to the Assessing Officer (AO) with the direction to give opportunity of cross examination to the assessee after providing copy of the statement of oath of Shri Indravadan Intwala. Thereafter, the reassessment proceedings were completed u/s.143(3) r.w.s. 254 of the Act vide order dated 30.03.2015 thereby making addition.

4. Aggrieved by the order of the ld.AO in the reassessment proceedings, the assessee preferred an appeal before the ld.CIT(A) and the ld.CIT(A) after considering the case of both the parties dismissed the appeal filed by the assessee.

5. Aggrieved by the order of ld.CIT(A), the assessee has filed the present appeal before this Tribunal on the grounds mentioned hereinabove.

6. The only dispute raised by the assessee before us is against challenging the order of ld.CIT(A) in confirming the action of ld.AO in making additions of Rs.25,52,780/- on account of unaccounted

investment in land. The Id.Authorised Representative(AR) appearing on behalf of assessee reiterated the same arguments as was raised by him before the Id.CIT(A) and the same is contained in para no.5 of the Id.CIT(A) order which is reproduced below:

"5. During the appellate proceedings, the A.R. of the appellant has filed written submission and the case was heard. During the course of the appellate proceedings, vide his letter dtd. 11.08.2016 the appellant submitted that "Appellant submits that the confirmations from all the persons and their PANs were furnished before Hon'ble CIT(Appeals) during first appellate proceedings. Appellant relied on the same during remand proceedings. It is submitted that loans were received from Manish Patel and Jyoti Patel amounting to Rs. 1,50,000/- and from P B Dave amounting to Rs. 2,00,000/-. It may be noted that the loans were received by account payee cheques. It is pertinent to note that confirmations from both of them were filed during first appellate proceedings which are not disputed by AO. As such the allegation of failure on the part of Appellants to produce actual confirmation for these two persons is misplaced. Appellant submits that AO ought to have appreciated that the confirmations were admittedly produced during the first appellate proceedings and therefore appellant relied on the same during remand proceedings, since it was not practical to obtain the same confirmation again after a gap of more than five years. AO ought to have appreciated that these person are regularly filing their returns and are allotted PANs by the IT department and the loans were obtained through account payee cheques.*

*Appellant submits that Shri Indravadan Hiratal Prajapati (Intwala) had sold first two pieces of land to the Appellants during the year under proceedings. Appellant submits that during the course of remand proceedings following the directions of the Hon'ble ITAT copy of the statement recorded behind the hack of assessee was provided as also cross-examination was accorded. On perusal of the statement recorded on oath following anomalies and contradictions are noticed in the replies and which itself suggests that the said statement needs to be rejected at threshold. Copy of the statement enclosed at **Pgs. 12 to 16.***

- *Shri Indravadan Intwala has very categorically admitted in reply to Q. No. 6 that the piece of land bearing Survey No. 445 at village Parsoli, Tatuka Jalalpore, Dist, Navsari ("the said land", for short) is sold to Pathik Developers (Partners - Vijay Shah, Jivanbhai Barvaliya and Snadip Mapara) for total consideration of Rs, 8,25,000/-*
- *Shir Indravadan in a reply to a Q. No. 7 reiterated that the said land admeasuring 62550 Sq. Mtrs. Is sold for consideration ofRs. 8,25,000/- o The Investigating Officer recording the statement, thereafter in Q. No. 8, the tone and tenor of which suggests putting indirect pressure on. Shri Indravadan, referred to some transactions undertaken by Shri Naginbhai Intwala and his family members in respect of nearby lands bearing S. No. 228, 346, 236, 345, 235 and 381, allegedly admitted by him to have been sold at the iate of Rs. 54.00 per Sq. Mtr. In reply to this Q. No. 8 it appears that Shri Indravadan feeling pressure tated that since Shri Naginbhai*

Intwala whose pices of lands are nearby my land and has admitted having sold the same at rate of Rs. 54 per Sq. Mtr., and therefore he and his wife also admits that the said land bearing S. No. 445 at Village Parsoli, Taluka Jalalpore admeasuring 62550 Sq. Mtrs. Is sold at rate ofRs. 54 per Sq. Mtr.

- **Appellant submits that the statement of Shri Indravadan is not reliable and cannot be admitted as evidence in view of the following:**
- The replies given by Shri Indravadan are self-contradictory. In his replies to Q. No. 6 he has veru categorically admitted to have sold the said land at consideration ofRs. 8.25,000/-
- Shri Indravadan reiterated that the said land admeasuring 62SS0 Sa. Mtrs. Is sold for consideration ofRs. 8.25.000A in his reply to Q. No. 7
- Shri Indravadan very categorically replied to Q. No. 8 that since Shri Naginbhai whose lands are nearby the said land bearing S. No. 445 and that since the said Naginbhai has admitted to have sold land belonging to him and his family members at rate ofRs. 54 per Sq. Mtr., therefore he (i.e. Shri Indravadan) is also admitting to have sold the said land bearing S. no. 445 at rate of Rs. 54/-. This itself is sufficient to establish that the said admission is not as per his own will but is guided by the so called admission of Shri Naginbhai Intwala. It is pertinent to note that the said Shri Naginbhai has not sold any land to the Appellants,"

7. On the other hand, the Id.Departmental Representative(DR) relied upon the order passed by the Revenue Authorities.

8. We have heard the Counsels for both the parties and we have also perused the material placed on record, judgments cited by the parties and the orders passed by the Revenue Authorities. As per the facts of the present case, the additions were made by the AO on account unaccounted investment made by the assessee. From the facts of the case, we noticed that one Shri Indravadan Intwala who had sold land, block no.445 admeasuring 62550 Sq.Mtrs to the assessee @ Rs.54 per Sq.Mtr. However, the documents with regard to registration of the same was prepared only for Rs.19.15 per Sq.Mtr. The said Shri Indravadan

Intwala who had sold his land to the assessee had admitted that the remaining amount was accepted by him as 'on money' and treated the same as his 'unaccounted income' out of the land sold and agreed to pay tax on the same. On the basis of the admission of the said Shri Indravadan Intwala, the additions were made in the hand of assessee on account of 'unaccounted investment'.

9. Whereas on the contrary, the assessee has categorically denied of making payment of any 'on money' to the said Shri Indravadan Intwala. The Id.AR submitted before us that the Revenue Authorities had made the additions in the hands of the assessee only on the basis of presumptions and assumptions whereas the statement of Shri Indravadan Intwala are self-contradictory and during the course of cross examination, the said Shri Indravadan Intwala in his reply to question to 6 has very categorically admitted to have sold the said land at consideration of Rs.8,25,000/-. We have also perused the statement made by the said Shri Indravadan Intwala and the cross examination done by the assessee of the said statement at page no.13 of the order of the AO. On specific question in the cross examination put by the assessee to the said witness i.e. Shri Shri Indravadan Intwala to the effect that 'what was the consideration received by him?' and in reply to this question, the said Shri Indravadan Intwala has categorically admitted that he do not remember "but it was as per sale deed executed".

When once the said Shri Indravadan Intwala in his categorical examination in respect of the consideration received by him has clearly stated that he had received the consideration in respect of land sold to the assessee as per sale deed executed by him. Therefore, there was no doubt left for the Revenue to discard the said statement made during cross examination of said Shri Indravadan Intwala. The Revenue Authorities have misinterpreted, misconstated the statement of Shri Indravadan Intwala wherein he has nowhere mentioned the specific amount of 'on money' received from the assessee, on the contrary had specifically and in clear words had admitted in cross examination to question no.3 that the sale consideration received by him was 'as per sale deed executed'.

10. We are also of the view that the sale deed executed by the Shri Indravadan Intwala in favour of assessee was a registered document and therefore presumption of correctness is attached to the contents contained in the said register document. Therefore, if the Revenue wanted to uproot the said presumption, then it was the onus of the Revenue to bring on record some cogent, convincing or admissible evidence on record to disprove the contents of the registered documents in the shape of sale deed. Therefore, there was no occasion left with the Revenue to make additions merely on some vague answers given by the said Shri Indravadan Intwala. It is a settled Law that no additions can

be made on suspicions as howsoever strong the suspicion may be, but the same cannot take place of proof. Therefore, keeping in view of the above principles in mind, we allow this ground and deleted the addition, accordingly appeal of the assessee is allowed.

11. In the result, appeal of the Assessee is allowed.

12. Order pronounced in the open court on 13-12-2019.

Sd/-
(O.P.MEENA)

Sd/-
(SANDEEP GOSAIN)

(लेखा सदस्यतथा/ACCOUNTANT MEMBER) (न्यायिक सदस्यकेसमक्ष /JUDICIAL MEMBER)

सुरत/ **Surat**, दिनांक **Dated:** 13th December, 2019 / S.Gangadhara Rao, Sr.PS

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

By order

/ / **TRUE COPY** / /

Assistant Registrar, Surat