

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

(Through Virtual Court)

**ITA. No: 430/AHD/2019
(Assessment Year: 2008-09)**

ITO, Ward-1, Mehsana	V/S	M/s. Akash Developers 1st Floor, 82, Apna Bazar, (Vimal Super Market), S.T. Workshop Road, Mehsana
(Appellant)		(Respondent)

PAN: AAOFA4076G

**Appellant by : Shri O.P. Sharma, CIT/DR
Respondent by : Shri Vartik Choksi, A.R.**

(आदेश)/ORDER

Date of hearing : 12 -01-2021

Date of Pronouncement : 23-02-2021

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax ('hereinafter called CIT(A)') order no.

CIT(A)/GNR/386/2016-17 order dated 12/02/2018 arising out of assessment order dated 29/03/2016. Revenue has taken following grounds of appeal:

1. *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 10,00,58,873/- made by the A.O. on account of unexplained investment.*
2. *It, is, therefore prayed that the order of the Ld. Commissioner of Income-tax(Appeals) may be set aside and that of the Assessing Officer be restored.*
3. *The appellant prays for leave, to amend or alter any ground or add a new ground which may be necessary.*

2. 3. As per the information received from ADIT(Investigation), Mehsana, it was learnt that the partners in the assessee firm i.e. M/s Akash Developers has purchased land of Market value Rs.10,00,58,873/-at undervalued price of Rs. 95,00,000/-. Also, In this connection the ADIT (Inv.), Mehsana vide its letter dated 31/03/2015, furnished information with respect to sale of an immovable property situated at Survey No.1990/50 of Mehsana city during the period relevant to A.Y.2008-09 along with copies of following agreements and sale deeds of the aforesaid land-

"(i) Agreement dated 06/01/2007 executed between Sardar (Mehsana) owners Association, Mehsana [first party), M/s Akash Developers through its partners(second party) and Mr, Rewabhai Shankarbhai Patel & Mr. Jitendrakumar Rewabhai Patel of Visnagar (third party). This agreement shows that the original party who had owned the land i.e. land situated at Survey No,1990/50 of Mehsana city has given his consent to sell the said land. (Annexure-10 to the TEP)

(ii) Agreement to sale dated 06/01/2007 of the said land executed between M/s Akash Developers, Mehsana (seller party) through its partners and Mr. Rewabhai Shankarbhai Patel & Mr. Jitendrakumar Rewabhai Patel of Visnagar (purchaser party) for sale of the land situated at Survey No.1990/50 of

Mehsana City. As per this agreement the total sale value of the said land is Rs.10,95,58,873/- (Annexure -1 to the TEP)

(iii) Sale deed dated 20.12.2007 of the said land executed between Sardar (mehsana) owners Association, Mehsana (seller party) and M/s Akash Developers, Mehsana (purchaser party) for sale of the land situated at Survey No.1990/50 of Mehsana City on total consideration of Rs.95,00,000/- (Annexure-2 to the TEP)"

The original owner of the land situated at survey no. 1990/50 of Mehsana city was 'Sardar (Mehsana) Owners association, Mehsana'. The firm 'M/s Akash Developers',

Mehsana entered into transaction of purchase of the said land from Sardar(Mehsana) Owners Association, Mehsana vide sale deed dated 20.12.2007. However, before the execution of the sale deed dated 20.12.2007, M/s Akash Developers, Mehsana have made a sale agreement dated 06.01.2007 with Mr. Rewabhai Shankarbai Patel & Mr. Jitendrakumar Rewabhai Patel of Visnagar to sale the land in question.

3. It is evident from the agreement to sale deed dated 06/01/2007 of the land in question i.e. survey no. 1990/50 of Mehsana, the total sale value of the said land was Rs. 10,95,58,873/-.However, in the sale deed dated 20.12,2007 that was executed between Sardar (Mehsana) Owners association, Mehsana and the M/s. Akash Developers the sale consideration is taken at Rs. 95,00,000/- only. Therefore, it is clear that the sale deed dated 20.12.2007 was executed on undervalue of the said land by Rs. 10,00,58,873/-(Rs.10,95,58,873/- minus Rs. 95,00,000/-), which has escaped in the hands of the assessee.

4. During the course of re-assessment proceedings, it is learnt that in an identical issue of the related seller party namely 'M/s. Sardar Owner Association, Mehsana' the ACIT, Mehsana sought directions u/s 144A of I.T. Act. As the issues involved in the case of the assessee were purely identical to that of M/s. Sardar Owner Association, Mehsana and both these parties were involved in connected transactions, this office also submitted a letter dated 29/02/2016 before Ld. JCIT, Mehsana with request to issue necessary directions u/s 144A of the I.T. Act in this case. Subsequently the Ld. Jt. CIT, Mehsana passed a Direction u/s 144A of the IT Act, dated 28/03/2016 whereby the Assessing Officer was directed to take action as per direction given as under on aforesaid issue and complete the assessment accordingly:-

"In this case a reference has been made by the Income Tax Officer Ward-1 Mehsana vide his letter dated 29/02/2016 u/s 144A of the I.T. Act 1961 with regard to assessment proceedings pending with him u/s 147 for Asstt. Year 2008-09. In order to look in to the facts, assessment record was called for from the A.O and vide this office letter No.MHN/JCIT/F.No 43/2015-16/ dated 02/03/2016 the assessee was asked to furnish necessary details / copies of documents etc in support of him claim. In response Shri Haresh Kansara CA & A R of the assessee attended, filed written submissions which are placed on record. The facts of the case in connection with the reference were discussed with the A/R and he was heard.

2. Briefly the facts of the case are that the assessee firm comprising of nine partners, furnished its return of income for the Asstt. Year 2008-09 on 20/01/2009 showing "NIL" income. Later on as per information received from the investigation wing of Income Tax Department it was known that during the period relevant to the Asstt. Year under consideration the assessee has purchased a land at Mehsana, bearing Survey No 1990/50 from one M/s Sardar Owners Association, which was registered vide Registration No 9989 on 20/12/2007 wherein sales consideration has been shown at Rs 95,00,000/- whereas facts came to notice indicate that value of the property was Rs 10,95,98,922 /- because firstly as per the copy of document titling " Banakahat Karar Lekh dated 06/01/2007", received from the Investigation Wing, Mehsana, an agreement was made between - (i) Sardar (Mehsana) Owners Association, Mehsana & Partners of the assessee firm as seller and (ii) Svs Revabhai Shankerbhai Pate I & Jitendra Kumar Revabhai Patel as purchaser of the said land . In this document the land was agreed to sale @ Rs 1381/- Per Sq.Feet. The land is admeasuring to 7373Sq Mts or 79362 Sq Feet, as such the total sales consideration works out at

Rs 10,95,98,922 /- (79362 x 1381) . The 25% of the same works out at Rs 2,73,99,730/- , however in order to clarify the amount an estimated 25% of the sales consideration has been shown in the document itself at Rs 2,54,00,000/- which makes crystal clear that the value of the land was above 10crores. It was also mentioned in the agreement that advance amounting to Rs 61,00,000/- has been received by the seller parties from the purchaser parties , Secondly as per the copy of another document titling " Sanmati Karar Lekh dated 06/01/2007 " received from the Investigation Wing, Mehsana that an agreement was done between (i) Sardar (Mehsana) Owners Association, Mehsana as first party and (ii) Partners of the assessee firm as second party and (Hi) Shri Revabhai Shankarbhai Patel and Shri Jitendra Kumar Revabhai Patel as third party . Through this document the first party has given its consent if the second party sales the property to the third party because vide their earlier banakhat dated 21/09/2006 they have agreed to sale this property to the assessee firm. As such , the property which was agreed to sale on 06/01/2007 for a sales consideration of more than ten crores cannot be believed to have been sold for Rs 95,00,000/- on 20/12/2007 as such the A.O has referred the issue before the under signed with his opinion that apparently there is suppression of actual value/sales / purchase consideration.

3. Before issuing any direction to the A.O the assessee was accorded an opportunity of being heard, copies of both the documents relied upon by the department were given to Ld A/R of the assessee and he was asked to explain as to why the unaccounted investment in the guise of suppression of purchase consideration should not be added to the declared income of the assessee. In response the assessee vide it's A/R's letter dated 22/03/2016 filed on 23/03/2016 submitted as under-

*From:
M/s Akash Developers
1, Samrajya Flats,
Ambavadi, Mehsana.
PAN: AAOFA4076G*

*To,
The Joint Commissioner of Income Tax,
Mehsana Range,
Mehsana.
Dear Sir,
Sub: Assessment proceedings for A.Y. 2008-09,*

Ref: Your Letter dated: 11.03.2016

The issue is in connection with the purchase and sale of the land at Mehsana bearing survey no 1990/50 which was registered on 20/12/2007 in which sale consideration of Rs. 95,00, 000/- is mentioned . it is alleged that there is a suppression of sale price in the transaction . There is a reference of one Banakhat Karar lekh and the "Sanmati karar lekh ". In that connection , we would like to submit as under.

The proceedings are in the case of M/s Akash Developers which is a partnership firm and is created on 28/08/2007. It consists of nine partners. So, the Banakhat Karar lekh and Sanmati Karar lekh which were entered before the partnership deed has no relevance for this issue. More so when the documents are entered into not in the name of the partnership firm but by the individual persons who formed the partnership subsequently, So, as the partners and the partnership firm are two different assessee and are always assessed separately, the reference and the documents which were made by individuals are not by the firm is not relevant and binding on the partnership firm.

Further, assuming but not agreeing to the fact that the calculations mentioned in the order sheet dated 11/03/2016 is taken as correct, and then in that case also , adverse reference cannot be drawn against the assessee because of following reasons:

Firstly, the banakhat made between the individuals , Sardar (Mehsana) Owners Association and Svs Revabhai Shankarbhai Patel & Jitendrakumar Revabhai Patel. Is on 06/01/2007 and on the very second day i.e. on 07/01/2007 the same and the said parties to the Banakhat cancelled in one day is not relevant.

Secondly, it is mentioned that the cash of Rs. 61,00, 000/- is paid as per the Banakhat. In that connection we would like to mention that on cancellation of the Banakhat the very next day the amount paid was refunded by the individuals who were the party to the said Banakhat. We are enclosing the copy of said Banakhat which was cancelled on 07/01/2007 in which the party has conformed that the banakhat made on 06/01/2007 stands cancelled and the amount paid is received back by them. So, again in this transaction of cash payment and cash receipt the assessee firm is not concerned as it is not the party to the document.

Thirdly, the documents mentioned in the Order Sheet and given to the A.R. during the course of hearing and the reference to the prices alleged to be mentioned in the said documents cannot be applied as the documents were cancelled in one day only, the amount alleged to have been paid in cash has also been returned back and the parties have acknowledged the same facts on the face of the Banakhat only. It is further submitted that the said party has given us Affidavit conforming the fact of the money received by them.

Fourthly, the assessee firm has purchased land on 20/12/2007 for Rs. 95,00, 000/-. After the purchase it was noticed that there is a litigation on the said land in the High Court of Gujarat. So the project for which the land was purchased

cannot be materialized due to litigation and the firm decided to sell the land and in fact has sold the land on 24/12/2010 for Rs. 1,25,00,000/- and has paid the taxes due thereon. Both the transactions were done by the firm on or above Jantri Value as mentioned in the order sheet seems to be imaginary and not realistic.

Fifthly, as per our submission the Income Tax Department has no material or proof or evidence showing the payment of value mentioned in the alleged Banakhats . More so, the department has no evidence to show that the assessee has paid more price than one mentioned in the purchase document of Rs. 95.00 lacs, the suppression cannot be concluded. We also request to provide us any materials against us which is proposed to be used against us, so that we can suitably reply and it will be as per the rules of the natural justice and fair play.

So, in our submission the facts that.

- The assessee firm is not a party to the documents mentioned in the order sheet or documents given to the A.R. during the course of hearing.*
- The Banakhat were cancelled in just one day.*
- The party who has been alleged to have made payments in cash at the time of Banakhat has acknowledged the cancellation of the documents and has conformed the receipt of payment given by way of document and notarized affidavit.*
- The property in question is subject to prolonged litigation and is not a clear property to do some project.*
- The assessee firm has purchased and sold the same as it is because of litigation.*

Thus the alleged suppression of sales does not get established for the assessees. The relevant following documents are enclosed herewith for your reference and perusal.

- Deed of partnership.*
- The copy of cancelled Banakhat in which the conformation of the money received is mentioned.*
- The purchase document ofRs. 95.00 lacs.*
- The sale deed ofRs. 125.00 lacs.*
- The affidavit of the party for cancellation ofbanakhat and money received back.*
- The litigation history and pendency of case till date of the property in question.*

*Sincerely yours,
Thanking You,
For, Akash Developers*

*(Partner)
End: As above 4.*

I have gone through the submissions and details furnished by the assessee very carefully, and do not found the same to be acceptable. To deal with the objections of assesses that the assessee firm is not a party to the transactions but its partners , it is to be pointed out that as is the matter of fact the land was sold by Sardar (Mehsana) Owners Association , Mehana to M/s Akash Developers (the assessee firm) the sale deed is registered with the Sub Registrar Mehana vide No 8989 dated 20/12/2007 . This makes crystal clear that the investor in the property is firm only and the partners were only signing authorities on behalf of the assessee firm. The submission that the Banakhat dated 06/01/2007 was cancelled on the very next day i.e on 07/01/2007 and the advance was refunded, goes on the establish that the deal agreed and sales consideration was ascertained, which as per the calculation works out at Rs 10,95,58,873/- whereas the value shown in the registered sale deed at Rs 95,00,000/- only . The submission that after purchasing the land on 20/12/2007 for Rs 95,00,000 /- the assessee has sold it on 24/12/2010 for Rs 1,25,00,000/- , makes it further clear that the assessee firm was actual investor . In the light of facts as evident from the Banakhat dated 06/01/2007 it can be safely inferred that the worth of the property while purchasing was not merely Rs 95 lacs but Rs 10,95,58,873/-5. In view of the facts as discussed above I do not find any reason to hold that the property which was agreed to purchase for a consideration of Rs 10,95,58,87 3/- was purchased for merely Rs 95,00,000/- while getting the same registered with the office of Sub Registrar ,the A.O is therefore appears to be justified in his observation, that there has been suppression of investment or unaccounted investment by the assessee in purchase of the land, accordingly the A.O is directed to assess difference between the two (10,95,58,873- 95,00,000= 10,00,58,873) as unaccounted investment by the assessee . The escaped income of the assessee as such is therefore to be taxed. "

4. As the direction u/s 144A of I.T. Act is binding on the A.O., therefore, in compliance of the aforesaid direction of Range Head, the difference of Rs. 10,00,58,873/- between the amount of Rs. 10,95,58,873/- i.e. consideration as per Agreement and amount of Rs. 95,00,000/- i.e. consideration as per the sale deed, is added to the total income of the assessee treating the same as unaccounted investment by the assessee.
5. Against the addition of Rs. 10,00,58,873/-, assessee preferred first statutory appeal before the Ld. CIT(A) who granted relief to the assessee on the ground that the JCIT/AO has not disputed the fact that sale deed executed during the

- year under consideration was at prevailing jantri rate and no document/evidence seized was referred in the assessment order which in fact proves that the appellant has made on-money payment as alleged by the A.O. and held that in the absence of any corroborative evidence, the addition made by the A.O. cannot be sustained.
6. Now Revenue has come before us by way of second statutory appeal.
 7. We have gone through the relevant record and impugned order. Now question before us is whether assessee has executed sale deed less than Jantri rate or whether assessee has made on-money payment as alleged by the A.O. or not ?
 8. In this case, addition has been made on the basis of information received from the Investigation Wing of the Department at Mehsana that there has been escapement of income on the ground that actual deed was executed at Rs. 95 lacs whereas the agreement to sell for the same land was entered at Rs. 10,95,58,873/- and hence sale deed was executed at undervalued consideration.
 9. Revenue has not given any comparable and moreover matter was not referred to the DVO for ascertaining actual cost of the land. In our considered opinion, the appropriate person was DVO who would have been able to ascertain the actual cost of the land, but Ld. A.O. has not exercised such practice and same is amounting to miscarriage of justice. Merely on the ground of information, addition cannot be sustained and for making any addition there has to be some corroborative evidences as well on the basis of surmises and conjectures addition cannot be sustained.

10. The Hon'ble Gujarat High Court in the matter of Sopan Infrastructure (P.) Ltd.
Vs. ITO [78 traxmann.com 170 (Gujarat)]:

"8. At this stage, it is required to be noted that even with respect to addition made in respect of on-money received in A.Y 2007-2008, the same has been subsequently set-aside by the learned CIT [A], against which an appeal was preferred which has been dismissed on the ground of low tax effect. Considering the aforesaid facts and circumstances of the case and solely on the observations made by another Assessing Officer with respect to the subsequent assessment years i.e., 2007-2008, the reopening was not permissible, more particularly in absence of any other tangible material available with the Assessing Officer that in the year 2005-2006, the assessee had received any on-money. Under the circumstances, it was not open for the Assessing Officer to re-open the assessment for A.Y 2005-2006, that too beyond the period of four years and more particularly when the original assessment was done under Section 143 (3) of the I.T Act.

9. In view of the above and for the reasons aforesaid, this petition succeeds. Impugned notice dated 26th March 2012 issued under Section 148 of the Income-tax Act, 1961 by the Revenue is hereby quashed and set-aside. Rule nisi made absolute. No costs."

11. The Hon'ble Gujarat High Court has further held in the matter of Vinodbhai Shamjibhai Ravani Vs. DCIT (79 Taxmann.com 237):

Section 48, read with section 148, of the Income-tax Act, 1961 -Capital gain - Computation of (Full value of consideration) -Assessment year 2009-10 - Assessee was partner in various firms -Re-opening notice was issued against assessee on basis of one sauda chitthi signed by him which was found during search - Sauda chitthi purportedly disclosed that land was sold by assessee for a much higher value but, subsequently, sale deed was executed for a much lesser consideration and balance amount was received by assessee in cash as on money - As per Assessing Officer, said amount was to be added to income of assessee - It was noted that assessee was never owner of land in question - Sale deeds were executed by original land owners - /Assessee had never executed any sale deeds - There was no tangible material available on record to form a reasonable belief that amount of sale consideration had been received by assessee in cash -

Whether it could not be said that any income had accrued to assessee and, therefore, reopening notice was deserved to be set aside - Held, yes [Para 7] [In favour of assessee]"

12. The assessee has filed an assessment order in assessee's own case for A.Y. 2011-12 wherein assessee has sold that land at Rs. 1,25,00,000/- in 2020 meaning thereby that assessee earned profit of Rs. 30 lacs in three years and same contention has been accepted by the Ld. A.O. with regard to same land when department has accepted the sale price of the said land at Rs. 1,25,00,000/- how that land could be alleged to have been purchased at Rs. 10,95,58,873/- and department has not brought anything on record to controvert the finding of the Ld. CIT(A). Thus, in view of the above, we are not inclined to interfere in the order passed by the Ld. CIT(A).

13. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in Open Court on	23 - 02- 2021
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Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER **True Copy**
Ahmedabad: Dated 23/02/2021

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad