

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD – BENCH ‘A’

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
AND  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1261/Ahd/2016

निर्धारण वर्ष/Assessment Year: 2012-13

ITO, Ward-2(1)(1) Ahmedabad.	Vs	M/s.Gopal Space Org. P.Ltd. 12, Shaan House Charankrupa Society Satellite Ahmedabad 380 015. PAN : AADCG 7971 N
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Revenue by :	Shri Deelip Kumar, Sr.DR
Assessee by :	Shri Umaid Singh Bhati, AR

सुनवाई की तारीख/Date of Hearing : 11/12/2019

घोषणा की तारीख /Date of Pronouncement : 09/01/2020

### ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER : Revenue is in appeal before the Tribunal against order of the Id.CIT(A)-2, Ahmedabad dated 19.2.2016 passed for the Asstt.Year 2012-13.

2. Revenue has taken four grounds of appeal, but its grievance revolves around a single issue viz. the Id.CIT(A) has erred in deleting the addition of Rs.3,41,29,844/- made by the AO with aid of section 69 of the Income Tax Act on account of unexplained investment made by the assessee in purchase of land.

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3. Brief facts of the case are that assessee is a private limited company engaged in the business of development and dealing in land/residential and commercial building etc. It has filed its return of income on 3.8.2013 declaring total income at Rs.766/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) of the Act was issued on 5.9.2014 which was duly served upon the assessee. On scrutiny of the accounts, as well as AIR information received by the AO it was observed that the assessee company has not shown any purchase of immovable property either under the head 'fixed assets' or under the head 'current assets' in the balance sheet, whereas as per AIR information, it had entered into sale/conveyance deed dated 7.12.2011 for purchase of land admeasuring 8398 sq.meters at survey no.507/1 of village Khoraj District Gandhinagar and final plot no.78 of TP scheme 63(Khoraj) for a consideration of Rs.3.22 crores. The Id.AO obtained details from the office of Sub-Registrar by using power under section 133(6) of the Act. On analysis of these accounts and accounting policies of the assessee, it was observed by the AO that the assessee should have shown the land on the 'asset' side and if any payment is required to be made to the vendors, then such payment should have been shown as 'liability' side in the balance sheet. Since the assessee failed to recognize the 'asset' in the balance sheet, he construed that this must have been purchased by the assessee from unexplained sources of income. Hence, addition of Rs.3,41,29,844/- under section 69 of the Act has been made.

4. Dissatisfied with the addition, the assessee carried the matter in appeal before the Id.CIT(A) and it has filed a detailed note exhibiting

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various developments in this transaction, and as to how it has not recognized it in the balance sheet. The Id.CIT(A) has noticed such submissions of the assessee from para-2.2 to para-10 of page nos.5 to 9. We deem it appropriate to take note of this submission in order to understand the contentions of the assessee. It reads as under:

*"1. The appellant a private limited company registered under the provisions of the Companies Act, 1956 is engaged in the business of developing and dealing lands, residential and commercial buildings etc and this fact has been admitted by the Assessing Officer in the body of the assessment order itself. The appellant was approached by Shri Dilipbhai Purshotambhai Suthar who was very well known the directors and promoters of appellant to develop a land located at Khoraj jointly with the appellant and had shown interest maximum upto invest upto Rs. 30,00,000/- (Rupees Thirty Lacs only) provided profits earned in the property jointly developed are shared between him and the appellant in the ratio of 10:90 and with a rider that he will not bear any loss occurred in the project. In the event of non implementation of joint venture project, he was entitled to get compensation equivalent to 100% of amount invested by him as damages on and above the amount actually invested by him. The owner of land located at Khoraj which was proposed to be jointly developed was not completely known to the appellant's but was better known to Shri Dilipbhai Purshotambhai Suthar only and therefore, the appellant agreed to enter into land deal but with an understanding that initial investment of Rs. 30 lacs as agreed would be made by him and balance would be made by appellant by making required payments to the parties concerned for the purpose of acquiring the land and permit the acquirers to encash the cheques upon handing over the vacant and peaceful possession of land. The purchase deed was agreed to be registered in the name of the appellant only for the purpose of better facilitation of approval of lay out plans etc. and to make payment of development charges etc which were to be made by the appellant only. Copy of joint venture agreement dated 15/04/2011 entered into between the appellant and Shri Dilipbhai Purshotambhai Suthar is appearing at Pages 1 to 8 of Paper Book.*

*2. Under these circumstances, the appellant in the year under consideration in order to achieve its objects purchased land at P.P. 78 of T.P. Scheme No. 63 of Survey No. 507/1 mouje Village Khoraj, Taluka & District Gandhinagar from Shri Shivabhai Popatbhai Gohil who was the owner of the land for a agreed consideration of Rs. 40,00,000/- (Rupees Forty Lacs only). Before making sale of land to the appellant, Shri Shivabhai Popatbhai Gohil had entered into an understanding with M/s Shubham Granite Ltd (now known as Blazon Marbles Ltd) to get the encroachments on the land clear and to make the land clear in*

*all respects. Shri Shivabhai Popatbhai Gohil had agreed to compensate M/s Shubham Granite Ltd for this purpose an amount of Rs. 2,82,00,000/- (Rupees Two Crore Eighty Two Lacs only) only on clearing the encroachments and to clear the land title in all respect. Since, appellant was interested in the said land for its business, it agreed to make payment of Rs. 40,00,000/- to Shri Shivabhai Popatbhai Gohil and balance of Rs. 2,82,00,000/- to M/s Shubham Granite Ltd. Thus, total amount agreed to be paid by the appellant works out to Rs. 3,22,00,000/- (Rupees Three Crore Twenty Two Lacs only). Accordingly, an amount of Rs. 5,00,000/- was paid by Shri Dilipbhai Purshotambhai Suthar to Shri Shivabhai Popatbhai Patel in cash and appellant issued cheque of Rs. 35,00,000/- as well as 12 cheques of Rs. 2,82,00,000/- to M/s Shubham Granite Ltd for the purpose of getting the land registered in its name by executing a registration deed before the Registration Authority. Stamp duty and other registration expenses were borne by Shri Dilipbhai Purshotambhai Suthar as part of joint venture agreement. The cheques so issued were to be cleared only upon handing over the vacant and peaceful possession of land. Under these circumstances purchase deed was executed on 07/12/2011 in favour of the appellant by Shri Shivabhai Popatbhai Gohil wherein M/s Shubham Granite Ltd acted as confirming party. Copy of purchase deed so executed is appearing at Pages 9 to 25 of Paper Book.*

*3. Though it was stated in the purchase deed that land is clear in all respect and vacant but when appellant visited land it was noticed that the land is in possession of maldharies and though it is non agricultural land in revenue records but it is used for agricultural operations by Maldharies. The appellant under these circumstances had no option but to not to permit Shri Shivabhai Popatbhai Gohil and M/s Shubham Granite Ltd to encash the cheques to issued till the land is handed over vacant and with clear possession to the appellant and Shri Dilipbhai Purshotambhai Suthar. The cheques so issued were therefore, not allowed to be encashed and became time barred as both the persons were not able to hand over vacant and clear possession of land. Copies of Form No. 7 & 12 extracts from the revenue records indicating that land under reference was used for agricultural operations upto financial year 13-14 are appearing at Page 26 to 27 of Paper Book evidencing undisputedly that land was not clear and vacant for development purposes.*

*4. The appellant in order to get rid of the problems having been faced with the land and not getting the land vacant due to paucity of funds required to get the land clear decided to sale land with a view to raise the funds which in turn will be paid to the occupiers of the land in order to get it vacant. The appellant accordingly, entered into agreement to sale with M/s Tvisha Tradelink and Consultancy LLP on 11/02/2013 for a consideration of Rs. 3,10,69,500/- (Rupees Three Crores Ten Lac Sixty Nine Thousand Five Hundred only). As per the terms, the appellant was to get 50% of the agreed consideration at the time of handing over clear and vacant possession of land and time period*

agreed to hand over the vacant possession of land was two months from the date of agreement failing which buyer had right to claim liquidated damages as per para 12 of the agreement. Balance of 50% of consideration was to be received by the appellant at the time of execution of sale deed in favour of the buyer. Copy of agreement to sale entered into by appellant with M/s Tvisha Tradelink and Consultancy LLP dated 11/02/2013 is appearing at Pages 28 to 34 of Paper Book.

5. During the period of two months appellant made all attempts to negotiate with the occupiers of the land in order to get the land vacant by making compensation to them but failed to do so and under these circumstances, appellant failed to handover vacant possession of land to M/s Tvisha Tradelink & Consultancy LLP. M/s Tvisha Tradelink & Consultancy LLP upon expiry of two months insisted for the possession of land and failing which demanded damages for non performance of the agreement to sale. After lot of persuasion, appellant entered into settlement agreement with M/s Tvisha Tradelink & Consultancy LLP on 18/05/2013 and as per the terms and conditions mutually agreed, appellant was required to make payment of liquidated damages amounting to Rs. 2,51,38,0507-(Rupees Two Crore Fifty One Lac Thirty Eight Thousand Fifty only) with an understanding that M/s Tvisha Tradelink & Consultancy LLP will not drag the matter in any Court of Law or Arbitral Tribunal. The agreed amount of liquidated damages were to be paid by the appellant to M/s Tvisha Tradelink & Consultancy LLP within 18 months from the date of settlement agreement failing which Tvisha was entitle to interest @ 36% p.a. till the amount is actually realised. Copy of settlement agreement dated 18/05/2013 is appearing at Pages 35 to 38 of Paper Book.

6. Thereafter, appellant sold part of the land to Shri Sagar Mukeshbhai Sheth on 22/07/2013 for a consideration of Rs. 1,91,00,0007- (Rupees One Crore Ninety One Lacs only) without informing or taking into confidence any of the parties involved in the land deal except Shri Dilipbhai Purshotambhai Suthar as there were no disputes to share the income with him as per agreement entered into with him. Copy of sale deed is appearing at Pages 39 to 66 of paper book.

7. Thereafter, appellant together with other group company M/s Shaan Leisure Ltd entered into joint development agreement with Pacifica (Ahmedabad Project) Developers P Ltd on 18/12/2014 to develop the balance area of land. The appellant was to get 6.07% of the sales revenue of the developed property. As part of joint development agreement, appellant was paid an amount of Rs. 75,00,000/-(Rupees Seventy Five Lacs only) vide cheque no. 725531 dated 19/12/2014. Copy of joint development agreement dated 18/12/2014 is appearing at Pages 67 t 126 of Paper Book. The said joint development agreement was entered into by appellant without informing Shri Shivabhai Popatbhai Patel i.e. the original land owner to whom balance of Rs. 35,00,000/-

(Rupees Thirty Give Lacs only) and M/s Tvisha Tradelink & Consultancy LLP to whom agreed amount of liquidated damages were to be paid. The appellant remained in active joint venture agreement with Shri Dilipbhai Purshotambhai Suthar as there were no disputes to share the income with him as per agreement entered into with him.

8. As per the settlement terms agreed into with M/s Tvisha Tradelink & Consultancy LLP on 18/05/2013, appellant was required to pay the liquidated damages with 18 months failing which it was also required to make payment of interest @ 36% on the agreement amount of liquidated damages. The 18 month period came to an end on 18/11/2014. By this date appellant had not made any payment to M/s Tvisha Tradelink & Consultancy LLP. Therefore, Tvisha approached the appellant in the month of December, 2014 to make payment of liquidated damages as well as interest as agreed in the settlement agreement. Due to sluggish and recessionary market conditions in real estate market, the appellant expressed its inability to make payment of liquidated damages and also the interest @ 36%. Instead it sought more time to make payment of original amount of liquidated damages. Both the parties discussed the matter by meeting again and again and finally it was decided to revise the terms of payment by modifying the original terms of settlement. Accordingly, revised settlement agreement was entered on 16th January, 2015 according to which amount of liquidated damages was revised to Rs. 2,54,00,000/- from original amount of Rs. 2,51,38,050/- and it was also decided that the Tvisha will not insist for the interest @ 36%. Out of the agreed compensation of Rs. 2,54,00,000/- an amount of Rs. 1,54,00,000/- was to be paid on or before 31/03/2015 and balance of Rs. 1,00,00,000/- was agreed to be paid on or before 31/03/2016 . It was also mutually agreed that the appellant will be entitle to further extension of 6 months and during this period Tvisha will not approach any Court of Law or Arbitral Tribunal in the matter with regard to the quantum of compensation. Thus, all this disputes came to end in this manner in relation to the land acquired in joint venture with Shri Dilipbhai Purshotambhai Suthar at Khoraj. Copies of relevant documents are appearing at Page 127 to 130 of Paper book.

9. The original land owner Shri Shivabhai Popatbhai Gohil came to know about disposal of land by the appellant through joint development agreement in the month January, 2015 and therefore, approached the appellant to pay balance amount of Rs. 35,00,000/- originally agreed. The appellant though kept on promising him to make said payment but when no such payment was made Shri Shivabhai Popatbhai Gohil filed a suit for recovery of his dues or in alternate to cancel the sale deed executed by him in favour of the appellant. With the intervention of the Court a settlement was arrived at between both the parties on 16/02/2015 whereby appellant was required to make payment of Rs. 40 lacs on and above the amount of Rs. 5 lacs already paid at the time of purchase of land and reflected in the purchase deed. Accordingly, Shri

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*Shivabhai Popatbhai as per mutual understanding arrived at in the Court has withdrawn the case filed against the appellant. Copy of suit filed against the appellant and terms of settlement are appearing at Page 131 to 149 of Paper Book.*

*10. Thus, on the facts and circumstances of the case on has to see as to whether the action of the Assessing Officer in making addition of Rs. 3,41,29,844/- within the meaning of section 69 is justified when there is no evidence of whatsoever nature which can implicate the appellant of any payment outside the books of account to acquire the said land or making any investment source of which remained to be explained by the appellant.*

*It is in this back ground of the matter, appellant makes following submissions with regard to each of the grounds of appeal taken in the appeal memo on the basis of which actions of the Assessing Officer have been disputed."*

5. Apart from the above factual submissions of the assessee, the assessee has made submissions as to how the addition under section 69 could not be made. The Id.CIT(A) has gone through the submissions of the assessee and thereafter deleted the addition.

*"2.3 Decision:*

*I have carefully considered the facts of the case, the assessment order and the written submission of the appellant. The addition of an amount of Rs.3,41,29,844/- has been made by the AO being unexplained investment in the land purchased in FP-78 of TP Scheme No.63 of Survey No.507/1 Moje Village, Khoraj Taluka and Dist. Gandhinagar for an amount of Rs.3,22,00,000/- being sales consideration and stamp duty expenses at Rs.19,29,844/-.*

*2.4 It has been noticed that the appellant has entered into a sale/conveyance deed dtd. 7.12.2011 for purchase of the land admeasuring at 8398 Sqr. Mtr. in the aforesaid survey number for consideration of Rs.3,22,00,000/-. The AO observed that the sale deed has been executed on 7.12.2011 and appellant being the purchaser has made the investment in the aforesaid property. As per the aforesaid sale deed the appellant was to pay Shri Shivabhai Gohil i.e. seller of land a sum of Rs.40 lakhs, out of the above a*

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sum of Rs.5 lakhs was paid in cash at the time of execution of the deed and balance was paid by way of cheques of Rs.35 lakhs in the name of original land owner Shri Shivabhai Gohil. In the aforesaid sale deed, M/s.Shubham Granite Pvt. Ltd. was a confirming party to whom the cheques of Rs.2,82,00,000/- were also paid. The cheques were issued from the bank account of the appellant to both i.e. the original land owner as well as to the confirming party. On the basis of the sale deed, the name in the revenue records in extract of 7I 12 were also changed and the land was entered into appellant's name. Thus the AO was of the view that the appellant company had become the owner of the said property.

2.5 Before the AO, the appellant claimed that it has entered into a joint venture agreement with Shri Dilip Suthar for making part investment by him and in support the copy of the JV agreement dtd. 15.4.2011 was also submitted to the AO. As per the para-F-2 of the said agreement Shri Dilip Suthar was required to make payment of an amount of Rs.5 lakhs to original land owner namely; Shri Shivabhai Gohel. The AO has objected that as per the sale deed dtd. 7.12.2011 this cash payment was made on 30.3.2011 to the original land owner. So the joint venture agreement was the arrangement and post-facto documentary evidences created to hide the truth that the appellant company had already become the owner of the property in question which was not at all recorded in its books of account. As per the JV agreement the stamp duty expenditures were also to be borne by Shri Dilip Suthar. In respect of the sources of the payments by Shri Dilip Suthar towards upfront expenses and the stamp duty expenses the appellant submitted the copies of the sale deeds of the properties sold by Shri Dilip Suthar in F.Y. 2010-11 and cash withdrawn from his bank accounts. The AO observed that Shri Dilip Suthar had withdrawn cash from his bank account and retained the same for no express purpose. No documentary evidence regarding alleged cash receipts by way of sale proceeds of agricultural produce except copy of extract of agricultural holding of Shri Dilip Suthar has been filed.

2.6 It is worth here to mention that possession of the aforesaid land was not given by the original land owner to the appellant although the sale deed of the same have already been executed on 7.12.2011. Except the cash payments the cheques given to Shri

*Shivabhai Gohil for Rs.35 lakhs and to Shubham Granite Pvt. Ltd. at Rs.2.82 crores have not been encashed due to the dispute and non-providing the possession by the land owner over the land to the appellant. In between various disputes arosed in respect of possession of the aforesaid land and various transactions have taken place. However, finally a settlement agreement dtd. 16.2.2015 was executed between the appellant and the original land owner Shri Shivabhai Gohil and according to such settlement the appellant was to pay a sum of Rs.40 lakhs over and above to Rs.5 lakhs paid by Shri Dilip Suthar to Shri Gohil at the time of the execution of the sale deed. It is worth here to mention here that the original land owner Shri Shivabhai P. Gohil has filed a regular civil suit No.16 of 2005 dtd. 22.1.2015 before the Hon'ble Principle Civil Judge Court City at Gandhinagar against the appellant stating that the sale deed executed on 7.12.2011 may be held to be illegal, null and void and the appellant has no right title interest in the suit property in any manner whatsoever. The relevant clauses of such petition dated 22/01/2015 is reproduced as under:-*

*"4. Thereafter, one Dilip Suthar introduced the plaintiff to the defendant and after some negotiations, the plaintiff agreed to sell the suit property to the defendant through Dilip Suthar. That the said Shubham Granite Ltd. stood as confirming party to the sale deed executed between the plaintiff and the defendant. The plaintiff states that after negotiaitions, the registered sale deed was executed by the plaintiff in favour of the defendant. The plaintiff states that vide registered sale deed dated 07/12/2011 bearing registration No. 13973, the plaintiff demised the suit property to the defendant for total consideration of Rs. 3,22,00,000/-. The plaintiff states that it was agreed that the defendant will pay Rs.40,00,000/- towards consideration to the plaintiff and Rs.2,82,00,000/- to the confirming party. The plaintiff states that the plaintiff had received only Rs.5,00,000/- from the defendant. Despite repeated reminders the defendant had not paid Rs.35,00,000/- to the plaintiff till date.*

*5. The plaintiff states that the defendant had taken the possession of the suit property in pursuance of the*

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registered sale deed bearing registration No. 13973. The plaintiff repeatedly demanded Rs.35,00,000/- from the defendant but on one or other pretext the defendant did not pay the said amount of Rs.35,00,000/- to the plaintiff.

9. The plaintiff states that thus the plaintiff is still owner of the suit property. The defendant has no right, claim or interest in the suit property in any manner whatsoever as the defendant has not paid the agreed consideration to the plaintiff. The defendant has no right to demise the suit property to any third person.

10. The plaintiff state that it is necessary to declare that the registered sale deed dated dated 07/12/2011 bearing registration No. 13973 in favour of the defendant is illegal and null and void. It is further necessary to declare that the defendant has no right, title, interest in the suit property in any I manner whatsoever.

11. The plaintiff states that the defendant has no right, title, interest, share in the said land in any manner whatsoever.

However, the defendant is illegally claiming its right and likely to demise the suit property to third party. Therefore, it is necessary to restrain the defendant and its agents, servants, representatives, etc. from gifting, demising, transferring, alienating, leasing and or dealing with the suit property in any manner whatsoever in the interest of justice by permanent injunction.

12. The plaintiff states that the act of the defendant has caused mental harassment, torture, trauma to the plaintiff and has further caused monetary loss to the plaintiff apart from inconvenience. The plaintiff is required to spend money on litigations etc. In view of the above referred facts, the defendant is liable to compensate the plaintiff. As a matter of fact by virtue of illegal acts and deed by the defendant the plaintiff has suffered mental tension, trauma, loss of reputation & good will and hence demands damages from the defendant. The Hon'ble Court may grant

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*appropriate compensation to the plaintiff from the defendant.*

*14. That the cause of action has arisen within the jurisdiction of this Hon'ble Court in 2011 when the defendant agreed to pay the consideration of the suit property to the plaintiff but did not pay entire consideration and thereafter when on 10/01/2015, the plaintiff demanded the balance consideration amount, the defendant did not pay any heed to the plaintiff and thereafter when the plaintiff came to know that the defendant is likely to demise the suit property illegally within few days and thereafter.*

*17. The suit has valued at Rs. 35,00,000/- for the purpose of jurisdiction and court Fees, and court fee of Rs. 43,450/- has been affixed on the plaint."*

*Thereafter the settlement between the original land holder and Shri Gohil took place and they filed the agreement of settlement dtd. 16.2.2015 duly notarized according to which the appellant had to pay Rs.40 lakhs over and above Rs.5 lakhs already paid at the time of execution of sale deed without any further payment in this regard. The relevant clauses of the agreement for settlement dated 16/02/2015 are reproduced as under for ready reference.*

*"WHEREAS as per the terms and conditions of the said Sale Deed, the cost of the land was fixed at Rs. 3.22 crores and the Second Party has paid the First Party an amount of Rs. 5 Lakhs. In addition to the same, the Second Party also issued Cheque of Rs.35 Lakhs to the First Party and issued Cheques for Rs. 2.82 crores to the Confirming Party of the said Sale Deed being one M/s Shubham Granites Ltd.*

*WHEREAS as a result of the breach of the terms and conditions of the Sale deed as stated hereinabove, the Second Party did not allow the Cheques which were paid to the First Party and the Confirming Party to be encashed.*

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WHEREAS owing to the above stated disputes and misunderstandings which had arisen between the parties, the First Party has has filed Regular Civil Suit No. 16 of 2015 against the second Party before the Hon'ble Principal Civil Judge Court at Gandhinagar for recovery of his due its due amounts as well as compensation bearing registration no. 13973.

Therefore now this indenture witnessh as under"

1. That the First Party hereby admits and acknowledges that despite the execution of the Sale Deed dated 07/12/2011 bearing registration no.13973 and in spite of the First party having received Rs. 5 Lakhs, no vacant and Peaceful possession of the said Land was given to the Second Party and thereby, the First Party had failed to fulfill the terms and conditions of the sale Deed resulting in a default.
2. That the Second Party hereby admits and agrees that though it did not receive the vacant and peaceful possession of the said Land, the Second Party has been successful in getting the said Land vacated and obtaining peaceful possession of the same, after great hardships, efforts and after incurring huge expenditures. The Second Party further acknowledges that it did not allow the Cheques issued to the First Party and the Confirming Party to be encashed which were to the tune of Rs. 35 lakhs and Rs. 2.82 crores respectively.
4. That in order to resolve all the disputes with the First Party with regards to the sale of the said Land, the Second Party undertakes and agrees to pay a lump sum amount of Rs. 40 Lakhs to the First Party over and above the Rs. 5 Lakhs which has already been paid to the First Party subject to the condition that the Second Party shall not be liable to pay any further amount either to the First Party or to the Confirming Party.
6. That the First Party hereby expressly agrees and acknowledges that over and above the amount of Rs.40 lakhs paid by the Second Party as stated herein above, no

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*further amount is payable by the Second Party towards the cost of the land including any amounts which may be claimed by the Confirming Party and in case the Confirming Party claims an such amounts, the same shall be settled solely by the First Party at its own costs and consequences.*

7. *That the First Party hereby absolves and indemnifies the Second Party from any such payments as may be claimed by the Confirming Party i.e. M/s. Shubham Granites Ltd. by virtue of the Sale Deed dated 07/11/2011 bearing registration no.13973.*

9. *The parties hereto declare that with the execution of this agreement all claims against each other stand settled and resolved fully and finally and that the parties shall cooperate with each other fully and in true spirit for complying with this Agreement. It is agreed that upon execution of this agreement the first party shall forthwith withdraw the above referred civil suit. It is agreed that the original above referred sale deed will remain valid."*

2.7 *On filing of this agreement of settlement, the Hon'ble 5th Additional Senior Civil Judge, Gandhinagar vide its order dtd. 21.2.2015 has disposed off the suit as per the withdrawn application filed by both the parties as per the agreement of settlement. The extract of the withdrawal application of the suit filed by both the parties dated 21/02/2015 is reproduced as under:-*

BEFORE THE HON'BLE SENIOR CIVIL JUDGE COURT AT  
GANDHINAGAR

Regular Civil Suit No. 16 of 2015

*Shivabhai Popatbhai Gohil .....Plaintiff*

*Versus.*

*Gopal Space Organizers P.Ltd. .... Defendant*

***The plaintiff and the defendant hereinabove most respectfully submit as under:***

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*That the plaintiff and the defendant in the above referred matter being Regular Civil Suit No. 16 of 2015 have arrived at a settlement and the defendant has paid the entire amount as stated by the plaintiff in the Civil Suit at the time of settlement. That in view of the settlement arrived between the parties, the parties do not want to proceed further in the matter. The plaintiff and the defendant have executed agreement of settlement dated 16/02/2015 and a copy of the settlement agreement is produced along with this pursis. That as per the said agreement, both the parties with mutual consent are desirous to withdraw the suit, which we hereby declare vide this pursis.*

*Date : 21/02/2015*

*Gandhinagar*

*Plaintiff Advocate for Plaintiff  
Defendant Advocate for defendant*

*2.7.1. In other words, this litigation came to an end vide agreement of settlement dtd. 16.2.2015 and the order of the Hon'ble Court dtd. 21.2.2015 passed thereupon.*

*2.7.2. Thereafter, the Hon' ble Court vide its order dated 21/2/2015 has disposed of the Civil Suit with the following order.  
Spl. Civil Suit No. 16/2015  
Order Below Exh. No. I:*

*In view of the withdrawn pursis at Exh. 9 This suit is disposed of accordingly.*

*Refund certificate be issued in the name of Plaintiff as per rule.*

*Date: 21/02/2015. Gandhinagar*

*(V.A.Buddha),  
5th Addl. Sr. Civil Judge ,Gandhinagar*

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**2.7.3 According to this final settlement the appellant had to pay only Rs.40 lakhs to Shri Gohil as against the sale consideration of the land without any further payment to anyone by taking the possession of the land. All these documents were available before the AO in the assessment proceeding and the same have not been controverted.**

2.8 Now AO has made the observation that as per para-5 on page-4 and 5 of the agreement dtd. 16.2.2015 an amount of Rs.50 lakhs was to be paid to Shri Gohil although in the subsequent para No.6 on page-5 the amount which was to be paid was repeated at Rs.40 lakhs. Thus, the AO doubted the authenticity of the agreement because of the difference in the amounts.

2.9 Before the final settlement agreement dtd. 16.2.2015 the part of the property in question was sold by the appellant vide deed dtd. 22.7.2013 for a consideration of Rs.1.91 crores on the basis of the sale deed already executed in its favour and balance land was shown under the head of fixed assets in its audited accounts for F.Y. 2013-14. Thereafter the appellant has also entered into an agreement dtd. 18.12.2014 for joint development of balance land with M/s. Pacifica (Ahmedabad Project) Developers Pvt. Ltd. So AO doubted the transaction and the agreement to settlement to be an afterthought.

2.10 Having considered the facts of the case and submissions it has been noticed that although the registered sale deed has been executed on 7.12.2011 in favour of the appellant by Shri Gohil as original land owner and confirming party namely M/s. Shubham Granites Pvt. Ltd. but actually no ownership over the land was transferred in favour of appellant due to non payment of the full consideration which was in consequence to failure in providing the possession of the vacant land to the appellant. According to this sale deed, Rs.5 lakhs were paid to Shri Gohil and remaining amount of Rs.35 lakhs by way of the cheques. Further to the confirming party cheques of Rs.2.82 crores were also issued. Thus, the payment actually made in the year under consideration was only to the tune of Rs.5 lakhs in cash and that too was claimed to have been paid by Shri Dilip Suthar as per the JV Agreement dtd. 15.4.2011. Thus, in the year under consideration it is obvious that on the date when the sale deed was executed i.e. 7.12.2011 the cash of

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Rs.5 lakhs was paid which was claimed to have been paid by Shri Dilip Suthar although the formal JV Agreement with Shri Dilip Suthar was undertaken on 15.4.2011. But Shri Dilip Suthar has confirmed having payment of Rs. 5 lakhs out of its sources which is verifiable from the summary of cash transactions provided. Further with regard to the registration charges of Rs.19,29,844/-, these have also been paid by Shri Dilip P. Suthar as per the JV agreement between the appellant and Shri Suthar dtd. 15.4.2011. The AO has not controverted the existence, authenticity and the terms of payment and the payments of Rs.5 lakhs and Rs.19,29,844/- made by Shri Dilip Suthar by bringing anything on record. The summary of the cash transactions of Shri Dilip Suthar explaining the source of above payments have been submitted to the AO also and same is verifiable. As per the JV agreement between the appellant and Shri Suthar, it is on record that the aforesaid payments have been made as per the terms and conditions of the JV agreement by Shri Dilip Suthar and appellant has not paid any amount except the cheques of Rs.35 lakhs to Shri Gohil and Rs.2.82 crores to M/s. Subham Granite Pvt. Ltd. Even if there was any doubt in respect of the sources of the initial payments of Rs.5 lakhs and the registration charges of Rs.19,29,844/- the necessary action in that case could have been taken in the case of Shri Dilip Suthar but not in the hands of the appellant. It is worth to note that Shri Dilip Suthar has been regularly filing its return of income having PAN No. CCRPS 8918 Q.

2.11 Further with regard to the aforesaid cheque payments, the cheques have not been encashed from the bank account of the appellant as the possession over the land has not been handed over to the appellant. Thus the sale deed dated 07/12/2011 was not came into force. It was submitted that the purchase deed was agreed to be registered in the name of the appellant only for the purpose of better facilitation of approval of lay out plans and to make payment of development charges which were to be made by the appellant only. It did not mean to transfer the rights over the land as the possession was in fact in dispute. The AO has not brought anything on record establishing that the cheques of the aforesaid amounts have been encashed from its bank account or any other payments in lieu of such payments have been made to Shri Gohil or the confirming party. Even nothing has been brought on record to show that in view of the sale deed the possession over the land was given by the appellant. Even in the case of Mls.Shubham Granites

*Pvt. Ltd. also in the scrutiny assessment u/s. 143(3) necessary details by the AO of the aforesaid party has been called for from the appellant and in compliance thereto the similar details have been provided by the appellant vide its letter dtd. 15.11.2014 in response to the notice issued u/s.133(6) of the I.T. Act to the said AO i.e. ITO, Ward-1 (1 ), Baroda. The balance payment of the sale deed dated 07/12/2011 was obviously not made due to absence of the handing over of the possession of the vacant land to the appellant due to land occupied by Maldharies and subsequent disputes arose which got settled only after passage of almost four years vide the agreement of settlement dtd. 16.2.2015 filed in the Court of Law and the said petition filed by the original land owner was disposed off by the Court on 21.2.2015. Thus, as per the records, in the year under consideration the initial payment and the registration charges have been paid by Shri Dilip Suthar which has not been controverted by the AO and subsequently as per the settlement agreement dtd. 16.2.2015 the balance payment of Rs.40 lakhs have been made by the appellant to Shri Gohil which falls in the A.Y. 2015-16. Merely the J. V. agreement was dated 15/04/2011 and the sale deed was dated 07/12/2011 prior to the JV agreement date would not alter the status of payment of Rs. 5 lakhs and further registration charges when the same were confirmed to have been paid by Shri Dilip Suthar out of its funds.*

*2.12 In view of the aforesaid discussion since no payments have been made by the appellant towards the sale consideration in the year under consideration although sale deed was executed but in absence of taking over of the possession of the land the litigation going on, which ultimately settled in A.Y. 2015-16 no adverse view is warranted in the hands of appellant. Nothing has been brought on record to show that besides Rs.5 lakhs and Rs.19,29,844/- paid by Shri Dilip Suthar any further payments has been made by the appellant out of its undisclosed income. Even the cheque so issued as per sale deed dated 07/12/2011 were to be cleared only upon handing over of the vacant and peaceful possession of the land which did not materialized in the year under consideration. Non- clearance of the cheques from the bank account of the appellant itself proves non-payment by the appellant obviously due to litigation and non- handing over of the peaceful possession over the land to the appellant. Even after a lapse of 6 months period from the date of issue*

*of cheques, the cheques itself becomes time barred and subsequently no payments are cleared by the bank. Even as per the copy of extract of 7/12 on the basis of the sale deed name of the appellant has been entered in the revenue record but this land was being utilized upto F.Y. 2013-14 for agricultural operations obviously by the original land owners or the possession holders.*

2.13 *It has been held by the Hon 'ble Supreme Court in the case of Dhakeshwari Cotton Mills Vs. CIT 26 ITR 775 that addition made merely on suspicion how so ever strong it may be cannot be sustained. Further it has been held that the addition made by the AO without making requisite inquiry from witnesses cannot be sustained as has been held in the case of Nathuram Premchand Vs. CIT 49 ITR 569. The Hon'ble Delhi High Court in the case of CIT Vs. Kamdhenu Steel & Alloys Ltd. 206 Taxman 254 has held that to make the assessee responsible there has to be proper evidence. It is equally important that an innocent person cannot be fastened with liability without cogent evidences. Thus the AO's stand of treating the entire sale consideration as paid by the appellant out of its undisclosed income is found not correct and hence the addition made by the AO is deleted.*

*The ground of appeal is allowed."*

6. With the assistance of the Id.representatives, we have gone through the record carefully. Sole issue for adjudication is, whether the AO was able to lay his hand on the evidence exhibiting the fact that the assessee has made investment which are not recorded in the books of accounts, and failed to explain the source of such investment. Therefore, addition on account of unexplained investment under section 69 is required to be made. Before advertng to the facts, we would like to note of section 69, which reads as under:

*"69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."*

7. A perusal of the above provision would indicate that if the AO was able to lay his hand on any evidence exhibiting the fact that in the financial year immediately preceding the assessment year, the assessee has made investment, which are not recorded in the books of accounts, if any, maintained by him for any source of income, and the assessee failed to give any explanation or such explanation was not to the satisfaction of the AO, then the value of the investment may be deemed to be the income of the assessee of such financial year. Thus, the first condition for invoking section 69 is, there should be some investment, which are not recorded in the books of accounts, if any maintained by the assessee for any source of income. The second condition is that the assessee failed to give any explanation, and if some explanation was given, it was not to the satisfaction of the AO. In this situation, the value of such investment may be deemed as income of the assessee of such financial year.

8. There is no doubt that the assessee is maintaining books of accounts, which are audited also. In the submissions (extracted supra), assessee has explained that there was no investment as construed by the AO. On an analysis of the submissions, as well as finding of the AO, it emerges out that basically, the AO has assumed existence of the investment on the basis of mercantile system of accounting only. He did not dispute the terms and conditions for project agreement in a way, but was of the view that even if these terms and conditions are there, then also the assessee should have shown investment on asset side, and disputed amount on liability side in the balance sheet. He also highlighted circumstances for disbelieving the dispute between the

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vendee and vendors, and other joint venture partners, and alleged settlement in 2015. The Id.CIT(A) did not concur with the AO's conclusion and reversed the finding.

9. We have duly considered submissions of the assessee and finding of the lower authorities. It is pertinent to observe that purchase agreement was subject to fulfillment of certain conditions viz. the assessee has pleaded that one Shri Dilipbhai Purshotambhai Suthar was very well known to the promoters and directors of the assessee-company. He approached the assessee to develop a land located at Khoraj jointly and shown his interest of investing maximum upto Rs.30 lakhs. He also laid down a condition that profit earned in the property jointly developed would be shared between him and the assessee in the ratio of 10:90, and with a rider that he would not bear any loss occurred in the project. Thus, according to him, if in the event of non-implementation of joint venture project, he would be entitled to get compensation equivalent to 100% of amount invested by him as damages. He knew owner of the land i.e. Shivabhai Popatbhai Gohil. An agreement was entered into. It was found that the land was under encroachment and sum of Rs.2.82 crores was required to be paid to M/s.Shubham Granite Ltd (now known as Blazone Marbles Ltd.) to get encroachment on the land cleared, and to make the land clear in all respects. In this exercise a sum of Rs.5.00 lakhs was paid by Shri Dilipbhai Purshotambhai Suthar and cheque of Rs.35 lakhs was issued by the assessee to Shivabhai Popatbhai Gohil. Similarly, the assessee has issued 12 cheques of Rs.2.82 crores to Shubham Granite Ltd. The deal could not be materialized as per the terms and conditions. Hence,

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payments of cheques were stopped, and they became time barred. Ultimately, the dispute was resolved after civil litigation in 2015.

10. The question before us is, whether there is any evidence available on the record proving conclusively that investment was made by the assessee, which has not been reflected in the books of accounts. The Id.CIT(A) has recorded a finding that in this year no payment was made by the assessee, and after looking into the chain of evidence flowing from different agreements, civil suits and ultimate resolution of the dispute, we are of the view that in this year, no asset came into existence in the name of the assessee, which requires to be shown in the books of accounts. The Id.AO has simply assumed certain facts, and assumed existence of unexplained asset which requires to be added under section 69 of the Act.

11. After considering elaborate finding of the Id.CIT(A) on this issue, we do not find any hesitation in concurring with finding of the Id.CIT(A). Therefore, we do not find any merit in this appeal. It is rejected.

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

**Pronounced in the Open Court on 9<sup>th</sup> January, 2020**

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

**Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER**