

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**

**BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकरअपीलसं./ITA Nos.1159 to 1161/AHD/2012**

**(निर्धारणवर्ष / Assessment Years: (2004-05 to 2006-07)**

**(Virtual Court Hearing)**

The ITO, Ward-9(4), Surat.	Vs.	Shri Narendra Premjibhai Patel, Survey No.6, Mangalwadi, Opp. GEB, Varachha Road, Surat-395 006.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AIGPP1584Q</b>		
<b>(Assessee)</b>		<b>(Respondent)</b>

Assessee by : Shri Hiren M. Diwan, CA

Revenue by : Shri O. P. Vaishnav, CIT(DR)

& Smt Usha Shrote, Sr. DR

**सुनवाईकीतारीख/ Date of Hearing : 19/04/2021**

**घोषणाकीतारीख/Date of Pronouncement: 03/06/2021**

**आदेश / O R D E R**

**PER DR. A. L. SAINI, ACCOUNTANT MEMBER:**

Captioned three appeals filed by the Revenue, pertaining to the Assessment Years (AY) 2004-05 to 2006-07, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), which in turn arise out of separate assessment orders passed by Assessing Officer (in short “the AO”) under section 143(3) r.w.s 147 of the Income Tax Act, 1961 [hereinafter referred to as the “Act”].

2. Since, the issues involved in all appeals of Revenue are common and identical, therefore these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as facts narrated in ITA No.1159/AHD/2012 for AY.2004-05 have been taken into consideration for deciding the above appeals *en masse*.

3. Grounds of appeal raised by the Revenue in its lead case in ITA No.1159/AHD/2012 for AY. 2004-05 are as follows:

*“1. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs. 1,90,30,400/- made by the A.O., on account of un explained cash credit u/s68 of the Act, without appreciating the facts of the case.*

*2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs. 1,75,32,049/- made by the A.O., on account of un explained expenditure u/s69C of the Act, without appreciating the facts of the case.*

*3. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs. 12,50,000/- made by the A.O., on account of estimation of fees income without appreciating the facts of the case.*

*4. On the facts and in the circumstances of the case and in law, the Ld.CIT(A), ought to have up held the order of the A.O.*

*5. It is, therefore, prayed that the order of the Ld.CIT(A) be set-a-side and that of the A.O. be restored.”*

4. Now, we shall take all these grounds one by one. Ground No.1 raised by the Revenue relates to addition of Rs.1,90,30,400/- made by Assessing Officer, on account of unexplained cash credit under section 68 of the Act.

5. Facts of the issue, which can be stated quite shortly are as follows: The assessee has filed his return of income declaring total income of Rs. 44,401/- on 07-02-2006. The assessee's case was reopened by AO on 12-10-2010 and notice u/s 148 was issued and served upon the assessee on 15-10-2011. Subsequently, notice u/s. 143(2)/142(1) along with questionnaire was issued on 11-05-2011 and 01-07-2011 and served upon the assessee. In response to the above notices, Shri Mayank J. Dave, C.A. of the assessee attended from time to time and submitted the details before AO as and when called for. From the perusal of records available, it was noted by AO that the assessee had paid huge amount to Surat District Co-Operative Spinning Mills Ltd. Accordingly, the assessee was asked to explain the sources of amounts paid to Surat District Co-Operative Spinning Mills Ltd.

6. The assessee, vide his reply dated 17.10.2011 has submitted the copies of bank statements of The City Co-Operative Bank Ltd and Associated Co-Operative Bank Ltd. From the perusal of the said bank statements, it was noted

that the assessee has paid an amount of Rs.1,00,00,000/- to The Surat District Co-Operative Spinning Mills Ltd vide the agreement dated 21.07.2003 with the mill. The said amount was deposited into his banks even prior to his appointment as underwriter. Further, the AO noted that assessee has deposited huge cash in his bank accounts in a short period thereafter. The assessee stated that the sources of payment will be submitted in next hearing. The assessee, vide his reply dated 14.11.2011, has stated that the sources of payment to Surat District Co-Operative Spinning Mills Ltd. were out of amount received from customers for sale of plots of land on behalf of mill. The assessee was again asked to furnish the sources of Rs. 100 lac paid to Surat District Co-Operative Spinning Mills Ltd. as mentioned in agreement dated 21.07.2003. The assessee, vide his reply dated 28.11.2011, again stated that he had received booking amount of Rs. 45,000 per plot from 08.07.2003 onwards which were paid to the mill. The assessee has only submitted name of the customers and copies of four sales deeds executed for proving the advances as genuine. The AO noted that about the deposits subsequent to 21.7.2003 in the bank accounts the assessee did not explain the sources. Therefore, AO rejected the contention of the assessee noted the factual aspects in his assessment order as derived from the agreement dated 21.07.2003 as under:

*“(a) The Surat District Co-Operative Spinning Mills Ltd. Called for offers on 08.07.2003 by way of advertisement in local newspaper. (b) The assessee made an offer to the mill based on his advertisement in newspaper on 08.07.2003 showing his interest to the offer (page no: 3 of the agreement). (c) After discussion with the assessee in the meeting of Board of Directors of mill dated 21.07.2003, the assessee was granted the right as underwriter by mill based on resolution passed in committee meeting of mill (page no.3 of the agreement). After taking in to his past experience in the line of business.*

7. Based on above, it was observed by AO that the assessee was granted the right to sell the land of the mill with effect from 21.07.2003 only. There was no any reference given in the agreement for any other agreements or letters grating him the right prior to 21.07.2003. However, the assessee has come forward with a story that it had received the huge amount of cash from customers against plot

and deposited into bank with effect from 08.07.2003 onwards. Thus, AO was of the view that prior to acquiring the right, the assessee has made a device to give the colour of genuineness to his black money advancing the story that the money deposited into bank were received from the customers. The complete name and address as and confirmations have not been furnished by assessee. Thus, the assessee has made up a make believe story. The AO also noted that the assessee has not submitted with evidences the efforts taken by him to find the customers for sale of plots on behalf of the mill prior to 21.07.2003 i.e. before the work for development was assigned to him and immediately thereafter. The assessee did not furnish the complete address of customers though specifically asked for as per notice dated 11.07.2011. The assessee has stated that the address of customer was the address of plots and it was very difficult for him to give the address if the customers have sold the plot to others. This also shows that the assessee has not given the basic details to prove the genuineness of transactions with such so called customers, their identity and their creditworthiness. Further, it is common practice that the customers are interested to invest in the land only if the underwriter has valid right to sell the land on behalf of the seller. In this case, the authority was granted only with effect from 21.07.2003 as per agreement (supra). The assessee has mentioned in submission dated 28.11.2011 that he started collecting the money from customers as soon as it was agreed between the assessee and mill. This is also a contradictory statement. This is also a make believe story advanced by the assessee because the decision by Board was taken on 21.07.2003 to grant the right to sell to the assessee and the agreement was also entered into on 21.07.2003 with the assessee. Therefore, acceptance of any money from customers prior to 21.07.2003 and even immediately thereafter cannot be believed. In view of the above, the amounts of cash of Rs.1,90,30,400/- deposited into bank on various dates from 08.07.2003 to 30.09.2003 and immediately after 21.07.2003 by way of entries of Rs.45,000/- each stand as not satisfactorily explained and therefore AO made addition to the tune at Rs.1,90,30,400/-.

8. Aggrieved by the order of Id. Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has deleted the addition made by the Assessing Officer observing as follows:

*“6. I have gone through the assessment order as well as the submissions of the appellant. The brief fact of the case on the basis of submission of the appellant which are also part of assessment order and my decision on various issues are as under:*

*i. The Surat District Co-Op Spinning Mills Limited wanted to sell, its land and for that purpose made an agreement with the appellant, the details of terms & condition are already mentioned in the above para 4 & 5.*

*ii. The appellant was to receive a commission of 5% on sell consideration of the land sold by the appellant on behalf of The Surat District Co-Op Spinning Mills Limited if the land was sold on specified rate price of Rs.3,951/-'per sq. yard. But later on The Surat District Co-Op' Spinning Mills Limited itself started to sell the plot of adjoining land at rate lower than Rs.3,951/- per sq. yard. This act of the mill affected the appellant's effort to sell the land as per agreement.*

*iii. Whatever money was received as sale consideration by the appellant was fully transmitted to The Surat District Co-Op Spinning Mills Limited through banking channel. About this fact, there is no dispute.*

*iv. The appellant has not been paid a single penny as commission on the sales affected through the appellant. And there is no evidence with the revenue that the appellant has been paid any commission either by cheque or cash or out of books of account.*

*v. The appellant has not spent any amount towards development of the land sold. The revenue has no also evidence to prove that the appellant has spent any amount on such development. The A.O., in the assessment order, has written that **"the development-expenditure must have been incurred year after year"**.*

*vi. There is a civil suit proceeding going on between the appellant and The Surat District Co-Op Spinning Mills Limited related to the transaction 'in question.*

*From the above facts, it is quite obvious that whatever the amount was deposited in the appellant's account and transmitted to the company was nothing but sale proceeds of land of the company. The appellant has acted just like as an agent of the The Surat District Co-Op Spinning Mills Limited. Just because the amount was deposited in appellant's account does not become the income of the appellant's undisclosed income. Moreover, the full details of the source of deposit were submitted before the A.O. during the assessment proceedings. Hence, the question of adding the same in the appellant's hand does not make any sense. Accordingly, the addition of Rs.1,90,30,400/- is hereby deleted and the ground of appeal is allowed.”*

9. Aggrieved by the order of the ld. CIT(A), the Revenue is in appeal before us.

10. Learned Departmental Representative (in short “the ld. DR”) for the Revenue submits before us that with respect to the addition made on account of unexplained cash credit, the A.O. has categorically raised query that the amount was deposited into assessee's bank even prior to his appointment as underwriter. From the copy of the bank statement, it was seen that the assessee had paid an amount of Rs.1crores to the Surat Dist. Co-op. Spinning Mills Ltd. It may be noted that the following factual aspects derived from the agreement dtd.21.07.2003, which were noted by AO are as follows: [i] Offer letters called for on 08.07.2003 by way of advertisement in local newspapers, [ii] The assessee made an offer showing his interest based on the advertisement, [iii] After taking into consideration of the past experiences in line of business, in the meeting of Board of Directors dated.21.07.2003, the assessee was granted the right as under writer. From the perusal of the bank statement, it is noticed that cash was deposited into his bank account, even prior to his appointment. Besides, the assessee had deposited huge cash in a very short period. It was also found that an amount of cash of Rs.1,90,30,400/- deposited into bank on various dates from 8-07-2003 to 30-09-2003 and immediately after 21-07-2003 by way of entries of Rs.45,000/-. Thus, prior to acquiring the right, the assessee had made a device to give a color of genuineness to his black money with a plea that the same were received from the customers. However, the assessee had not proved the identity nor even furnished the confirmation, PAN and other details, as to whether they are assessed to tax or not. The A.O. noted that assessee has not proved prima-facie the identity of the creditor, his capacity i.e. creditworthiness and genuineness of the transaction. As it was not satisfactorily explained by the assessee, the A.O. had rightly made addition of Rs.1,90,30,400/- to the total income of the assessee u/s.68 of the Act.

11. Learned Authorized Representative (in short “the Ld. AR”) relied on the order of Ld. CIT(A) and defended the order passed by the ld. CIT(A).

12. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that during the assessment proceedings, the CIT(A), held that whatever the amount was deposited in the assessee's account and transmitted to the company was nothing but sale proceeds of land of the company. The assessee has acted just like as an agent of The Surat Dist. Co-op. Spinning Mills Ltd. As such, an amount so deposited in assessee's account does not become the income of the assessee's undisclosed income. During the course of assessment proceedings, the assessee submitted full details of the source of deposits made. Hence, the question of adding the same in the assessee's hand does not make any sense. Accordingly, the CIT(A) deleted the addition of Rs.1,90,30,400/-. We have gone through the findings of Ld.CIT(A) and noted that there is no infirmity in the order of Ld.CIT(A). That being so, we decline to interfere in the order of Ld.CIT(A), his order on this issue is hereby accepted and grounds of appeal raised by the Revenue is dismissed.

13. We shall take ground no.2 raised by the Revenue which relates to deletion of addition of Rs.1,75,32,049/- made by the Assessing Officer on account of unexplained expenditure under section 69C of the Act.

14. Brief facts *qua* the issue are that during the assessment proceedings, the assessee was asked to furnish the nature of activities carried out by him, to furnish the books of account of business as land developer, the details of expenses incurred for land development, copies of trading account, P&L Account and Balance Sheet of his proprietary concern M/s Shreeji Developers. The assessee, vide his reply dated 17.10.2011 stated that he has earned only salary and other misc. income. Further, he has not maintained any books of accounts for the business since he has not carried out any business at all. He acted as agent of the mill only. He further stated that he has not carried out any land development activity and has not incurred any expenses for land development. Moreover, he

has not prepared any trading account, profit and loss account and Balance Sheet of his property Concern M/s Shreeji Developers.

15. However, the AO noted that assessee has made an agreement dated 21.07.2003 with Surat District Co-Operative Spinning Mills Ltd. In the said agreement on page number 3, the status of the assessee has duly been defined as land developers, project consultant and underwriter who had completed various projects in past. Accordingly, he was assigned the 'work' in the capacity of proprietor of M/s Shreeji Developers. Moreover, the assessee himself signed the agreement being party of the other part. Hence, the observations of the assessee which stated that he had not carried out any business are not acceptable at all. The AO noted the factual aspects as derived from the agreement dated 21.07.2003 and supplement agreement dated 16. 10.2004 as under:

*“1. Vide clause no: 11 on page no: 7 of the agreement dated 21.07.2003, it was responsibility of the assessee to put the scheme for sale of plots of land. He has to incur the expenses viz plan permission expenses, architect fees, conversion charges for land from industrial land to residential land etc*

*2. Vide clause no: 12 on page no: 8 of the agreement dated 21.07.2003, the assessee has to incur the expenses viz expenses for internal roads, street lights, drainage and water facilities and he was granted the right to recover such expenses from the buyers.*

*3. Vide clause no: 18 on page no: 9 of the agreement dated 21.07.2003, it was the responsibility of the assessee to prepare the lay out for construction, to obtain the approval from municipal authorities. Further, he has to incur all the required expenses for the said purpose.*

*4. Vide clause no: 19 on page no: 9 of the agreement dated 21.07.2003, it was the responsibility of the assessee to convert the use of land from industrial to residential land. He has to incur the expenses viz expenses for permission from municipal authorities, premium, conversion tax etc.*

*5. Vide clause no: 20 on page no: 9 & 10 of the agreement dated 21.07.2003, it was the responsibility of the assessee to obtain all other required permissions and he has to incur the expenses for the said permissions.*

6. *Vide clause no: 24 on page no: 10 of the agreement dated 21.07.2003, the assessee has to incur the expenses for land tax, betterment charges, premium conversion tax, expenses for town planning etc*

7. *Further, it was mentioned in clause no: 1 on page no: 4 of the agreement dated 16.10.2004 that in view of recent construction rules of Government of Gujarat and The Bombay Municipal Tax Act, there was need to segregate the lands into different plots, to obtain the permission for plan of construction, to provide internal roads, drainage, water line and other basic facilities for development of land. Hence, the permission was granted by mill to the assessee for such activities.”*

16. In view of various above clauses in agreement dated 21.07.2003 and 16.10.2004, the assessee was not only appointed as agent but he was also engaged in the various activities of land development. Further, he was also granted rights to recover the said amount from customers. The agreements with customers were duly signed by him on behalf of the Mill. Thus, in nutshell, he has to carry out the business of developers of land under consideration. However, AO noted that assessee in his submission, repeatedly mentioned that he only acted as agent without engaging himself in land development activities. Further, he has submitted that he has not incurred any expenses for land development activities. However, the said plea of the assessee was not accepted by AO. The AO noted that assessee has not proved with evidences as to who had incurred huge amount of expenses for land development. Further, the assessee, vide his submission dated 14.11.2011 stated that he has also received an amount of Rs.5,25,96,148/- from members as development expenditure. The assessee was required to pay Rs.18,86,12,838/- to mill towards sale of land only as per agreement dated 21.07.2003. However, the assessee has paid total amount of Rs.15,90,67,548/- only to the mill. The sources of this according to the assessee is Rs.10,64,71,400/- being amount received from members for sale of land and Rs.5,25,96,148/- being amount towards development charges. Thus, the entire of Rs.15,90,67,548/- [Rs.15,90,67,548/- + Rs.5,25,96,158/-] was paid to the mill towards his liability to pay Rs.18,86,12,838/- and the assessee did not kept any money to discharge his

other obligation to develop the land. It was responsibility of the assessee to develop the land and incur expenditure for that purpose. The assessee has collected the land development expenditure from customers but this source was diverted to the mill for discharging his liability to pay Rs.18,86,12,838/- leaving no money to fund developments expenses. The land was duly plotted and necessary development was carried out by the assessee as per agreement and for these expenditure, there is no known sources available with the assessee. The assessee could not show the sources. The assessee failed to prove the sources of expenses incurred by him together with evidences for incurring such expenses. The assessee simply mentioned that he has not carried out any land development activities and accordingly, has not incurred any land development expenses. This plea of the assessee was not accepted by AO. In view of above discussion, the AO treated the expenses incurred for land development as unexplained expenditure u/s 69C of the Act. Since the assessee has carried the project on hand for more than one year, the development expenditure must have been incurred year after year. Therefore, 1/3rd of Rs.5,25,96,148/- i.e Rs.1,75,32,049/- was disallowed by AO towards unexplained expenditure u/s 69C of the Act, 1961.

17. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has deleted the addition made by the Assessing Officer. Aggrieved, the Revenue is in appeal before us.

18. The Id. DR for the Revenue submits before us that with regards to the issue of addition of Rs.1,75,32,049/- on account of unexplained expenditure u/s 69C of the Act, the Surat Dist. Co-op. Spinning Mills Ltd. vide agreement dtd.21.07.2003, assigned the work, in the capacity of proprietor of M/s Shreeji Developers, as per clause No.11 of the agreement, the assessee was required to put the scheme of sale of plots of land. He was also given permission to incur the expenses regarding plan permission expenses, architect fees, conversion charges for industrial land to residential land. As per clause No.12, the assessee was also required to incur the expenses for internal roads, street lights, drainage and water facilities for which he was granted right to recover the same from the buyers. As

per clause No. 18, the assessee has to obtain the approval for construction from municipal authorities and to incur all the required expenses for the said purpose. As per clause No.24, it was the responsibility of the assessee, to incur the expenses on land tax, betterment charges, premium conversion tax and town planning as well. However, the assessee contended that he acted only as agent without engaging himself in land development activities. He had not incurred any expenses for land development. The A.O. also found that the assessee was required to pay Rs.18,86,12,838/- to mill, towards sale of land, however the assessee has made total payment of Rs.15,90,67,848/- to the mill, for which it is contended that an amount of Rs. 10,64,71,400/- was received by him from members against sell of land and Rs.5,25,96,148/- received from members towards development charges. The assessee had carried out the development work by making plots. But, the assessee did not shown any sources available with him. The assessee failed to prove the sources of expenses incurred by him with cogent evidences. The assessee only pleaded that he had not carried out any land development activities. Therefore, the A.O. has rightly made addition u/s 69C of the Act, considering 1/3<sup>rd</sup> of the development expenditure incurred by the assessee of Rs.5,25,96,148/- i.e. Rs.1,75,32,049/- was disallowed by AO, therefore, AO order may be upheld.

19. On the other hand, learned counsel for the assessee defended the order passed by the Id. CIT(A).

20. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that assessee has not incurred the expenditure, although it is mentioned in various clauses of the development agreement. The AO has not brought any evidence on record which can demonstrate that assessee has incurred expenses for development work. There was no evidence with the AO to prove or even indicate that such amount was spent by assessee on the development of land in concern which was sold.

Therefore, AO made addition purely on surmises and conjecture. We note that Hon'ble Supreme Court in the case of Omar Salav Mohamed Sait reported in (1959) 37 ITR 151 (S C) had held that no addition can be made on the basis of surmises, suspicion and conjectures. In the case of CIT(Central), Kolkata vs. Daulat Ram Rawatmull reported in 87 ITR 349, the Hon'ble Supreme Court held that, the onus to prove that the apparent is not the real is on the party who claims it to be so. The burden of proving a transaction to be bogus has to be strictly discharged by adducing legal evidences, which would directly prove the fact of bogusness or establish circumstance unerringly and reasonably raising an interference to that effect. The Hon'ble Supreme Court in the case of Umacharan Shah & Bros. Vs. CIT 37 ITR 271 held that suspicion however strong, cannot take the place of evidence. Therefore, we do not find any infirmity on the order of Ld.CIT(A), hence, we approve the order of Ld.CIT(A).

21. Ground No.3 raised by the Revenue relates to deletion of the addition of Rs.12,50,000/- made by the Assessing Officer, on account of estimation of fees income without appreciating the facts of the case.

22. Brief facts *qua* the issue are that on going through the records, it was observed by AO that the assessee was appointed as underwriter as per agreement dated 21.07.2003 wherein he was granted the rights to sell the land on behalf of the mill after developing the same. However, he has not offered any profit for doing the business activities. Accordingly, the assessee was asked to show cause as to why 2% of total amount paid during the year to mill should not be considered as his income for acting as underwriter on the behalf of mill. The assessee, vide his reply dated 15.12.2011, submitted that he was appointed as agent to sell the plots on behalf of mill. He was entitled to commission only if the sales price per sq. mtr was more than Rs.3951, then, the commission was to be paid to him @ 5% of amount in excess of sales price at Rs. 3951 sq. mtr. Since he had not sold any land at more than Rs. 3951 per sq mtr due to the fact that mill was itself selling the land at price lower than Rs. 3951 per sq mtr. and he was finding difficult to find customers at price more than Rs. 3951 per sq mtr., he has

sold all the plots at price which was less than Rs. 3951 per sq mtr. Hence, assessee has not earned any profit.

23. However, the AO rejected the contention of the assessee. He noted that no prudent businessman would carry out such responsible task without earning any single rupee and taking such huge risk on his head. Therefore, AO held that the assessee must have earned 2% as his net income on payments made to the mill in absence of maintenance of books of accounts, vouchers etc. Hence, considering the principle of human probability, Rs.12,50,000 (being 2% of Rs.6,25,00,000) was added to the total income as income for rendering the services of underwriters and developers.

24. On appeal, Id CIT(A) deleted the addition. Aggrieved, the Revenue is in appeal before us.

25. The Id. DR for the Revenue submits before us that with regards to the addition of Rs.12,50,000/- made on estimation of fees, the assessee contended that he was granted the right to sell the land on behalf of the mill, after developing it. He will get a commission at the rate of 5% of amount in excesses of sell price of Rs.3951 per sq.mts. However, he was facing difficulty to find out the customers for the price, more than Rs.3951 per sq.mts. He sold all the plots less than Rs.3951 per sq.mts. As such, he had not earned any profit. The A.O. did not agree with the plea of the assessee because no prudent businessmen would carry out such responsible task without earning single rupee vis-a-vis huge risk on his head. Therefore, the A.O. held that the assessee must have earned 2% commission as his net income on payments made to the mill. In absence of maintenance of books of account, vouchers etc. as well as considering the principle of human probability, the A.O. has rightly added an amount of Rs.12,50,000/- (being 2% of Rs.6,25,00,000/-) to the total income for rendering services of underwriters and developers. Therefore, AO order may be upheld.

26. On the other hand, learned counsel for the assessee defended the order passed by the Id. CIT(A).

27. We have heard both the parties and note that about estimation of fees, the learned counsel submitted that assessee was granted the right to sell the land on behalf of the mill, after developing it and he would get a commission at the rate of 5% of amount in excesses of sell price of Rs.3951 per sq. mts. However, the assessee was facing difficulty to find out the customers for the price, more than Rs.3951 per sq. mts. The Assessing Officer did not agree with the plea of the assessee because no prudent businessmen would carry out such responsible task without earning single rupee *vis-à-vis* huge risk on his head. We note that assessee did not receive any amount as commission. There was no evidence with the AO either in cheque or cash or received but not shown in the books of account. Therefore, AO made addition based on surmise and conjecture and such additions are not tenable in law, therefore, Ld.CIT(A) has rightly deleted the addition made by AO. Hence, no interference is required in the order of Ld.CIT(A), thus we dismiss Revenue's appeal.

28. We have adjudicated the appeal of the Revenue, taking lead case in ITA No.1159/Ahd/2012 for A.Y. 2004-05. Since the facts are identical and similar in subsequent assessment years 2005-06 and 2006-07, therefore, our instant adjudication shall apply *mutatis mutandis* to ITA No.1160 and 1161/Ahd/2012, for assessment years 2005-06 and 2006-07 also. Accordingly, these Revenue's appeals in ITA No.1160 and 1161/Ahd/2012 are also dismissed.

29. In the result, the appeals of the Revenue ( in ITA Nos. 1159 to 1161/Ahd/2012) are dismissed.

Order is pronounced on 03/06/2021 by placing result on Notice Board.

Sd/-

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Sd/-

**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

lwjr /Surat

दिनांक/ Date: 03/06/2021

SAMANTA

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**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

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ITAT, Surat