

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 2018/AHD/2016
(Assessment Year: 2012-13)
(Virtual Court Hearing)

Deputy Commissioner of Income Tax, Circle-2(3), Surat	Vs.	M/s. Shhlok Enterprise, Block No.292, Plot No.135/B, Shhlok Arcede, Bamroli Road, Surat. PAN : ABUFS8091E
APPELLANT		RESPONDEDNT

Appellant by	Ms Anupama Singla, Sr. DR
Respondent by	Shri P M Jagasheth, CA
Date of hearing	03/12/2020
Date of pronouncement	06/01/2021

ORDER

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by Revenue is directed against the order of the learned Commissioner of Income Tax (Appeals)-1, Surat [in short “the ld. CIT(A)”] dated 04.05.2016 for the Assessment Year (AY) 2012-13. The Revenue has raised following grounds in its appeal:-

“1. The Ld. CIT(A) erred in law and on facts of the case in holding that the statement of Shri Navin H. Patel, partner of the firm recorded during survey operation on 30.08.2013 did not have any evidentiary value. Shri Patel was bound to state the truth of the facts in his statement during survey to the Authorized Officer, who is also a public servant.

2. The Ld.CIT(A) erred in law and on facts in ignoring the fact that Shri Navin H Patel, the partner of the firm, on

05.09.2013, while stating on oath u/s.131 of the IT Act, had reaffirmed the modus operandi and quantum of unaccounted income stated and disclosed in his statement dated 30.08.2013.

3. The Ld.CIT(A) erred in law and on facts in accepting the retraction dated 23.03.2015, made after a considerable lapse of 18 months from the date of survey, without there being any reason tendered by the deponent. Therefore, the same is not a valid retraction and should have not been accepted by the CIT(A).

4. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of unaccounted receipts brought in books of accounts in the form of unsecured loans through accommodation entries with the help of one Shri Vipul Thakkar, who was in the business of providing entries for a commission of 0.15%, on the ground that the figures of unsecured loan of Trial Balance, which was prepared on 30.08.2013 and these amount related to A.Y. 2014-15 without appreciating the fact that lenders, who appeared in the Trial Balance and have lent in subsequent years, also have lent unsecured loan during the year under consideration.

5. The Ld. CIT(A) erred in law and on facts in deleting addition of Rs.13,79,336/- on account of interest on Unsecured loan.

6. The Ld.CIT(A) erred in law and on facts in deleting the addition of Rs.2,86,54,117/- on account of difference in receipts as per impounded materials and regular books of accounts.”

2. Brief facts of the case that the assessee is a partnership firm engaged in the construction of residential and commercial

properties. For the year under consideration the assessee filed its return of income on 31st August 2012 declaring total income of ₹ 22.22 lakhs. The case was selected for a scrutiny and assessment was completed under section 143(3) on 30th March 2015 assessing total income at ₹ 3.22 Crore. During the assessment it was noted that a survey was conducted under section 133A on the premises of assessee on 30th August 2013. In the survey certain books of account found and were impounded. In the said survey statement of one of the partner Navin H Patel was recorded. The partner of the assessee admitted that unsecured loan was availed by the assessee firm, arranged through one Vipul Thakkar on payment of commission at the rate of 0.15% of the cheque amount. On the basis of statement of partner the assessing officer issued show cause notice as to why the unsecured loan of Rs. 1.30 Crore received during the year should not be added to the total income of the assessee. The assessing officer in para in par 4 at page No. 6 recorded that the amount of figure of unsecured loan was wrongly takes as Rs. 1.30 Crore instead of Rs. 1.54 Crore. The assessee filed its reply and explained that none of the loan received by assessee is bogus. It was further contended that the statement was recorded under pressure at the fag starting of the survey proceeding. The

partner who made a statement was unaware of any accounting knowledge and whatever the statement was made is erroneous. The assessee furnished the conformation and acknowledgement of return of income tax return of the lenders. The assessing officer has extracted the contents of the reply of assessee in para 4.2 of the assessment order. The assessing officer not accepted the explanation furnished by the assessee. The assessing officer on the basis of statement of partner of assessee recorded during the survey held that assessee failed to prove the creditworthiness of the lender. On the basis of aforesaid observation the assessing officer made addition under section 68 of ₹ 1.54 Crore.

3. The assessee also claimed and interest expenses on such unsecured loan of ₹ 13.79 lakhs. Since the loan was treated as bogus loan, consequent upon the interest expenses was also treated as non-genuine.
4. The assessing officer on further perusal of the survey report noted that assessee received booking amount of ₹ 4.81 Crore during the relevant financial year and that assessee has shown a receipt of ₹ 1.94 Crore only in its books of account. Therefore, the assessing officer issued show cause notice to explain the difference of ₹ 2.86 Crore in the books of account,

should not be treated as additional undisclosed income. The assessee filed its reply and explained that differential amount are advance received as booking amount during the year and the assessee has disclosed the additional income of Rs. 2.00 Crore in the year in which flat, shops and offices were sold and document were executed. The assessee further explained that they are following 'Percentage of Completion Method' and have shown a specific percentage of work in progress (WIP) as profit and hence advance received would not affect net profit of the assessee. The assessee explained that during the year under consideration the assessee has shown profit at the rate of 8% of work in progress i.e. total cost of the construction. The contention of assessee was not accepted by assessing officer. The assessing officer noted that there is difference of Rs. 2.86 Crore, which has not been disclosed by the assessee. The assessing officer treated the entire difference of amount as income of the assessee. The assessing officer took his view that no profit can be calculated on such amount. The assessing officer also held that assessee failed to prove that unaccounted advance of ₹ 2.86 Crore are part of disclosure of Rs. 2.00 Crore made during the financial year 2013-14, i. e. for assessment year 2014-15. The assessing officer further noted that in the affidavit filed by assessee, the assessee

admitted the disclosure on account of booking advances for project 'Shalok Acardé' for assessment year 2014-15, but no bifurcations of disclosure has been given against the money received during the year. The assessing officer concluded that Rs. 2.86 Crore is the undisclosed income of the assessee, out of the amount of Rs. 2.86 Crore, the assessee availed accommodation entry in the form of unsecured loan of Rs. 1.54 Crore, on which commissions must have been paid to Vipul Thakkar. On the aforesaid observation no separate addition of unsecured loan was made, but addition of undisclosed advances was made. The assessing officer thus, made addition of Rs.2.86 Crore on account of unaccounted advance.

5. Aggrieved by the additions the assessee filed appeal before learned Commissioner (Appeals). Before learned Commissioner (Appeals), the assessee filed detailed written submission as recorded by him, in para 5 of the impugned order. In the written submission the assessee contended that survey was conducted on the assessee group on 30th August 2013. The assessing officer during the course of survey, recorded statement of Naveen H Patel, one of the partners of assessee was recorded. The partner in a statement had admitted that

unsecured loan was accepted by the firm or he does not know the lender personally and that loan was secured on payment of commission, on the basis of his observation the assessing officer issued notice as to amount of a less loan of ₹ 1.54 Crore should not be added to the income of assessee. The assessee in reply to the show cause notice before assessing officer stated that none of the unsecured loan is bogus and whatever was stated during the survey by the partner of assessee was stated under pressure at the fag starting of survey proceeding, the partner was unaware of the accounting knowledge. The statement of said partner was again taken wherein he has specifically stated that his earlier statement was erroneous and there was no unsecured loan. The assessing officer not accepted the submission of assessee and treated the amount as undisclosed income. The assessee explained that during the course of survey no adverse material was found regarding unsecured loan allegedly received by assessee. On the basis of a statement of partner without any further evidence, it cannot be said that assessee received unsecured loan from bogus parties. During the course of assessment proceeding, copy of confirmation of all unsecured loan from lenders along with a return of income were furnished for verification by assessing officer. The loan amounts were received through banking

channel through cheques. Thus, the assessee proved identity of lender, genuineness and creditworthiness of the transaction. There was no material evidence before the assessing officer for treating the loan as unaccounted received. Since the assessing officer treated the unsecured loan as unaccounted received consequent interest was also disallowed. The assessing officer without any material evidence on record treated the unsecured loan as unaccounted amount received only on the basis of a statement of one of the partner. Though, confirmation of unsecured loan was furnished to the assessing officer. The assessee also furnished the TDS deducted on the interest paid on unsecured loan as well as copy of TDS return.

6. With regard to addition on account of undisclosed receipt of ₹ 2.86 Crore, the assessee stated that during the course of assessment proceeding the assessing officer on the basis of survey report noted that assessee received ₹ 2.86 Crore as unaccounted received. The assessing officer issued show cause notice for treating the difference of actual received and the received shown by assessee in its books of account. The assessee explained that they are following 'percentage completion method' of accounting, wherein any case even if

the assessee has received any amount in advance, they show profit as a per specific percentage of work in progress. For the year under consideration the assessee has shown 8% of work in progress. The assessee also relied on various case laws as recorded by learned Commissioner (Appeals).

7. The learned Commissioner (Appeals) after considering the submission of the assessee with regard to addition on unsecured loan of ₹ 1.54 Crore noted that the survey was conducted on 30th August 2013 and that statement was related to the assessment year 2014-15, and the firm had made disclosure of Rs. 2.00 Crore for that year. The assessing officer made addition on the basis of statement recorded during the survey without any supporting evidence or any adverse material on record. The learned Commissioner (Appeals) also concluded that it is settled legal position that statement recorded during the survey has no evidence of value moreover the survey party has no power to record the statement oath. During the appellate proceeding the learned Commissioner (Appeals) directed the assessee to furnish the copy of return of income for assessment year 2012 - 13 with Audit Report and final accounts. On the basis of Audit Report the learned Commissioner (Appeals) noted that assessing

officer taken a figure of ₹ 1.30 Crore only on the basis of statement of partner. The learned Commissioner (Appeals) also examined the statement of partner regarding the alleged unsecured loan and held that the said a statement is no way related with the assessment year under consideration moreover the figure of alleged unsecured loan of ₹ 1.54 Crore as recorded by assessing officer at ₹ 1.30 Crore is neither telling with the unsecured loan reflected in the books of account nor any party-wise breakup has been given by assessing officer in the show cause notice. No such information was confronted to the assessee. The learned Commissioner (Appeals) also held that once the assessee filed confirmation of lender and return of income, the onus by the assessee was discharged and it was shifted on the assessing officer to prove that entry made in the books are not genuine. The assessing officer has not issued any notice to the lender nor made any independent enquiry to ascertain the truth. On the basis of the aforesaid observation the learned Commissioner (Appeals) deleted that addition of unsecured loan. Since, the addition of unsecured loan was deleted the consequent disallowance of interest payment was also deleted.

8. With regard to addition on account of unaccounted received the learned Commissioner (Appeals) noted that it is an admitted fact that during the relevant period, the assessee received total amount of ₹ 4.81 Crore as booking advance from customer as evident from the impounded material. The assessee has accounted only Rs1.94 Crore, thereby a difference of ₹ 2.86 Crore, which has been treated by assessing officer as undisclosed income. The assessee has not shown any income either on such suppressed received. The learned Commissioner (Appeals) noted that before him the assessee raised mainly three contention, (i) assessee has shown correct income based on the percentage completion method, (ii) that entire alleged on money is not taxable as income as only profit element should be taxed, and (iii) that assessee has already made disclosure of Rs. 2.00 Crore as undisclosed income for the entire project on the basis of alleged on money received that is Rs. 7.56 Crore for the entire project. All these contention of assessee was rejected by assessing officer, the assessing officer simply made addition on account of difference of booking amount and the amount shown in the books of account. The learned Commissioner (Appeals) also noted that assessing officer allowed telescoping of unsecured loan of ₹ 1.54 Crore on the ground that same representing

accommodation entries made out of the unaccounted money and represent utilization of money.

9. The learned Commissioner (Appeals) independently considered the contention of assessee regarding the percentage completion method as applicable to the real estate transaction. The learned Commissioner (Appeals) noted that assessee explained that project has fulfilled triple condition of revenue recognition during the year. First of achieving reasonable level of development i.e. stage of completion of construction, second at least 25% of saleable project area should be secured by agreements with buyers and third one at least 10% of the total revenue as per agreements are sale realized. The working provided by assessee was also recorded by learned Commissioner (Appeals) on page No. 20 and 21 of the order in the following manner ;

“Application of percentage completion method as per guidance note of accounting for real estate transaction”

Particulars		Working
Total sellable area square feet		247007
Project cost		
Land	₹ 21643714/-	
Cost of construction	₹ 163505405/-	₹ 185149119/-
Cost incurred till 3.03.2012		

Land	Rs. 21,643,714/-	
	Rs. 42,678,665/-	Rs. 64,322,379/-
Total area sold till 31.03.2012(sq Ft)		102167
Total sale consideration as per agreement of sale executed		Rs. 89,774,603/-
Amount realized till 31.03.2012		Rs. 21,061,890/-
Condition No. 1		
Percentage of completion of work without land till 31.03.2012 should be more than 25%		26.10%
(42678665/163505405)		
Condition No. 2		
Project area sold by agreements till 31.03.2012 should be more than 25%		41.36%
(42678665/163505405)*100		
Condition No. 3		
Revenue realized till 31.03.2012 should be more than 10%		23.46%
(21061890/89774603)*100		
Working of profit for A.Y. 2012-13		
Percentage of completion of work		34.74%
(64322379/185149119)*100		
Revenue recognized		Rs. 31,188,460.79/-
(Rs.89774603*34.74%)		

Proportionate cost		Rs. 26,605,013.20/-
(102167/247007* Rs. 64322379)		
Income from project		Rs. 45,83,447.59/-

10. On the basis of aforesaid working, the learned Commissioner (Appeal) held that profit we should be booked in the books of account as per project completion method works out to ₹45,83,447/- against which the assessee has already offered ₹57,66,360/- in its return of income. The assessee has also explained that they have applied flat 8% profit rate on work in work in progress to arrive at the profit for the current year on percentage completion method. The learned Commissioner (Appeals) noted that assessing officer has not examined the issue not rejected the method of profit determining which are mining the project on a year-to-year basis. The assessing officer has not rejected the books of accounts by pointing out any defects in the maintenance of books of account by invoking the provision of section 145(3) of the Income tax Act.

11. On second contention of the assessee that whole of the alleged on money received during the year cannot be taxed the learned Commissioner (Appeals) recorded that it was argued before him that it is settled law that when unaccounted sale is detected only the profit component embedded therein should

be brought to tax and relied on the decision of jurisdictional High Court in CIT versus President Industries [258 ITR 654(Gujarat)]. The learned Commissioner (Appeals) further noted that it was argued before him that out of the total unaccounted on money of ₹ 7.56 Crore, they have offered Rs. 2.00 Crore as undisclosed income which is 26.83%, which is much more than the regular profit rate of 8% offered by assessee in the return of income. Thus, the additional disclosure of Rs. 2.00 Crore cover all profit component of alleged on account of receipt related for the year under consideration and thus, there was no scope for further addition. It was also recorded that since, on money is not part of work in progress working and is part of advance against sale, no profit should be worked out on this amount. There was no sale of flat and the sale was started in subsequent year and ended in the year when survey was conducted in assessment year 2014-15. The assessee also prayed for application of project completion method and revenue should be recognized in the subsequent year which is assessment year 2014-15. The learned Commissioner (Appeals) after considering the submission of the assessee concluded that working of project completion as noted above was furnished before him, which works out to be Rs. 45.83 lakhs. The assessee has not taken

₹2.86 Crore as a part of revenue though received. Thus, the working of assessee is defective and is an inappropriate to that extent. The assessee while filing of return worked out net profit @ 8.7 % of work in progress of ₹ 6.63 Crore and arrived at the carry forward work in progress of ₹ 7.20 Crore. Beside this work in progress cannot be taken as absolute truth because evidence of unexplained expenditure as per admission of assessee for entire project was also found, further the assessee has taken a stand that if addition is required to be made that should not be more than 8% of ₹ 2.86 Crore of alleged unaccounted received for the year under consideration. On the basis of conclusion of defect working the learned Commissioner (Appeals) restricted the addition to the extent of 8.7% of ₹ 2.86 Crore. The learned Commissioner (Appeals) worked out 8.7% of ₹ 2.86 Crore at ₹ 24,92,908/-, which was rounded to figure of ₹ 25 lakhs, thereby granted relief of ₹ 2.61 Crore. Aggrieved by the order of learned Commissioner (Appeals) the revenue has filed present appeal before the Tribunal.

12. We have heard the submission of learned departmental representative (DR) for revenue and the learned authorised representative (AR) for assessee and have gone through the

orders of lower authorities carefully. Ground No. 1 to 3 are general. Ground No. 4 relates to the additions under section 68 and Ground No. 5 relates to consequential disallowance of interest expenses. The learned DR for the revenue submits that a survey was conducted at the premises of the assessee on 30th August 2013. During the survey action statement of one of the partner was recorded oath. The partner of assessee admitted to have received accommodation entry in the form of unsecured loan. The statement was given voluntarily and binds the assessee form. Section 31 of Evidence Act binds the persons who make statement. The onus was upon the assessee to prove that statement was obtained under any duress or presser. No such averment was ever made by the assessee. The assessee failed to prove the identity of creditor, creditworthiness of creditor and the genuineness of transaction. During the assessment or during the first appellate authority, the assessee failed to bring any material on record that unsecured loan was a genuine transaction. The finding of learned Commissioner (Appeals) in para 7.2 at page 13 is not correct. The ld. DR for the revenue prayed for reversing the finding of learned Commissioner (Appeals) and to restore the order passed by assessing officer. In support of ground No. 6 the ld DR for the revenue submits that in para 6

of the assessment order the assessing officer clearly held that during the survey action under section 133A, it was found that the assessee received sum of Rs. 4.81 Crore, however, the assessee in its books of accounts have shown only receipts of Rs. 1.94 Crore, thus there was clear difference of Rs. 2.86 Crore. The assessee nowhere established that Rs. 2.86 was part of Rs. 2.00 Crore offered by the assessee during the survey action. The learned Commissioner (Appeals) restricted the addition to 8.7%. The ld. DR for the revenue submits that entire amount should be upheld.

13. On the other hand the ld. AR for the assessee supported the order of learned Commissioner (Appeals). The ld. AR for the assessee further submits that Ground No.4 relates to deleting the treatment of unsecured loan as unexplained credit under section 68 and ground No.5 relates to deleting the interest expenses and ground No 6 relates to restricting the difference of alleged undisclosed receipt of booking amount to 8.7%. The ld AR for the assessee further submits that survey action was carried out at the premises of the assessee on 30th August 2013. Notice under section 131 was issued to the assessee for recording the statement of the partner. No proceeding was pending at the relevant time to invoke the provision of section

131 of the Income-tax Act. The statement was recorded by the survey party under section 133A, such statement has no evidentiary value in the eyes of law. The survey party has no power to administer oath to the person, whose statement is recorded by them. The assessing officer without rejecting the books of account and pointing out any defect make huge addition on account of undisclosed receipt. The ld. Commissioner (Appeals) after considering the entire facts and the material called by him, as recorded in par 9 of the impugned order and restricted the addition of undisclosed receipt of booking to 8.7%. In support of his submissions the ld AR for the assessee relied on the decision of Hon'ble Apex Court in CIT Vs Kadar Khan (2012) 25 taxmann.com 413SC, Gujarat High Court in CIT Vs Shardaben K Modi (2013) 35 Taxman.com 264(Guj), CIT Vs Golden Finance (2013) 40 taxmann.com 264 (Guj) and CIT Vs Kishore Mohan Lal Telwala (ITA No. 411 of 1999 dated 24.04.2000).

14. On the issue of year of taxation the ld AR for the assessee relied on the case law in CIT Vs Ashaland Corporation [1987] 7 Taxman 393 (Guj), CIT Vs Motilal C Patel & Co. {1988] 40 TAXMAN 336 (Guj) and CIT Vs Om Developers (ITA No. 314/Ahd/2002). On the issue of estimation of profit relied on

CIT Vs Abhishek Corporation (IT No. 15 of 2003), Greenfield Reality P Ltd Vs ACIT (IT (ss) A 289, to 292/Ahd/2018) and CIT Vs Hariram Bhambani (ITA No. 313 Of 2913 Bom HC).

15. We have considered the rival submission of the parties and have considered the contentions of the orders passed by lower authorities. We have also deliberated on the various case laws relied by the parties. During the assessment the assessing officer made addition of Rs. 1.54 Crore by taking view that statement of partner of assessee recorded during the survey wherein he admitted to have availed the accommodation entry and during the assessee that assessee failed to prove the creditworthiness of the lender and made addition under section 68 of ₹ 1.54 Crore. Since the loan was treated as bogus loan, consequent upon the interest expenses ₹ 13.79 lakhs, on such unsecured loan was also treated as non-genuine.

16. During the assessment the assessing officer on perusal of the survey report noted that assessee received booking amount of ₹ 4.81 Crore during the relevant financial year and that assessee has shown a receipt of ₹ 1.94 Crore only in its books of account. On show cause the assessee explained that differential amount are advance received as booking amount during the year and the assessee has disclosed the additional

income of Rs. 2.00 Crore in the year in which flat, shops and offices were sold and document were executed. The assessee stated that they are following 'Percentage of Completion Method' and have shown a specific percentage of work in progress (WIP) as profit and hence advance received would not affect net profit of the assessee. The claimed that during the year under consideration the assessee has shown profit at the rate of 8% of work in progress i.e. total cost of the construction. The assessing officer not accepted the version of assessee by taking view that there is difference of Rs. 2.86 Crore, which has not been disclosed by the assessee. The assessing officer treated the entire difference of amount as income of the assessee. The assessing officer took his view that no profit can be calculated on such amount. The assessing officer also held that assessee failed to prove that unaccounted advance of ₹ 2.86 Crore are part of disclosure of Rs. 2.00 Crore made during the financial year 2013-14, i. e. for assessment year 2014-15. The assessing officer treated Rs. 2.86 Crore as undisclosed income of the assessee. The assessing officer was of the view that out of the amount of Rs. 2.86 Crore, the assessee availed accommodation entry in the form of unsecured loan of Rs. 1.54 Crore, on which commissions must have been paid to Vipul Thakkar. On the

aforesaid observation, the assessing officer was of the view that no separate addition of unsecured loan added, but addition of undisclosed advances was made. The assessing officer thus, made addition of Rs.2.86 Crore on account of unaccounted advance.

17. Before learned Commissioner (Appeals) the assessee filed exhaustive written submission as recorded above. The learned Commissioner (Appeals) after considering the submissions and the material called by him, considered the contention of the assessee held that before him the assessee raised mainly three contention, (i) assessee has shown correct income based on the percentage completion method, (ii) that entire alleged on money is not taxable as income as only profit element should be taxed, and (iii) that assessee has already made disclosure of Rs. 2.00 Crore as undisclosed income for the entire project on the basis of alleged on money received that is Rs. 7.56 Crore for the entire project. It was noted by learned Commissioner (Appeals) that all these contention of assessee was rejected by assessing officer, the assessing officer simply made addition on account of difference of booking amount and the amount shown in the books of account. The learned Commissioner (Appeals) also further noted that assessing officer allowed

telescoping of unsecured loan of ₹ 1.54 Crore on the ground that same representing accommodation entries made out of the unaccounted money and represent utilization of money. The learned Commissioner (Appeals) independently examined the contention of assessee regarding the percentage completion method as applicable to the real estate transaction. The learned Commissioner (Appeals) noted that assessee explained that project has fulfilled triple condition of revenue recognition during the year. First of achieving reasonable level of development i.e. stage of completion of construction, second at least 25% of saleable project area should be secured by agreements with buyers and third one at least 10% of the total revenue as per agreements are sale realized. The learned Commissioner (Appeals) after considering the working of the assessee, which we have recorded in para 9 (supra) held that profit we should be booked in the books of account as per project completion method works out to ₹45,83,447/-against which the assessee has already offered ₹57,66,360/-in its return of income. The assessee have applied flat 8% profit rate on work in work in progress to arrive at the profit for the current year on percentage completion method.

18. The learned Commissioner (Appeals) held that assessing officer has not examined the issue not rejected the method of profit determining which are mining the project on a year-to-year basis. The assessing officer has not rejected the books of accounts by pointing out any defects in the maintenance of books of account by invoking the provision of section 145(3) of the Income tax Act. On second contention of the assessee that whole of the alleged on money received during the year cannot be taxed the learned Commissioner (Appeals) recorded that it was argued before him that it is settled law that when unaccounted sale is detected only the profit component embedded therein should be brought to tax and relied on the decision of jurisdictional High Court in CIT versus President Industries [258 ITR 654(Gujarat)]. The learned Commissioner (Appeals) further noted that it was argued before him that out of the total unaccounted on money of ₹ 7.56 Crore, they have offered Rs. 2.00 Crore as undisclosed income which is 26.83%, which is much more than the regular profit rate of 8% offered by assessee in the return of income. Thus, the additional disclosure of Rs. 2.00 Crore cover all profit component of alleged on account of receipt related for the year under consideration and thus, there was no scope for further addition. It was also recorded that since, on money is not part

of work in progress working and is part of adverse again sale, no profit should be worked out on this amount. There was no sale of flat and the sale was started in subsequent year and ended in the year when survey was conducted in assessment year 2014-15. The assessee also prayed for application of project completion method and revenue should be recognized in the subsequent year which is assessment year 2014-15. The learned Commissioner (Appeals) after considering the submission of the assessee concluded that working of project completion as noted above was furnished before him, which works out to be Rs. 45.83 lakhs. It was held that the assessee has not taken ₹2.86 Crore as a part of revenue though received; hence, the working provided by assessee is defective and is an inappropriate to that extent. The assessee while filing of return worked out net profit @ 8.7 % of work in progress of ₹ 6.63 Crore and arrived at the carry forward work in progress of ₹ 7.20 Crore. It was also held that work in progress cannot be taken as absolute truth because evidence of unexplained expenditure as per admission of assessee for entire project was also found, further the assessee has taken a stand that if addition is required to be made that should not be more than 8% of ₹ 2.86 Crore of alleged unaccounted received for the year under consideration. On the basis of

conclusion of defect working the learned Commissioner (Appeals) restricted the addition to the extent of 8.7% of ₹ 2.86 Crore. The learned Commissioner (Appeals) worked out 8.7% of ₹ 2.86 Crore at ₹ 24,92,908/-, which was rounded to figure of ₹ 25 lakhs, thereby granted relief of ₹ 2.61 Crore.

19. Before us, no specific submission was made by Id. DR for the revenue on the finding of learned Commissioner (Appeals) that the survey was conducted on 30th August 2013 and that statement was related to the assessment year 2014-15, and the firm had made disclosure of Rs. 2.00 Crore for that year. The assessing officer made addition on the basis of statement recorded during the survey without any supporting evidence or any adverse material on record. The learned Commissioner (Appeals) also concluded that it is settled legal position that statement recorded during the survey has no evidence of value moreover the survey party has no power to record the statement oath. On the issue of estimated addition we have seen that leaned Commissioner (Appeals), while restricting the addition relied on the decisions of Hon'ble Jurisdictional High Court in CIT President Industries (258 ITR 654 Guj), Kishore Manohar Telwala (supra) and Abhishek Indutries Vs

DCIT(1999) 63 TTJ (Ahd) 651 and decision of Tribunal in Brijwasi Developers Pvt Ltd (ITA No. 289/Ahd/2013).

20. No contrary facts or law is brought to our notice to take other view; therefore, we affirm the order of leaned Commissioner (Appeals). In the result the grounds of appeal raised by the revenue are dismissed.

21. In the result the appeal of the revenue is dismissed.

Order pronounced on 06/01/2021.

Sd/-
(DR. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 06/01/2021

Self by author

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

/ / TRUE COPY / /

By order

Asstt. Registrar/Sr. PS/PS
ITAT, Surat