



IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA no.1755/Mum./2018
(Assessment Year : 2009-10)

Dy. Commissioner of Income Tax
Central Circle-6(2), Mumbai

..... Appellant

v/s

Samira Residencies Pvt. Ltd.
Marathon Future, B-Tower
902-903, Mafatlal Mill Compound
M.N. Joshi Marg, Lower Parel
Mumbai 400 013
PAN - AALCS6418G

..... Respondent

Revenue by : Shri Sumoguan Pal
Assessee by : Shri Rishabh Shah

Date of Hearing - 19.05.2021

Date of Order - 29.06.2021

ORDER

PER S. RIFAUH RAHMAN, A.M.

The aforesaid appeal has been filed by the Revenue challenging the order dated 29.12.2017, passed by the learned Income Tax Commissioner (Appeals)-54, Mumbai, pertaining to the assessment year 2009-10.

2. The grounds on which the present appeal has been filed by the Revenue are as under:-

1. *Whether On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in restricting the disallowance to ₹ 2,35,84,376, without appreciating that the purchases were established to be bogus to the extent of ₹ 4,71,68,757?*

2. *Whether On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in giving the relief by relying on the declaration made by the assessee before the Hon'ble ITSC which did not succeed?*

3. Brief facts of the case are, assessee is a leading lifestyle and infrastructure company engaged in the construction and development of real estate projects. The assessee filed its original return of income for the assessment year 2009-10 on 30.09.2010 declaring total loss of ₹ 1,88,095/-. A search and seizure under section 132(1) of the Income Tax Act, 1961 (in short '*the Act*'), was conducted on the assessee group on 21.03.2013. The notice under section 153C of the Act was issued and served on the assessee. Subsequently notices under section 143(2) and 142(1) of the Act were issued and served on the assessee. Meanwhile, the assessee filed an application before the Settlement Commission on 19.02.2015 and requested the Assessing Officer to abate the ongoing assessment proceedings. In the meantime, the Settlement Commission rejected the application filed by the assessee on 4.3.2015 under technical ground.

4. The Assessing Officer observed that the evidences regarding claiming bogus purchases were found during the search. Accordingly,

the Assessing Officer issued a show cause notice to the assessee vide notice dated 22.10.2014. The assessee did not reply and not represented the case before Assessing Officer since it was pursuing its application before Settlement Commission. The Assessing Officer observed that as the time to complete the assessment on/or before 31.03.2015, he proceeded to complete the assessment with the information available on record. He observed that the purchases debited by the assessee in the books of account are not substantiated and backed by documents such as delivery challan, etc. The Assessing Officer issued notice under section 133(6) of the Act to the parties remained un-served as the parties were not traced. Accordingly, he made addition of the entire purchase amount of ₹ 471,68,757/-.

5. Aggrieved with the above order assessee preferred an appeal before CIT (A) – 54, Mumbai. Before CIT(A), assessee filed a detailed submission, for the sake of clarity it is reproduced below:–

"Adding the sum of Rs.4,71,68,757/- from bogus purchase transaction as the some amount was utilized by the assessee in payment to farmers and cash expense. Also the amount of bogus purchase transaction were debited as a development expense and included in WIP. The learned assessing officer has erred while adding sum of Rs.4.71,68,757/- without considering and appreciating the facts and circumstances of the case"

1. The Ld. AO erred in adding the sum of Rs.4,71,68,757/- on account of bogus purchases without considering the submissions made by the assessee during the course of the assessment proceedings. The .40 placed reliance on the application made by the assessee in front of the Hon'ble ITSC for this purpose. However, while doing so, the AO has erroneously ignored other parts of the some application wherein it has been mentioned by

the assessee that on a conservative side, 50% of the abovementioned amount i.e. Rs.2.35,84,379/- was utilized by the assessee for its business purposes. The assessee submitted that it incurs various development expenditures in the form of levelling of land, fencing, construction of compound and roads, supply of electricity and water, etc. Part of these expenses such as wages paid to the labourers, hiring of vehicles and equipments for which the assessee has to hire local suppliers who do not have an organised business, are of such nature that some need to be paid in cash. Besides this, payment in cash is also required to be made for the purchase of lands from farmers, intermediaries and the like. The owners of the land were to be persuaded to part with their land. They were not interested in the money by way of cheque only. Part of the consideration they wanted in cash. The land aggregators and the person involved, wanted to have their share in the deal without the knowledge of the land owners, who otherwise would not have parted with their land. The process was to be completed at the earliest. The applicant company did not want to enter into any litigation. At the same time, acquisition of the land and for that purpose satisfying the owners and the parties in between was essential. This could have been achieved only by payment of money that too in cash. The applicant company was advised to enter into the deal in such a fashion so that the accounted funds go out of the hands of the company through banking channels but is utilized thereafter in cash for the other purpose. With this process, the applicant has been able to acquire the desired pieces of land with peaceful possession and clear title in a hassle free manner.

2. Hence, in order to facilitate the smooth running of its business, the assessee makes these payments in cash. In other words these accommodation purchases were not used to inflate the expenses but to substitute the other out of books purchases. Hence entire amount of purchases can not be disallowed. At the same time the appellant has not maintained any records to provide evidence that the entire amount has been used for the purpose of business, hence it requires an estimation in prudent manner. There cannot be any dispute about a well settled legal proposition that tax can be levied only on real income. It is an elementary rule of accountancy as well as of taxation laws that profit from business cannot be ascertained without deducting cost of purchase from sales, otherwise it would amount to levy of income-tax on gross receipts or on sales. Such a recourse is not permissible unless it is specifically authorised to do so under any particular provisions contained in the Act. Considering the various judicial pronouncements and practice, we request to kindly allow 75% of the total purchase as expenses incurred for purpose of business and 25% may be added to the returned income of the appellant. Besides the above, it is pertinent to mention here that

this submission of the assessee was even accepted by the Hon'ble ITSC and the application was rejected merely for the reason that the balance 50% income of Rs.2,35,84,279/- was offered by the assessee in AY 11-12 and not in AY 09-10,

3. The AO erred in law in completely ignoring the submission of the assessee while passing his order. In doing so, the AO ignored the fact that the remaining expenses were duly supported by proper evidences. This fact was also mentioned In the various statements recorded u/s. 132(4) of the Act. The relevant extracts of the statement of Mr. Sameer Nerurkar recorded on 21.03.2013 has been reproduced herein under:-

Q.13 KIL is an accommodation entry provider and it returns back cash after deducting its commission on entry of bogus transactions. In view of this kindly explain the modus operandi.

A.13 - Sir, M/s. Samira Habitats (1) Ltd., M/s Samira Realty Projects P. Ltd. And M/s Samira Residences P. Ltd are my related concerns in which I am a director. These companies Involved In real estate business wherein they purchase agricultural land from farmers, convert it into non- agricultural land, do the plotting and subsequently sell the land either as a plot or after construction of residential houses thereon.

At the time of purchase of land, the farmers insist on cash payment over and above the agreement value. We cannot fund this cash requirement by withdrawals from the bank. Therefore, these companies had entered into transactions with MIs Karma Industries Ltd. I accept that there were no actual purchases from M/s. Karma Industries Ltd. And we had received back cash after getting the commission deducted by M/s Karma Industries Ltd. The cash generated was used for cash payment to the farmers for land acquisition.

Q.21 I am showing you Annexure—A3(loose paper folder) containing page no.1 to 15 found and impounded on 22.03.2013 from Room No. 3, Sej Hiro Chambers, Opp. Dutta Paths House, Thikral, Although, Raigad and statement recorded of Shri Nit in Nagwekar on 21.03.2013 u/s. 133A at Room No.3, Sej Hira Chambers, Opp. Dutta Paths House, Thikrol, Alibaugh, Raigod wherein in response to Q. No.22, he has stated that Rs.6,00,77,175/- cash component has been paid in the purchase of land which is having deed value of Rs.16,94,26,160/- from F.Y.2006-07 to F.Y. 2012-13 which comes to near about 35% of the agreement values. Out of Rs.6,00,77,175/-, Rs.5,95,02,175/- paid to farmers and Rs.5,75,000/- has been paid to brokers. Please explain the source of cash component paid to farmers and brokers.

Ans.: I have gone through the above statement and seized papers. I request you to provide me with a copy of these seized papers as there are numerous documents. Most of these transactions are old transactions and I do not know the complete and exact details of all such transactions. However, as explained above, we purchase agricultural land from farmers / agriculturists. These farmers / agriculturists who are from small villages and with less educational background sometimes insist on cash payments as they may not be utilizing proper banking facilities, However, It may be noted that in case of land purchased through aggregators, no such cash payments are made. We shall furnish the complete details of purchases shortly with your good self."

4. Further, statements of various brokers recorded on oath u/s 131 of the Income Tax Act, 1961 have also been overlooked by the AO wherein these brokers have clearly administered on oath the fact that the assessee makes certain payments in cash. The relevant extracts of these statements are being reproduced herein below:

- *Statement of Shri Anil Shantaram Path:*

Q5. Please state the amount of commission you have got for facilitating MIs Samira Habitats India Limited in the land dealings at Nogaon. Please also state that there is any amount of cash paid by MIS Samira Habitats India Limited to land owners/ farmers during the purchase of land. If so, also state the quantum of payment made by M/s Samira Habitats India Limited to the concerned land owners/brokers.

Ans: Sir, I confirm that I have facilitated M/s Samira Habitats India Limited in the land dealings at Nagoon. The details of the gut numbers and the commission for the some are depicted as under:-

<i>Sr.no.</i>	<i>Gut no.</i>	<i>Approx. Commission and the rate (Amount in ₹)</i>	<i>Approx. Value of consideration paid in cash (Amount in ₹)</i>
<i>1.</i>	<i>1931</i>	<i>9,982</i>	<i>Nil</i>
<i>2.</i>	<i>1744</i>	<i>11,150</i>	<i>2,00,000</i>
<i>3.</i>	<i>3</i>	<i>56,760</i>	<i>3,00,000</i>
<i>4.</i>	<i>2041, 2048</i>	<i>50,000</i>	<i>18,00,000</i>
<i>5.</i>	<i>1938, 1894</i>	<i>12,660</i>	<i>4,20,000</i>

6.	2073	6,438	2,20,000
7.	1742	10,500	2,10,000
8.	1893	3,360	3,70,000
9.	1720	26,654	Nil
10.	1749, 1934	68,900	Nil
11.	Nagaon & Parhur	2,01,960	Nil
12.	1735 & Pathur	37,100	Nil
13.	1992	1,09,800	Nil
14.	1760	21,975	Nil
15.	1774	11,000	Nil
16.	1755, 1767, 1941	18,575	Nil
17.	1756, 1761, 1763, 1940	12,700	11,96,500
18.	306	32,800	Nil
19.	1932	7,000	Nil
20.	1754, 1680	55,000	42,45,000
	Total	7,64,414	89,61,500

Further, I confirm that the amount referred in column 3 of the above table represents the amount of commission received in cheque against my PAN AGQPP5057J. I didn't receive any commission in cash. Column 4 of the above table represents the cash consideration paid for land dealings by M/s. Samira Habitats India Limited to the respective farmer / farmers in cash."

"Q5. Please state the amount of commission you have got for facilitating M/s. Samira Habitats India Limited in the land dealings at Magoon. Please also state that there is any amount of cash paid by M/s Sam ira Habitats India Limited to land owners/ farmers during the purchase of land. if so, also state the quantum of payment made by MIS Samira Habitats India Limited to the concerned land owners/brokers."

Ans: Sir, I confirm that I have facilitated M/s. Samira Habitats India Limited in the land dealing at Nagaon & Sahan village. The details of the gut numbers and the commission for the same are depicted as cinder:-

Sr.no.	Gut no.	Approx. Commission and the rate (Amount in ₹)	Approx. Value of consideration paid in cash (Amount in ₹)
1.	1744	11,150	2,00,000
2.	1742	10,500	2,10,000
3.	1749	20,000	Nil
4.	1730	47,100	Nil
5.	1678	32,000	Nil
6.	1740		Nil
7.	1760	14,650	Nil
8.	304	13,500	Nil
	Total	1,48,900	4,10,000

Further, I confirm that the amount referred in column 3 of the above table represents the amount of commission received in cheque against my PAN ATDPM6349L. I didn't receive any commission in cash. Column 4 of the above table represents the cash consideration paid for land dealings by M/s Samira Habitats India Limited to the respective farmer / farmers In cash."

Statement of Smt. Asha Jonardan Hale:-

"Q5, Please state the amount of commission you have got for facilitating M/s. Samira Habitats India Limited in the land dealings at Nagaon. Please also state that there is any amount of cash paid by M/s. Samira Habitats India Limited to land owners/ farmers during the purchase of land, if so, also state the quantum of payment made by M/s. Samira Habitats India Limited to the concerned land owners/brokers.

Ans: Sir, I confirm that I have facilitated M/s. Samira Habitats India Limited in the land dealing at Nagaon village. The details of the gut numbers and the commission for the same are depicted as under:-

Sr.no.	Gut no.	Approx. Commission and the rate (Amount in ₹)	Approx. Value of consideration paid in cash (Amount in ₹)
1.	1688	44,413	10,40,000
2.	1723	33,215	Nil

3.	1745	48,388	6,97,000
4.	2041	47,450	18,01,000
5.	2048		
6.	2025/1, 2025/2	15148	Nil
7.	1906, 1920	36967	265000
8.	1732	6961	Nil
9.	1778, 1743	48414	Nil
10.	1992	194860	Nil
11.	1998, 1671	76735	652000
12.	1889, 1903, 1928, 1919	93103	Nil
13.	1996, 2000, 2002, 2006	252816	Nil
14.	2043, 2046	70435	575000
	Total	9,68,941	50,30,000

Further, I confirm that the amount re/erred in column 3 of the above table represents the amount of commission received in cheque against my PAN ADHPH3807Q I didn't receive any commission in cash. Column 4 of the above table represents the cash consideration paid for land dealings by MIS Somiro Habitats India Limited to the respective farmed farmers in cash."

Statement of Shri Manohar Janardan Thakur:-

"Q5. Please state the amount of commission you have got for facilitating M/s Samira Habitats India Limited in the land dealings at Nogaon. Please also state that there is any amount of cash paid by M/s. Samira Habitats India Limited to land owner's farmers during the purchase of land. If so, also state the quantum of payment mode by M/s Samira Habitats India Limited to the concerned land owner's/brokers.

Ans: Sir, I confirm that I have facilitated MIS Samira Habitats India Limited in the land dealings at Nagaon. The details of the gut numbers and the commission for the some are depicted as under:

Sr.no.	Gut no.	Approx. Commission and the rate (Amount in ₹)	Approx. Value of consideration paid in cash (Amount in ₹)
1.	1931	9,982	Nil
2.	2041, 2048	50,00	18,00,000
3.	1938, 1894	12,660	420000
4.	2073	6,438	2,20,000
5.	1893	3,360	3,70,000
6.	1720	26,654	Nil
7.	1899	66,220	7,20,000
8.	1770, 1773	70,000	Nil
9.	1992	1,09,800	Nil
10.	1774	11,000	Nil
11.	2028	10,920	Nil
12.	1934, 2077, 2035, 2038, 1761, 1763, 1940	1,41,350	11,16,000
13.	1755, 1767, 1941	18,575	Nil
14.	1932	7,000	Nil
	Total	5,43,959	46,40,000

Further, I confirm that the amount referred in column 3 of the above table represents the amount of commission received in cheque against my PAN AGSPT4436F. I didn't receive any commission in cash. Column 4 of the above table represents the cash consideration paid for land dealings by M/s. Samira Habitats India Limited to the respective farmer/ farmers in cash,"

Statement of Shri Nitin Narayan Adhikari:-

Q5. Please state the amount of commission you have got for facilitating MIs Samira Habitats India Limited in the land dealings at Nagaon. Please also state that there is any amount of cash paid by M/s. Samira Habitats India Limited to land owners/ farmers during the purchase of land. If so, also state the quantum of payment made by M/s Samira Habitats India Limited to the concerned land owners/brokers.

Ans: Sir, I confirm that I have facilitated M/s. Samira Habitats

Indio Limited in the land dealings at Nagaon. The entire amount of consideration which was to be paid through cheque has been directly paid to the concerned owners/farmers through my account. The company used to give the cash portion of the consideration to me to suther hand over the amount to the concerned farmers. As per terms and condition laid down during negotiation, I kept Rs.10,000/- per gunta and I used to give balance amount to concerned owners/farmers. The some amount I used to charge from the company i.e. Rs.10,000/- per gunta. The details of the gut numbers and the commission for the same are depicted as under:-

<i>Sr. no.</i>	<i>Gut no.</i>	<i>Commission Received in cash from company as well as owner / farmer</i>	<i>Approx. Value of consideration paid in cash (Amount in ₹)</i>	<i>Amount paid to farmers / owners</i>	<i>Financial Year</i>
1.	20	11,04,000	35,05,000	29,53,000	2008-09
2.	22	3,40,000	10,80,000	9,10,000	2008-09
3.	24	4,22,000	13,40,000	11,29,000	2008-09
4.	36	18,50,000	58,73,000	49,48,000	2008-09
5.	28/1	6,90,000	21,91,000	18,46,000	2008-09
6.	28/2	90,000	2,86,000	2,41,000	2008-09
7.	18	2,50,000	7,95,000	6,70,000	2008-09
8.	34	3,10,000	9,85,000	8,30,000	2008-09
9.	16	6,22,000	19,75,000	16,64,000	2008-09
10.	26	3,00,000	9,55,000	8,05,000	2008-09
11.	27	4,22,000	13,40,000	11,29,000	2008-09
12.	13	422000	13,40,000	11,29,000	2008-09
13.	14	400000	12,70,000	10,70,000	2008-09
14.	21	220000	7,00,000	5,90,000	2008-09
		7442000	2,36,35,000	1,61,93,000	

Further, I confirm that the amount referred in column 3 of the above table represents the amount of commission received in cheque against my PAN ACUPA654IN,

Q6. After going through your information, it is clear that you Sot Rs.2,36,35,000 from M/s Samira Habitats India Limited. Please

state the application of this money.

Ans: Sir, I confirm that I got Rs.2,36,35,000/- from M/s. Samira Habitats India Limited, I paid to Rs.1,61,93,000/- to the concerned farmers/owners. I have constructed my own home for Rs.30,00,000, purchased one vehicle for Rs.19,00,000/- (Out of this Rs.7,00,000/- from bank loan), I have given Rs.25,00,600/- advance for a plot of land and rest of amount has been spent as household expenses.

- *Statement of Shri Nitin Nagwekar:-*

Q22. On perusal of Annexure-A submitted by you it is seen the following cash components are involved in the purchase of land. Please comment on the same.

<i>Sr. no.</i>	<i>Financial Year</i>	<i>Cash Component</i>
<i>1.</i>	<i>2006-07</i>	<i>63,56,600</i>
<i>2.</i>	<i>2007-08</i>	<i>43,38,400</i>
<i>3.</i>	<i>2008-09</i>	<i>3,06,74,475</i>
<i>4.</i>	<i>2009-10</i>	<i>29,15,700</i>
<i>5.</i>	<i>2010-11</i>	<i>86,70,000</i>
<i>6.</i>	<i>2011-12</i>	<i>43,00,000</i>
<i>7.</i>	<i>2012-13</i>	<i>28,22,000</i>
	<i>Total</i>	<i>6,00,77,175</i>

Ans: Sir, I confirm that the above mentioned amount to the tune of Rs.6,00,77,175/- have been paid in cash to the farmers / owners."

5. The AO has clearly erred in ignoring these basic facts while passing the Assessment Order, It is a well decided judicial principle that the best judgement cannot be made without considering all the material available on record with the AO. For this purpose we would like to quote Section 144 of the Act for your ready reference and records.

"Section 144 of the Income Tax Act, 1961

If any person—

(a) fails to make the return required [under sub-section (1) of section 1393 and has not made a return or a revised return under

sub-section (4) or sub-section (5) of that section, or

(b) fails to comply with all the terms of a notice issued under sub-section (1) of section 142 for fails to comply with a direction issued under sub-section (2A) of that section], or

(c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143, the [Assessing] Officer, after taking into account all relevant material which the [Assessing] Officer has gathered, [shall, after giving the assessee an opportunity of being heard, make the assessment] of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment"

6. Further, we would 0150 like to rely on the decision of the Hon'ble Supreme Court in the following cases-

In the case of State of Orissa v. Maharaja Shri B.P. Singh Deo [1970] 76 ITR 690 (SC) the Hon'ble Supreme Court held that the mere fact that the material placed by the assessee before the AO is unreliable does not empower the officer to make an arbitrary order. The power to make a best judgment assessment is not on arbitrary power.

In the case of State of Kerala v. C. Velukutty [1966] 60 ITR 239 (SC) the Hon'ble Supreme Court held that, though there is an element of guesswork in a best judgment assessment, it should not be a wild one, but should have a reasonable nexus to the available material and the circumstances of each case. Though the section provides for a summary method because of the default of the assessee, it does not enable the assessing authority to function capriciously without regard to the available material.

- In the case of BrijBhushanLalParduman Kumar v. CIT (1978) 115 ITR 524 (SC)the Hon'ble Supreme Court held that, the authority making a best judgment assessment must make an honest and fair estimate of the income of the assessee and though arbitrariness cannot be avoided in such an estimate, the same must not be capricious but should have a reasonable nexus to the available material and the circumstances of the case.*

7. We would also like to point out the fact that even during the search no cash was found from the premises of the assessee meaning thereby that the cash would have been utilized for some payment. As explained above, such cash has been paid to the land owners and towards development expenses of such land. Thus, overlooking the fact that such cash so received by way of bogus bills were solely required by the assessee to conduct its

business and were nothing more than business expenses and adding the same to the income of the assessee is unjust and uncoiled for and should be deleted.

8. Further, in it's application before the Hon'ble ITSC, it was stated by the assessee that all the bogus bills procured for A.Y. 2009-10 were debited to development expenses and the some were included in Work in Progress at 31.03.2009 & 31.03.2010. The entire land bought was sold in the A.Y. 2011-12 and so 50% of Rs.4,71,68,757/- i.e., Rs.2,35,84,379/- was offered as additional income in the A.Y. 2011-12. The AO rejected this submission of the assessee by merely holding in his order that the offer of the assessee of 50% of income is arbitrary and only on attempt to evade the interest component on this admitted declaration. The AO further stated that the bogus purchases had been offered and accepted as corresponding to AY 09- 10 and as such should have been offered in the same year. However, while stating so the AO has erred in ignoring the basic fact that the bogus expenses which are being added to the income of the assessee were never claimed as an expense by the assessee in A 09-10 in the first place. The same was merely added by the assessee in it's Closing WIP. Thus, the same could have been added only in the year in which the same was actually claimed as an expense by the assessee. We would like to place reliance on the following case tows in this regard:

Principal CITy. Ashwin Kantilal Raval (2015) 231 Taxman 615 (Guj.)(HC):

During assessment proceedings, Assessing Officer mode addition to assessee's income by rejecting certificate issued by Structural Engineer certifying value of work-in-progress of a particular project Tribunal finding that said project was completed subsequently and profit earned in respect of same had already been assessed, deleted addition made by Assessing Officer. On facts, the HC held that the impugned order passed by Tribunal did not require any interference. (AY. 2009-10)

CIT v/s Excel Industries Ltd. (SC(2013) 86 CCH 0086 ISCC: In this case, the Hon'ble SC of India held that Thirdly, the real question was the year in which the assessee was required to pay tax. There was no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and paid tax thereon. Therefore, it was not as if the Revenue has been deprived of any tax. The rate of tax remained the same In the present AY as well as in the subsequent AY. Therefore, the dispute raised by the Revenue was entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue

to continue with this litigation when it was quite clear that not only was it fruitless but also that it may not have added anything much to the public coffers."

9. In view of the above, the assessee submits that the Ld. 40 has erred in not accepting the assessee's contention. Thus, the addition made by the AO is unjustified and deserves to be deleted."

6. After considering the detailed submissions of the assessee, the Ld CIT(A) observed that the assessee has offered 50% of the income that is ₹ 235,84,279/- of the disputed purchases before Income Tax Settlement Commission by submitting that the assessee had utilised the above said amounts in its business, the cash expenses which are unaccounted by the assessee include development expenditures in the form of leveling of land, fencing, construction of compound and roads etc., and the cash were also used for the purchase of lands from farmers, intermediaries, etc. He observed that the Settlement Commission rejected the assessee's application for the reason that this amount generated and utilised in assessment year 2009-10, was computed by the assessee in assessment year 2011-12.

7. The Ld CIT(A) relying on the seized material by the Investigation Wing during search, he observed that these papers have the details of lands purchased and sold by the assessee group, the Village details, name of purchaser, area, GAT number, government values, cash paid and the deal value. The GAT number of the lands acquired by Samira Residencies was also seen. He also observed that as per seized

material, a cash of ₹ 277,51,625/- was paid by the assessee to acquire the above said lands. He observed that the learned Counsel for the assessee made his submission that the assessee also incurred other expenses relating to development. The learned Counsel requested the Ld CIT(A) to allow 75% of the bogus purchase amount and may make an addition of 25% of the above said amount. The Ld CIT(A) opined that other than seized material referred to above, which mentions cash paid to farmers on the land acquired, there is no other material evidencing the application of income for business purpose. He proceeded by accepting the payment made by cash on purchase of land only. Therefore, he proceeded to direct the Assessing Officer to delete 50% of the amount of bogus purchases as applied for the purpose of business and he further observed that the assessee also offered the same before Settlement Commission.

8. Aggrieved with the above order, the Revenue is in appeal before us.

9. Before us, the learned DR submitted by relying on the findings of Assessing Officer at Page-5 and 11 of the assessment order that the purchases declared by the assessee in its books of account are bogus beyond doubt. He submitted that assessee had categorically confirmed the findings and admitted fact of the search proceedings that it is engaged in accounting bogus purchases in its books of account by

taking accommodation entries from various parties as per the confidential annexure to its application further he submitted that the assessee had not produced any evidence during assessment proceedings despite specific opportunities were provided to the assessee and he submitted that notice under section 133(6) of the Act issued by the Assessing Officer were remained un-served despite assessee was appraised of this fact. The Inspector has also mentioned in his report that the parties could not be traced. Therefore, he vehemently argued that the findings of the Assessing Officer be confirmed. Further he brought to our notice the findings of the Ld CIT(A) at Page-16 of the order and submitted that the Ld CIT(A) has not considered the fact that the parties were not traceable. Therefore, by relying on the decision of the Hon'ble Supreme Court in N.K. Proteins Ltd. v/s DCIT, [2017] 250 taxmann.com 22 (SC), he prayed that 100% of the bogus purchase be sustained.

10. On the other hand, the Ld AR submitted that the documents found during search itself discloses the fact that assessee has paid cash to the farmers and also indulged in incurring cash expenses in development of land et cetera. He submitted that the cash paid by the assessee to farmers and also the development expenditures were much more than 50% of the additions sustained by the Ld CIT(A). He prayed that at least the order of the Ld CIT(A) be sustained.

11. Considered the rival submissions and material on record. We notice that in the search proceedings it was agreed by the assessee that it has indulged in taking bogus purchase bills from various parties and the documents found during search clearly indicates that the assessee had utilised the same making payment to farmers and other similar parties for acquiring the lands for the purpose of its business. We also noticed that the assessee also claimed that it had incurred other expenditures for the purpose of development of land in cash. However, the assessee has not brought any material on record to demonstrate the same before the Ld CIT(A). However, it is fact on record that the Ld CIT(A) has observed that the cash payments were recorded in the documents found during search which include details of parties, GAT numbers etc. Therefore, it clearly indicates that the assessee had utilised the cash received from the accommodation entry providers in their business. The purchase of lands and developing the same is part of the business operation of the company. It is only the case of the Revenue that the assessee has indulged in taking bogus purchase bills from the entry providers. It is proved beyond doubt that the assessee has indulged in the above transactions. However, the cash generated in the above transactions were in turn utilised by the assessee for the purpose of business only. There is no material brought by the Assessing Officer to prove contrary or utilised by the

assessee in any other personal use or illegal activities. Therefore, we do not see any reason to interfere with the findings of the Ld CIT(A) and, hence, we are inclined to dismiss the grounds raised by the Revenue.

12. In the net result, Revenue's appeal is dismissed.

Order pronounced in the open court on 29.06.2021

Sd/-
PAVAN KUMAR GADALE
JUDICIAL MEMBER

Sd/-
S. RIFAUR RAHMAN
ACCOUNTANT MEMBER

MUMBAI, DATED: 29.06.2021

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai