

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, Hon'ble JUDICIAL MEMBER
AND Dr.SHRI ARJUN LAL SAINI, Hon'ble ACCOUNTANT MEMBER

(Virtual Hearing)

आ.अ.सं./I.T.A No.395/SRT/2018
निर्धारण वर्ष/Assessment Year: 2014-15

Rudra Developers, Pali Hill No.4, Tithal Road, Valsad. [PAN: AADFR 8700 K]	Vs .	The Principal Commissioner of Income Tax, Valsad.
अपीलार्थी / Assessee		प्रत्यर्थी/Respondent

निर्धारितकीओर से /Assessee by	Shri Nitin Mehta – CA & Shri Amrit Pathan – CA
राजस्वकीओर से /Revenue by	Shri S.T.Bidari – CIT(DR)

सुनवाई की तारीख/ Date of hearing:	13.04.2021
उद्घोषणा की तारीख/Pronouncement on:	07.06.2021

आदेश /O R D E R

PER Dr.ARJUN LAL SAINI, ACCOUNTANT MEMEBER:

By way of this appeal, the assessee has challenged the correctness of the order of Learned Principal Commissioner of Income Tax-Valsad, Valsad, (hereinafter referred as “Ld.PCIT”) under section 263 of the Income Tax, 1961 (the “Act”) dated 29.03.2018. Grievances raised by the assessee in its revised grounds of appeal are as follows:

- “1. The learned Principal Commissioner of Income Tax, Valsad (“the CIT”) erred in fact and in law in revising the assessment by invoking powers u/s 263 of the Income Tax Act, 1961 (“the Act”) despite the fact that the conditions stipulated for invoking such extra-ordinary jurisdiction were not satisfied.*
- 2. The learned CIT erred in fact and in law in setting aside the assessment u/s 143(3) of the Act and directing a fresh assessment on the issues already considered and decided during the proceedings u/s 143(3) of the Act.*

3. *The learned CIT erred in law and in fact in not dropping the proceedings u/s 263 and observing that the order passed u/s 143(3) was made without proper examination and inquiry despite the fact that the learned Assistant Commissioner of Income Tax, Valsad Circle, Valsad ("the AO") had examined the matter and the order u/s 143(3) was passed after application of mind.*
4. *The learned CIT erred in fact and in law in not dropping the proceedings u/s 263 despite the fact that the original order passed by the learned AO was not erroneous nor was prejudicial to the interest of the Revenue.*
5. *The learned CIT erred in fact and in law in not dropping the proceedings u/s 263 despite the fact that the Assessee had given full explanation with respect to the issues raised by the learned CIT.*

Alleged Undisclosed Income:

6. *The learned CIT erred in fact and in law in directing the learned AO to frame a fresh assessment in the case of the Assessee despite the fact that the learned AO had thoroughly examined the additional income disclosed by the Assessee in the return filed subsequent to survey proceedings.*
 7. *The learned CIT erred in fact and in law in directing the AO to frame a fresh assessment in the case of the Assessee despite the fact that the AO had thoroughly examined the material which was impounded during the course of survey.*
 8. *The learned CIT erred in fact and in law in directing the AO to frame a fresh assessment in the case of the Assessee merely on the basis of assumptions, surmises and conjectures.*
 9. *The learned CIT erred in fact and in law in not appreciating the submissions and evidences submitted by the Assessee during the course of the revision proceedings.*
 10. *The learned CIT erred in fact and in law in holding that income of Rs. 207.90 crores had escaped assessment and consequently directing the AO to frame a fresh assessment.*
 11. *The learned CIT erred in fact and in law in holding that income of Rs. 207.90 crores had escaped assessment merely on the basis of assumptions and presumptions and without appreciating the evidences and submission filed by the Assessee.*
 12. *Your Assessee craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal."*
2. Although, in this appeal, the assessee has raised multiple grounds of appeal, as noted above, however, during the course of hearing the solitary

grievance of the assessee has been confined to the issue that jurisdiction exercised by the Learned Principal Commissioner of Income Tax-Valsad, (“Ld.PCIT”) under section 263 of the Act is not valid, so far the following issues are concerned:

(i).Amount declared in survey Rs.2,10,00,000/- Vis-à-vis Rs.210,00,00,000/- (that is, Rs.2.10 crores Vis-à-vis Rs.210 crores).

(ii).Though assessee had declared Rs. 2,10,00,000/- in the survey proceedings, the returned income was only Rs.2,11,99,030/-, which means apart from the disclosure in the survey proceedings, the assessee had a mere Rs.1.99 lacs as regular income for the year.

(iii).In the pre-survey period for 6 Months, the land development and land leveling expenses were Rs.34.82 lacs, whereas in the post -survey half of the year the expenses are Rs. 1.19 Crores.

(iv).The sundry creditors for land development and land leveling expenses were shown as outstanding at the end of the year, but no details of the parties were furnished before the assessing officer.

3.Facts of case which can be stated quite shortly are as follows: The Assessee before us is a partnership firm engaged in the business of development and construction of real estate projects.The assessee filed its return of income for the assessment year 2014-15, on 26.09.2014 by declaring total income of Rs.2,11,99,030/-. The case was manually selected for scrutiny and the assessment under section 143(3) was finalized on 20.12.2016 determining total income of Rs.2,14,30,830/-. A survey under section 133A was conducted on the business premises of the Assessee on 30.09.2013 and in pursuance of the same, the assessee had disclosed additional income of Rs.2,10,00,000/- in its return of income. During the course of the survey as well in the course of the assessment proceedings, the disclosure made by the

assessee was thoroughly verified and the disclosure made at Rs. 2,10,00,000/- in the return of income filed was accepted by the assessing officer.

4. After that, Learned Principal Commissioner of Income Tax (Id PCIT) has exercised his jurisdiction under section 263 of the Act. From the assessment records and survey statements, the Id PCIT observed that disclosure made at Rs. 2,10,00,000/- (in short 2.10 crores) by the assessee in the return of income filed was accepted by the assessing officer without application of mind. As per Id PCIT, the said disclosure should be read by the assessing officer at Rs.210,00,00,000/- ((in short 210 crores). Therefore, Id PCIT has pointed out that in the assessment order the assessing officer should have made addition to the tune of 210 crores instead of 2.10 crores. The Id PCIT also observed that assessing officer has not examined that though assessee had declared Rs. 2,10,00,000/- in the survey proceedings, the returned income was only Rs.2,11,99,030/-, which means apart from the disclosure in the survey proceedings, the assessee had a mere Rs.1.99 lacs as regular income for the year. The assessing officer has not examined the pre-survey period and post -survey period, the land development and land leveling expenses. The assessing officer also failed to examine sundry creditors for land development and land leveling expenses. Therefore, Id PCIT observed that order passed by the assessing officer was erroneous and prejudicial to the interest of Revenue.

5.The assessee during the 263 proceedings, submitted reply before the Learned Principal Commissioner of Income Tax (Ld.PCIT). The Ld.PCIT has issued nine show cause notices to the assessee which are stated in his order under section 263 of the Act, from page no.2 to 44 of his order under section 263 of the Act. The Ld.PCIT has issued nine show cause notices, on different issues during the 263 proceedings. His order under section 263 contains 54 pages. The assessee has filed written submissions against these nine show cause notices which have been reproduced by the Ld.PCIT in the revision order under section 263 of the Act. The main reason to revise the assessment order passed by assessing officer under section 143(3), dated 20.12.2016 was that since the assessing officer has committed error in reading the figures (Amount) disclosed in the survey proceedings. In the diary of the assessee, the amount was written, say for example, 400 Lacs, it should be read as 4 Crores instead 4 Lacs. According to the ld PCIT, 400 Lacs, means 4 Crores, however, the assessing officer has considered in his assessment order at 4 Lacs only, therefore, ld PCIT concluded in his order that assessing officer has not applied his mind, as assessing officer has read 400 Lacs, as 4 Lacs only, instead of 4 crores. Therefore, Ld.PCIT observed that Assessing Officer has not made enquiry about the undisclosed income declared by the assessee at Rs.2.10 crores, (it must be considered by the assessing officer at Rs.210 crores). The observation of Ld.PCIT for the main issue is reproduced below:

(i)As can be seen from the contents of para-4 of letter dated 01.03.2018, the figures in hundreds have been taken as figures in singular for example, 400L

which should mean 400 Lacs or 4 crores has been taken as 4 lacs on the basis of the assessee's submissions during the course of survey proceedings.

(ii) Going by common sense and usual practice one is likely to find examples of writing/jotting down big amounts in short form/abbreviated form, for example, 400 lacs (400L) may be abbreviated and written/jotted down 4L but not otherwise i.e. no reasonable person will write/jot-down 4 lacs (4L). This is completely absurd and the AO has caused serious damage to the cause of revenue by not considering this and other documents/data back-up impounded during the course of survey. It is another matter that this illogical and unjustifiable interpretation placed on the figures mentioned in the said annexure have not been questioned by the survey team, it was the duty of the AO to go through the documents impounded during the course of survey which included this important note book having huge implications about the quantum of unaccounted-for income of the assessee. The assessee's AR in its submissions made vide letter dated 12.03.2018, did not make any submissions about the reasons for such illogical and unjustifiable interpretation about the contents of this annexure/document and instead contended that the survey team had accepted the said interpretation.

(iii) He also supplied the copy of the AO's letter dated 15.12.2016 asking about the contents of two documents i.e. BF/2-page no. 2 and BF/6 page no. 13 and assessee's reply vide letter dated 19.12.2016 along with the copy of the affidavit dated 05.10.2013 filed by the assessee. In view of the above, it becomes clear that the said documents impounded during the course of survey were not considered by the AO while framing the Assessment. This has led to causing the huge loss of revenue on account of AO's failure to make requisite inquiries by raising suitable queries about these documents, confronting the assessee, obtaining its response and then forming an objective opinion. This one annexure (writer long note book) itself accounts for prima-facie escapement of income of Rs.207.90 crores (Rs.210-2.10 crores). Therefore, the order dated 20.12.2016 passed by the AO i.e. ACIT, Valsad Circle, Valsad is therefore set-aside on this issue to be made afresh after making requisite inquiries and giving due opportunity to the assessee."

6. Thus Id PCIT, based on the above observations, held that assessment order dated 20.12.2016, framed by the assessing officer under section 143(3) of the Act was without making inquiries and that is why, the assessment order so passed by the assessing officer is erroneous as well as prejudicial to the interest of the Revenue, therefore, Id PCIT directed the assessing officer to make fresh assessment order.

7. Aggrieved by the order of Ld.PCIT, the assessee is in appeal before us.
8. Shri Nitin Mehta, Learned Counsel for the assessee has pleaded a lot before the Bench. The sum and substance of his arguments are that assessee has disclosed Rs. 2.10 crores during the survey and not Rs.210 crores as alleged by the ld.PCIT in his order. The ld Counsel took us through the impounded diary and explained the Bench that during the survey proceedings, in response to a question asked by the survey team, the assessee has categorically stated that say for example, the figure written in diary at 400 Lacs, means 4 lacs only and not 4 Crores. Therefore, the assessee has disclosed in the return of income (the total of all figures in lacs) at Rs. 2.10 crores. The assessing officer has applied his mind and examined Rs. 2.10 crores during the assessment proceedings. The assessee submitted books of accounts, documents and evidences before the assessing officer therefore, assessing officer has examined the other issues raised by the ld PCIT, such as returned income, the pre-survey period and post -survey period land leveling expenses, and sundry creditors for land development and land leveling expenses. Therefore, order passed by the assessing officer is neither erroneous nor prejudicial to the interest of Revenue, hence order passed by the ld PCIT under section 263 of the Act may be quashed.
9. On the other hand, Shri S.T. Bidari, ld.CIT-DR, for the Revenue argued that amount written in the diary found during the survey has been interpreted by the ld PCIT in accordance with the language mentioned in the said diary

by the assessee himself. Learned DR explained the Bench by taking the same example, as mentioned above in this order, and stated that assessee had himself written in the diary the figure, say, **400 Lacs, which means 4 crores only**. The Learned DR, therefore argued that when assessee himself saying, by writing in diary in his handwriting, without any pressure by the department, that for example, he received 400 lacs, which can be interpreted by an ordinary person, as 4 crores only. Therefore, a written figure by the assessee in his diary should be relied and accepted by the assessing officer, which the AO has failed to do so. Apart from this, the Learned Departmental Representative submitted written submission before the Bench, important part of the same is reproduced below:

“The assessee is a partnership - firm engaged in the business of development of real estate projects. A survey u/s 133A was conducted on the business premises of the assessee on 30.09.2013 and in the proceedings the assessee had disclosed additional income of Rs 2,10,00,000/- . Subsequently, the assessee filed ITR for Assstt Year 2014-15 on 26.09.2014 declaring total income of Rs. 2, 11, 99,030/-.

The case was selected for scrutiny assessment u/s 143(3) and the assessment proceedings were completed u/s 143(3) vide order dated 20.12.2011 determining total income of Rs. 2,14,30,130/-. From the assessment order, it can be seen that no discussion was made regarding the survey action and the impounded documents.

This assessment order u/s 143(3) dated 20.12.2016 was set aside by the Ld. Pr. CIT, Valsad vide order u/s 263 dated 29.03.2018 with direction to make fresh assessment after giving due opportunity to the assessee. The impugned order u/s 263 is subject matter of this appeal.

2. Discussion of facts of the case :-

The Ld Pr. CIT after examination of assessment records noticed that many aspects relevant to ascertaining of taxable income of assessee, have escaped notice of Ld AO. The Id AO has completed the impugned order u/s 143 without making relevant & essential examination and without making proper verifications. The findings of the Id PCIT is discussed below at length.

2.1 The LD AO has not even mentioned the fact of survey u/s 133A even though case is selected for scrutiny manually, presumably for this reason.

2.2. From the records the Ld. PCIT found that for the following 3 reasons there appears to be no inquiry from the AO, during scrutiny assessment proceedings.

Though the assessee had declared Rs. 2,10,00,000/- in the survey proceedings, the returned income was only Rs. 2,11,99,030/-, which means apart from the disclosure in the survey proceedings, the assessee had a mere Rs. 1.99 lacs as regular income for the year.

In the pre-survey period for 6 months, the land development and land leveling expenses were Rs.34.82 lacs, whereas in the post- survey half of the year the expenses are Rs. 1.19 Crs.

The Sundry Creditors for land development and land leveling expenses were shown as outstanding at the end of the year, but no details of the parties or details of work done by the parties were furnished nor called for by the Id AO.

During the assessment proceedings, the Id AO has not verified these aspects as evident from the records placed before the Id PCIT in the proceedings u/s 263. The Id PCIT had brought this to the notice of the assessee, but the assessee could not furnish satisfactory explanation nor could it demonstrate that these issues were properly explained before the Id AO in the assessment proceedings.

“2.3 The Ld PCIT has found that the Id AO .has not made necessary inquiries and verifications regarding Capital introduced by the partners and loans purported to be received by the assessee firm.

2.4 The Id. PCIT, noticed that the assessee claimed to have received advances for plots. No agreements in support of the said advances were found nor furnished by the assessee- firm. Further, the Id PCIT found that most of the advances had no co -relation to the size of the plot and in some cases, they have been returned without paying any interest after 2-3 years. Most of the deposits have been received in cash. It was also evidenced that most of these advances came from 3 families. However, the Id AO had not made the necessary cross verification, inquiries with the families regarding genuineness of the advances.

2.5 The Id PCIT found that advances and deposits given by the assessee as well as, method of accounting, method of Revenue, recognition, applicability of Accounting Standard - 9 (**AS-9**), which have impact on ascertaining the taxable income of the assessee, were not examined by the Id Assessing Officer.

2.6 The Id PCIT found that the Id DCIT has not properly examined and analyzed in right earnest the notings appearing in impounded material being

(written notebook at Sr No. 11 of Annexure BF) - in written pages 1 to 7, based on which the alleged disclosure of Rs. 2.10 Crs was made.

2.6.1 During the survey proceedings, in the statement recorded one of the partners of the assessee - firm explained the notings. He has explained that the entry 400L means 4 lacs. There was no counter questioning or cross questioning on this. This in itself ought to have triggered the Id AO to make thorough examination of the issue. It is common sense that 4 lacs would not be written as 400L especially while recording unaccounted transactions . The endeavor of the assessee in recording unaccounted transactions is to record larger amounts in the smallest figures possible or in most cryptic manner possible. Hence, 4 lacs would be recorded as 4L and not 400L. Clearly 400 L would indicate 400 lacs or 4 Crs. By application of logic, the Id AO ought to have atleast examined these aspects before blindly accepting what is stated by the assessee in its sworn statement.

*2.6.2 From the perusal of the above impounded material it can be seen that, on the top of the page the month and the year 2013 is mentioned, below that a series of numbers such as 400 L, 200 L, 1000L, etc are mentioned one below another with a noting **J** or "**K**" against each entry. It can be seen that no names or any other details of the transactions is mentioned in any page. From the incriminating notings , it is not clear whether they are receipts or payments. The Id AO has not discussed these incriminating notings in assessment order. It is evident that Id AO has not made inquiry to ascertain the nature of transactions indicated by the notings.*

2.6.3 The partner of the assessee - firm has stated that the notings denote advances received for the plots. (ref Ans to Q No. 11 in statement dated 30.09.2013), but no co- relation of an advance to any specific plot, or of size of plot to the amount. The rationale of making notings is to create a record to aid memory and to prevent possible misunderstanding in future, same applies to unaccounted transactions too. The assessee has not mentioned name or the plot number or size of plot in the notings, hence, his statement does not explain or corroborate the notings. The Id A O has not examined this aspect, and he has merely gone by statement.

2.6.4 The above impounded pages do not mention names of the persons from whom the above monies have been received. Hence, no cross verification was possible. Any names provided later on are mostly convenient after thought. Even otherwise, the Id AO has not summoned or examined any of the persons from whom above monies are received. This is a gaping hole in the investigation and assessment proceedings. Evidently, IdAO has not made efforts to ascertain relevant facts regarding true nature of above transactions and the quantum involved.

2.6.5 The assessee firm has admitted and canvassed during assessment proceedings and in proceedings u/s 263 that the figures are noted in 'lacs'. The relevant para 10 in assessee's letter dated 08.05.2018 filed before the Ld PCIT (page 74 of paperbook) is reproduced for ready reference.

".....Further, you kind office is of the view that the amounts recorded are in Crores and not iocs. In other words the amounts recorded as 200L represents Rs 2 Crores and not Rs 2 lacs. We submit that this finding has to be returned by the survey party and not your kind office. During the course of survey, the survey party had pin pointedly asked a question as to what the figure denotes. **The assessee categorically replied that the figures are written in lacs and not crores.** The survey party accepted this since there was no other material found during the course of survey denoting that the figures are recorded in Crores. We therefore submit that the finding returned by the survey party on this issue are final and cannot be changed. This was an on the spot verification and therefore, since no material is found denoting that the amounts are in crores we submit that no further action is required....."

In view of the above admission as well as application of common knowledge and logic, it is clear that amounts mentioned as 400L is 400 lacs.

2.6.6 From the above discussions it is evident that the Id AO has not examined the issue. He has not conducted relevant and essential enquiries or verifications, which should have been made."

10. Therefore, based on the above submissions, Id PCIT stated that assessing officer has not applied his mind and he accepted the figure explained by the assessee during survey proceedings, therefore order passed by the assessing officer is erroneous and prejudicial to the interest of revenue, hence the order passed by the Id PCIT may be upheld.

11. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id PCIT and other materials brought on record. The law with regard to exercise of jurisdiction u/s.263 of the Act on the ground that the AO failed to make enquiries which he ought to have made in the given circumstances of a case is well settled. The Commissioner can regard the order as erroneous on the ground that in the circumstances of the

case the Income-tax Officer should have made further inquiries before accepting the statements made by the assessee in his return. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an enquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct. We derive support for the proposition as stated above from the decision of the Hon'ble Delhi High Court in the case of Gee Vee Enterprises 99 ITR 375 (Del).

12. Since in the present case, Id PCIT has exercised jurisdiction u/s 263 of the Act on the ground that the Assessing Officer (AO) while completing the assessment proceeding did not make enquiries which he ought to have made. Therefore, it is necessary to look into what enquiries the AO made on the issues raised in the order u/s.263 of the Act. It is clear from the submissions and material available on record with regard to the assessee that assessee before us is a partnership firm engaged in the business of development and construction of real estate projects. A survey action under section 133A of the Act was conducted on the business premises of the Assessee on

30.09.2013 and in pursuance of the same, the assessee had disclosed additional income of Rs.2.10 crores in its return of income. During the course of the survey as well in the course of the assessment proceedings, the disclosure made by the assessee was thoroughly verified and the disclosure made in the return filed was accordingly accepted by the assessing officer. The assessing officer also accepted the financial statement filed by the assessee and accordingly accepted that the assets and liabilities reflected in the balance sheet was true and fair. During the course of the survey, a writer's long book was impounded, and the entries therein were duly explained by the assessee during the course of survey itself and the same was accepted by the Department. The Statement of Jainul K Desai ("JKD") was recorded on 30-09-2013, wherein he explained the entries made in the long book. (vide paper book Pg. No. 38-48). During the course of survey, the Department has sought clarification regarding letters **J**, **K** and **L** mentioned in the long book. The JKD in his statement had explained that **J** & **K** stood for Jainul and Kirtikumar and **L** stood for Lakh. It was also explained that 400L meant Rs. 4 lakhs, 200L meant Rs. 2 lakhs and similarly the other entries were explained during survey proceedings (vide paper book Pg. No. 46). Accordingly, a disclosure of Rs. 2.10 crores was made during the survey and the income was offered by the Assessee. All these documents and evidences were examined by the assessing officer, while making the assessment under section 143(3) of the Act, therefore assessing officer has made sufficient inquiries.

13. We note that during the course of assessment proceedings, the assessing officer has issued detailed questionnaire and conducted thorough inquires. (vide paper book Pg. No. 59). After examination of the books of accounts, evidences and details submitted by the assessee, the AO passed the assessment order on 20.12.2016 u/s 143(3) of the Act, assessing the total income at Rs.2,14,30,830/-. (paper book Pg. No. 62-67). The additional income of Rs. 2.10 crores was accepted by the assessing officer after verifying these documents and evidences. We note that Ld. PCIT interpreted figure of 200L mentioned in notebook impounded during survey as 200 Lakhs and so on and consequently estimated the income of the assessee at Rs. 210 crores instead of 2.10 crores as declared by the assessee during survey. We note that Id. PCIT has not pointed out any discrepancy in the financial statements of the assessee and has accepted the same and he has also not disputed the statement of JKD in which he had explained the entries made in the long book. The Id PCIT has made the interpretation of 200L as 200 Lakhs and so on despite the fact the issue was already verified by the survey team itself during the survey proceedings and assessing officer has also examined the same during the assessment proceedings.

14. We noted that assessee submitted before us (vide pg. no.7 of the paper book) audited profit and loss account as on 31.03.2014, wherein assessee has shown the additional income declared at the time of survey to the tune of Rs.2.10 crore. The assessee has also shown the additional income in its

computation of income which placed at paper book page no.2. The assessee has also mentioned, the facts of disclosure during survey, in its principle of accounting policies to the notes to accounts of the audited financial statements. The assessee submitted before us a copy of the eight diary found during the survey proceedings which is placed at assessee`s paper book, page no.31 to 37. The assessee submitted before us the questions and answers which were asked from assessee during the survey proceedings by the survey party and reply given by the assessee, the important portion, which is useful for our analysis is reproduced below:

“Question – 11 Please let us know what kind of entries are made in a writer long note book received from your car which is impounded and inventoried as Annexure BF-11?

Answer. On the page no. 1 of the notebook received from my car, Revenue Survey No. 298, 299/2 is written, which are of land of Kosamba Village. The second entry is of R.S.No.449/1 P6, P7, 534, 533 land of Village Bhagdawada. Out of these, NA approval of Village Kosamba is complete and NA application is made for Bhagdawada Village. Month-wise entries of advances received against plots of both these lands are done in this note book. These whole amount, I have received in cash.

Question-12 On each of the Page No.1 to 7 of this Annexure, after number “L” and “J” or “K” is written. Please tell us the meaning of it.

Answer: The letter “L” written in the notebook after number indicates lakhs and “j” and “k” indicates as “j” means Jainul and “k” means Kirtibhai. These means the name of the person who received this money.

Question-13.In the answer of above question you said that “L” indicates lakhs, then does it mean that 400L means 400 lakhs and 200L means 200 lakhs?

Answer: No. 400L means 4 lakhs and 200L means 2lakhs and all the other entries are also like wise.

Question-14: In this notebook, entries are made from April-2013 to September-2013, the total of which amounts to 2.10 crores, tell us in which firm you received these advances?

Answer: Above shown land is of my partnership firm M/s. Rudra Developers and this advances, I have received under this firm.

Question-15: Whether above Rs.2,10,00,000 advances received by you, has been accounted in your regular books of account?

Answer: No, madam Rs.2,10,00,000 advances received by me during April-2013 to September-2013 are not accounted in my regular books of account. This money has been received by us as 'on money', and received by us as an income over and above regular income of our firm. I am willingly declaring this income as undeclared income for the accounting year 2013-14, received over and above regular income. I will not claim any type of expenditure or any deduction. We will pay at regular time, the tax liability over this undeclared income of Rs.2,10,00,000. Madam, I want to tell you again that, this undeclared income of Rs.2,10,00,000, I am declaring in my firm M/s.Rudra Developers for the accounting year 2013-14 as an undeclared income over the regular income."

15. From these above questions and answers, it is evident that assessee has explained the survey team about the meaning of brief amount recorded in the diary, say for example 400 L means 4 lacs and 200 L means 2 lacs. The said cited interpretation has been accepted by the survey team. The assessing officer also gone through these answers and questions and applied his mind while passing the assessment order under section 143(3) of the Act dated 20.12.2016. Since the Assessing Officer has taken into account, the survey material and the question and answers asked during the survey proceedings and explanations of the assessee and thus made adequate inquiry and then after he has passed the order under section 143(3) of the Act dated 20.12.2016, therefore order passed for Assessing Officer should not be erroneous. The Learned Counsel also submitted before us an affidavit which is placed at page no.53 of the paper book wherein assessee has mentioned the additional income of Rs.2.10 crore and stated that he had declared additional income to the tune of Rs.2.10 crore for the current financial year. In addition

to the factual position narrated above, the Id Counsel, to support his arguments, has relied on the following judgments to prove his stand:

(a) *Sreelekha Banerjee v/s CIT [1963 49 ITR 112 (SC)*

*“If there is an entry in the account books of the assessee which shows the receipt of a sum on conversion of high denomination notes tendered for conversion by the assessee himself it is necessary for the assessee to establish, if asked, what the source of that money is and to prove that it does not bear the nature of income. The department is not at this stage required to prove anything. It can ask the assessee to bring any books of account or other documents or evidence pertinent to the explanation if one is furnished, and examine the evidence and the explanation. If the explanation shown that the receipt was not of an income nature, the department cannot act unreasonably and reject that explanation to hold that it was income. If however, the explanation is unconvincing and one which deserves to be rejected, the department can reject it and draw the inference that the amount represents income either from the sources already disclosed by the assessee or from some undisclosed source. The department does not then proceed on no evidence, because the fact that there was receipt of money is itself evidence against the assessee which he fails to rebut, and being unrebutted, that evidence against him by holding that it was a receipt of an income nature. **The very words “an undisclosed source” show that the disclosure must come from the assessee and not from the department.** In cases of high denomination notes. Where the business and the state of accounts and dealings of the assessee justify a part of a particular sum in high denomination notes, the assessee prima facie reasonably have been kept in high denomination notes. Before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence which it has in its possession. The department cannot by merely rejecting unreasonably a good explanation. Convert good proof into no proof. It is within the range of these principles that such cases have to be decided. (emphasis supplied).*

(b) *Udhavdas Kewalram vs. CIT [1967] 66 ITR 462 (SC)*

“It is for the income-tax authorities to prove that a particular receipt is taxable. In deciding whether an item of receipt is taxable as income, the Tribunal may consider the evidence in the light of the statements made by the assessee, his conduct and the probabilities, but in arriving at its conclusion there must be a fair and reasonably full review of the evidence. (emphasis supplied)”

(c) *CIT vs. Daulat Ram Rawalmull [1973] 87 ITR 349 (SC)*

“The onus to prove that the apparent is not the real is on the party who claims it to be so. As it was the department which claimed that the amount of fixed deposit receipt belonged to the respondent firm even though the receipt had been issued in the name of B. the burden laid on the department to prove that the respondent was the owner of the amount despite the fact that the receipt was in the name of B. A simple way of discharging the onus and resolving the controversy was to trace the source and origin of the amount and find out its ultimate destination. So far as the

source was concerned, there was no material on the record to show that the amount came from the coffers Central Bank, on behalf of the respondent. As regards the destination of the amount, there was nothing to show that it went to the coffers of the respondent. On the contrary, there was positive evidence that the amount was received by B. It would thus follow that both as regards the source as well as the destination of the amount, the material on the record gave no support to the claim of the department. (emphasis supplied)”

16. Based on the above discussion, it is true that the assessing officer while completing the assessment did make specific inquiries with regard to amount disclosed in survey at Rs.2.10 crores. Besides the above, as rightly pointed out by the learned counsel for the assessee that ld PCIT has not set out as to why and how this disclosed amount in survey need to be investigated and as to what type of inquiry ought to have conducted by the assessing officer. In Fact, the assessing officer made lot of inquiry. Hon’ble Delhi High Court in the case of Gee Vee Enterprises (supra) held that Income-tax Officer is not only an adjudicator but also an investigator. In the assessee’s case, as facts narrated above, clearly shows that assessing officer did sufficient inquiry about the amount disclosed in survey to the tune of Rs.2.10 crores, therefore assessing officer had worked as an adjudicator and also an investigator. We have also noted that no asset worth Rs. 210 crores held by the assessee and it is impossible to earn Rs. 210 crores from the land held by the assessee. The ld. PCIT has not brought any material to justify the alleged income of Rs. 210 crores. Thus, we note that allegation made by the ld PCIT is based merely on suspicion and conjecture. A mere observation that no proper details have been obtained, cannot be sufficient to come to a conclusion that the assessing officer did not make proper and adequate inquiries which he ought to have made in the given facts and circumstances of this case. The assessing officer has examined other issues raised by ld PCIT, such as

returned income Rs.2,11,99,030/-, the pre-survey period and post -survey expenses of Rs. 1.19 Crores and sundry creditors for land development and land leveling expenses. In the conclusion, we are of the view that none of the reasons set out by the ld PCIT for invoking the jurisdiction under section 263 of the Act are sustainable. The impugned order of ld PCIT has to be quashed for the reason that order of the assessing officer sought to be revised in the impugned order was neither erroneous nor prejudicial to the interest of the revenue for the reason of any lack of inquiry that the assessing officer ought to have made in the given facts and circumstances of the case. We accordingly quash the order under section 263 of the Act and allow the appeal of the assessee.

17. In the result, appeal of the assessee is allowed.

Order pronounced on 07 June 2021 at the time of hearing of appeal.

Sd/-

(PAWAN SINGH)

(न्यायिक सदस्य/JUDICIAL MEMBER) (लेखा सदस्य/ACCOUNTANT MEMBER)

सुरत/ Surat, दिनांक Dated: 07 June 2021/#SGR

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

By order

/ / TRUE COPY / /

Assistant Registrar, Surat