

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, AHMEDABAD**

*(Conducted Through Virtual Court)*

**BEFORE S/SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**AND**  
**T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.2386/Ahd/2018**

**With**

**Cross Objection No.67/Ahd/2020**

**Assessment Year : 2013-14**

DCIT, Cent.Cir.1 Baroda.	Vs	M/s.Monareeca Enterprise "Monalisa Lakewood" B/h. Vibgyor School Atladra Padra Road Baroda PAN : AATFM 2714 L
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Milin Mehta, AR
Revenue by :		Shri Vijaykuamr Jaiswal, CIT-DR

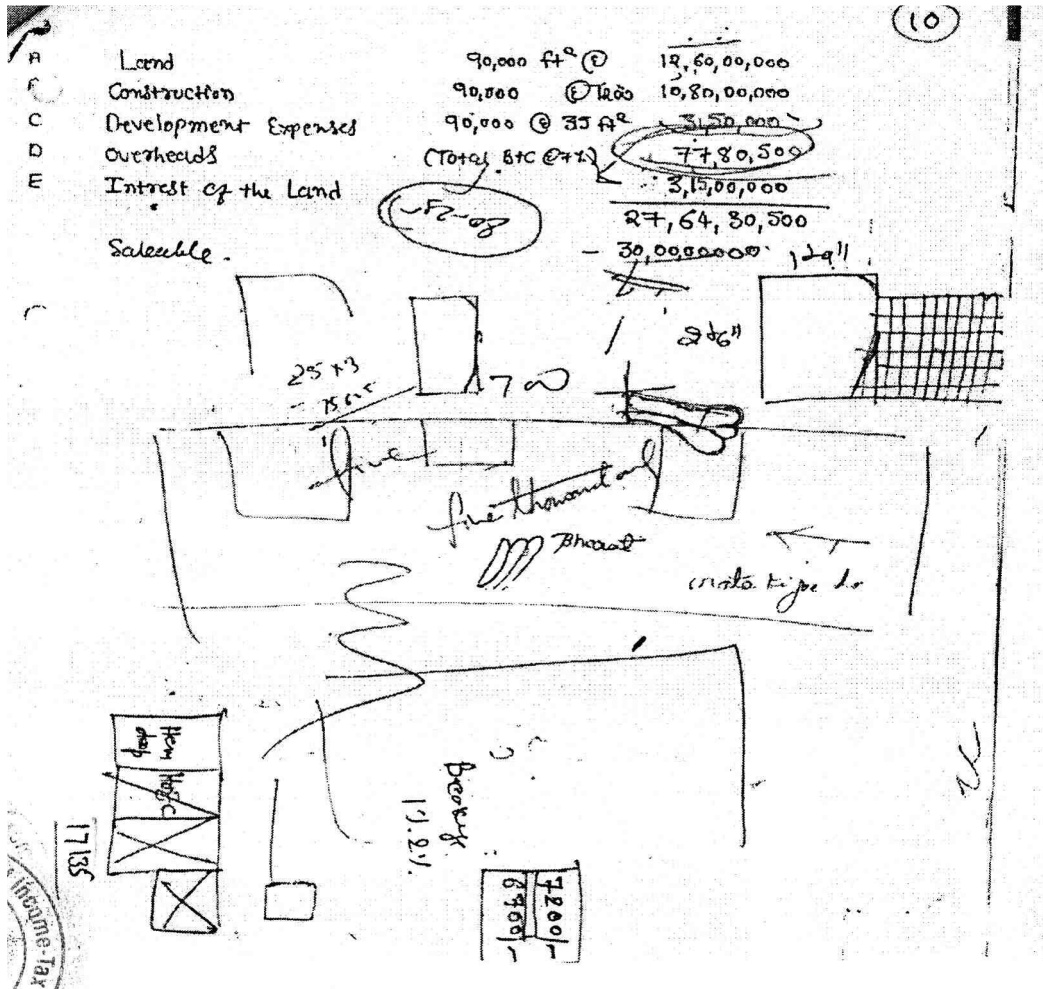
मुनवाई की तारीख/**Date of Hearing** : **16/02/2022**  
घोषणा की तारीख /**Date of Pronouncement**: **16/03/2022**

**आदेश/O R D E R**

**PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:**

This appeal is filed by the Revenue against order dated 6.9.2018 in appeal no. CIT(A)-12/321/CC-1/2017-18 passed by the Ld.Commissioner of Income-tax (Appeals)-12, Ahmedabad [for short "Ld.CIT(A)] relating to the assessment year 2013-14. Thereafter, assessee has also filed cross objection bearing No.67/Ahd/2020 in the Revenue's appeal. We dispose of both appeal and the CO by this common order for the sake of convenience.

2. Brief facts of the case is that the assessee is engaged in the business of real estate development. The assessee firm was constituted on 3.2.2011 wherein Shri Jiten Oza and Smt.Neetaben Patel are the partners. The capital contribution of Shri Jiten Oza was Rs.4,00,000/- and that of Smt.Neetaben Patel was of Rs.2,61,07,304/- as on 31.3.2012 mainly on account of development agreement (and bestowing the land to the firm), which reduced to Rs.1,10,07,304/- as on 31.3.2013 on account of withdrawal made by Smt.Neetaben Patel. The closing stock i.e. work-in-progress as on 31.3.2012 was Rs.2,75,17,712/- and that of 1.3.2013 was Rs.3,37,09,177/-. Thus, the cost of construction incurred during the financial year 2013-14 was Rs.42,28,752/-. The assessee has filed its return of income under section 139 of the Act on 3.8.2013 declaring total income at Rs.NIL, which was processed under section 143(1) of the Act. Thereafter search action under section 132 was carried out in the Bafna Panchal group of cases on 7.1.2014 which covered the residential premises of Shri Mukund Patel, Smt. Nitaben Patel and Shri Jaresh Patel, the partners of the firm. Subsequently, a survey under section 133A of the Act was also carried out at the site office of the assessee-firm viz. Monareeca Enterprise, B/h. Vibhyor School, Atladara Padra Road, Baroda. The books of account/documents etc. have been impounded as per Annexure A/1 to A/3. Page no.10 of Annexure A/3 apparently contained details of working of project cost which is produced at page no.2 of the assessment order.



3. This impounded paper was confronted to Shri Jiten Oza during the course of survey, wherein it was stated that this is the project cost details of the project "Monalisa Lakwood". It is the case of the department that from the impounded documents and statement of Shri Jiten Oza, amply clear that the assessee has made investment of Rs.12.60 crores in the land of the project procured in the name of the partner of the firm. However, as per sale deed furnished during the course of assessment proceedings, non-agricultural open land for the project i.e. Block No.404, Old R.S. No.510 & 511, Khata No.83, Moje Bhayali, Vadodara admeasuring 8083 sq.mts. (8083 \* 10.7639 = 87005 sq.ft approx.) was shown to be purchased by Smt.Nitaben M.Patel, partner of the firm as her capital. It is further seen from page no.20 of the Id.CIT(A)'s appellate order that

Smt.Nitaben purchased the above property by making payment through cheque starting from 28.7.2009 to 7.2.2011 by instalment during the financial year 2009-10 and 2010-11. However, as per the AO Rs.10.10 crores Rs.12.60 crores minus Rs.2.5 crores) was clearly unexplained investment/expenditure in the form of purchase of land for the previous year relevant to the assessment year 2013-14. It is, for this reason, the AO reopened the assessment of the assessee-firm by issuance of notice under section 148 on 31.1.2017. In compliance thereof, the assessee replied that the original return filed under section 139(1) of the Act be treated as return filed in response to the notice under section 148 of the Act. After considering submissions and material on record, the AO completed re-assessment by holding that the assessee has actually paid Rs.12.6 crores for purchase of the alleged land. However, the sale deed of the land was made for lesser amount of Rs.2.5 crores as reflected in the books of accounts. Therefore, it was established that this alleged land transaction, the assessee firm has made undisclosed investment of Rs.10.10 crores. Further, the investment of Rs.10.10 crores has not been accounted for in the books of accounts of the assessee firm; the same was added as undisclosed investment in the hands of the assessee. Aggrieved against this reassessment, the assessee filed an appeal before the Id.CIT(A).

4. The Id.CIT(A) after considering validity of reopening of the assessment, and additions made by the AO passed a detailed order directing the AO to delete the impugned addition made to the total income of the assessee. The operative portion of the impugned order of the Id.CIT(A) are as follows:

*“6. After careful consideration of the analysis of the facts by the AO and the reasoning adopted by the AO for the impugned addition and*

*the submissions of the appellant supported by documents of purchase of land and development agreement, I am convinced that the land was purchased by Smt. Neetaben Patel in her individual capacity, that the investment was made by her for the purchase of said land in her own name and that she was the absolute owner of the said land. The land came into the possession of the appellant partnership firm in lieu of capital contribution of Smt. Nitaben Patel and the appellant partnership firm got unrestricted development right because of the development agreement between Smt. Neetaben Patel and the appellant firm. Under the circumstances, if at all there was any unexplained investment at the time of purchase of the land, it could be by Smt. Neetaben Patel and that too in the A.Y. 2011-12. In such a scenario no addition could be made in the hands of the appellant firm and in AY 2013-14.*

*6.1 One possibility may exist that when the said land was bestowed by Smt. Nitaben Patel to the appellant firm for development, the appellant firm might have been required to pay undisclosed-amount of Rs. 10.10 crores to Smt. Neetaben Patel and in such a case, the addition would be required to be made both in the hands of the appellant firm and Smt. Neetaben Patel. But it cannot be ignored that neither during the survey nor during the search, any evidence in regard to any undisclosed investment over and above purchased consideration of land as mentioned in the sale deed and over and above the capital share of the Partner as mentioned in the books of accounts have been found. Moreover, the firm having being constituted on 3/2/2011 and with no business and no receipt of any booking for the project, cannot have the fund at its disposal to have the amount to the tune of Rs.10.10 crore to pay to Smt. Neetaben Patel. Therefore, this particular hypothesis does not hold water and stand the probability.*

*6.2 Without entering into the debate on the relied upon impounded page No. 10 of Annexure A/3 as to whether it is a dumb document, whether the scribbling there in are rough or whether the statement of Shri Jiten Oza u/s 133A along with the said page could be relied upon or not for the impugned addition, I am of the view that there is apparently no wrong if for the purpose of estimation of project cost and to determine the rate at which the constructed property may be sold, a notional value of land which may be based on the market value of the land during the duration of the project or otherwise may be adopted by the management and it can be seen if the rate at which the constructed property are to be sold are in commensuration to the prevalent rate of similarly placed properties and in such a scenario, the notional value adopted in a loose paper cannot be the sole basis for drawing adverse inference of unexplained investment. I am also of the opinion that if Rs.10.10 crore is added in the hands of the appellant as done in the impugned assessment order, the project*

*cost and the work in progress have to be enhanced by that amount and consequently the profit will go down or the project will end up in loss and that the effect of addition made in the hands of the appellant's firm as made in the assessment order will get neutralized/nullified over the period of the project.*

*6.3 On careful consideration of the facts and issues in the case, I am of the considered opinion that the addition made in the assessment in the hands of the appellant for the AY 2013-14 cannot be upheld. The AO is directed to delete the addition made to the total income.”*

5. Aggrieved against this order, the Revenue is in appeal before the Tribunal with the following grounds:

*“1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.10,10,00,000/- for A.Y. 2013-14 without appreciating the fact that the above addition was made by the A.O. on the basis of incriminating document found during the course Survey proceeding u/s 133A of the IT. Act.*

*2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the entries recorded at the impounded material (Annexure-A/3) found from business premise of the assessee firm while upholding the addition of Rs.10,10,00,000/- made by the A.O., whereas the same impounded material has been held by Ld. CIT(A) as a piece of evidence disclosing suppression of land consideration by appellant firm while upholding the re-opening proceeding u/s 147 of the I. T. Act.*

*3. It is, therefore, prayed that the order the Ld. CIT(A)-12, Ahmedabad may be set aside and that of the AO may be restored to the above extent.*

*4. The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”*

6. The ld. DR, Mr.Vijaykumar Jaiswal for the Revenue contended that the CIT(A) has erred in deleting the addition of Rs.10.10 crores without fully appreciating the addition based on the incriminating material found during the course of survey proceedings under section 133A of the Act. The ld.DR further submitted that the CIT(A) has upheld reopening of the assessment under section 147 relying

upon piece of loose sheet found during the course of survey proceedings, and therefore, the ld.CIT(A) ought not have deleted the addition of Rs.10.10 crores made by the AO. He therefore submitted that order passed by the AO is to be restored.

7. Per contra, the ld.counsel for the assessee, Mr.Milin Mehta reiterated submissions made before the lower authorities. For the brevity, we reproduce the same as follows:

*“(a) the statement made by Shri Jiten Oza is vague and such vague statement cannot be made a basis for making an addition in the case of the appellant,*

*(b) the impounded page relied upon by the Department is a rough page and has lot many scribbling including irrelevant pictures and has nothing to do with actual investments,*

*(c) the statement recorded during the course of survey proceedings has not evidentiary value as settled by decision by the Supreme Court in CIT v/s. S. Khader Khan Son wherein it has been held that any admission made in statement during survey cannot be made,*

*(d) the impounded relied upon page is a dumb document as it does not in any manner mention that appellant had paid any excess consideration over and above the consideration mentioned in the sale deed and the document does not controvert the fact that the land was introduced as capital in the appellant by its Partner and was not purchased by the appellant and thato there was neither any evidence to show that appellant had paid money more than what was stated in the agreement to sell nor any unearthing from the premises of the appellant during the survey and search of any evidence of any cash consideration paid. Reliance has been placed on CIT v/s. Premprakash Nagpal and CIT v/s. Vivek Agarwal, K.P. Vargheese v/s. ITO and host of other cases,*

*(e) the relied upon impounded document was found during the course of survey and not during the course of search and accordingly provisions of section 132(4A) were not applicable to the document and thus there is no presumption that the contents of such documents were true,*

*(f) the investment in land was made by one of the Partners of the appellant in A.Y. 2011-12 (as per the payment schedule last installment of payment towards consideration of land was made on*

*07.02.2011 i.e. F.Y. 2010-11 related to A.Y. 2011-12) and thus addition of Rs.10.10 crores in A.Y. 2013- is bad in law since as per section 69, the addition of unexplained investment could be made in the year in which investments were made. For this, reliance has been placed on CIT Vs. Shree Ram Jaiswal and CIT Vs. Roopchand Nawal Chand Gandhi and other cases.”*

8. In the light of the above, it is submitted by the ld.counsel for the assessee that the ld.CIT(A) has passed the impugned order after appreciating the facts in right perspective and after considering material available on record. Therefore, order of the ld.CIT(A) does not require any interference, and the Revenue appeal is to be dismissed.

9. In response, the ld.DR submitted that Shri Jiten Oza has confirmed in a statement recorded under section 133A the working in the paper sheet seized during the course of survey contained project cost details of the project “Monalisa Lakewood”. Statement was not rebutted by him at any point of time during the assessment proceedings also. Therefore, the addition made by the AO under section 69A of Rs.10.10 crores is to be sustained.

10. We given ought thoughtful consideration and gone through the material available on record and the paper book filed by the assessee. It could be seen from the loose sheet that the land cost was Rs.12.60 crores while the land cost reflected in the sale deed was Rs.2.5 crores. The contention of the same cannot be accepted on two grounds; (a) the original cost of land purchased by Smt.Nitaben Patel for a consideration of Rs.2.5 crores starting from 28.7.2009 upto 7.2.2011 by instalment payments during the financial year 2009-10 and 2010-11 and also introduced capital contribution Rs.2,61,07,304/- by Smt.Nitaben to the firm on 31.3.2012. Thus, the land cost could not be estimated at Rs.12.60

cores; (b) other entries in the loose sheet papers related to the cost of construction of nine bungalows, development expenses, over-head expenses etc. which are clearly matched with the expenses maintained by the assessee-firm in its books of accounts. In the absence of any other investment to the extent of Rs.10.10 crores, the estimation made by the AO is baseless. Further, the AO has also not made any attempt to verify the cost of the land from any partners of the firm or from previous owner of the land. Thus, the addition was made based on the assumption that the cost of land was Rs.12.60 crores, the difference of Rs.10.10 crores ought to have been added in the hands of Smt.Nitaben and not in the hands of assessee's firm relating to the Asstt.Year 2011-12. But the AO made the addition in the hands of the assessee firm which is not legally correct.

11. We are guided by the recent judgment of Hon'ble jurisdictional High Court of Gujarat in the case of Pr.CIT Vs. Nageshwar Enterprises, 122 taxmann.com 41 (Guj) wherein it is held as follows:

*"9. A Co-ordinate Bench of this Court, in the case of Kailashben Manharlal Chokshi v. CIT. [2008] 174 Taxman 466/[2010] 328 ITR 411 (Guj.), took the view that merely on the basis of admission, the assessee cannot be subjected to additions. The Co-ordinate Bench proceeded to observe that unless and until some corroborative evidence is found in support of such admission, the department would be justified in making additions. In other words the proposition of law as laid down is that the department cannot start with the confessional statement. The confessional statement has to be brought in aid of other materials on record. In the case on hand two authorities have concurrently recorded a finding of fact that, except the statement recorded under section 108 of the Customs Act there is no other evidence.*

*10. Mrs. Raval, the learned standing counsel appearing for the Revenue seeks to rely upon the decision of the Rajasthan High Court in the case of Bannalal Jat Constructions (P.) Ltd. v. Asstt. CIT [2019] 106 taxmann.com 128/264 Taxman 5 (SC).*

11. *The ratio of this decision is that there is a statement recorded in the course of the search proceedings and such statement is retracted and the burden is on the maker of the statement to establish that the admission in his statement was wrong and that such statement was recorded under duress and coercion. It is further brought to our notice that the decision of the Rajasthan High Court was carried in appeal by the assessee before the Supreme Court and the Supreme Court has dismissed the SLP. There need not be any debate with the proposition of law as laid down in the decision of the Rajasthan High Court, but a close look at the decision of the Rajasthan High Court would indicate that the confessional statement was not the only piece of evidence. There was no material to corroborate the statement made by the assessee in the form of confession. In the case on hand, as noted above, there is no material except the confessional statement of the assessee recorded under section 108 of the Customs Act.*

12. *In view of the concurrent findings recorded by both, the CIT(A) as well as the Appellate Tribunal, we are of the view that we should not disturb the finding of facts. None of the questions as proposed by the Revenue could be termed as substantial question of law.”*

12. In the present case on hand, the AO has not made any further enquiry with any other parties and made the addition based only on the loose sheet of paper found during course of survey action. The AO has made addition of Rs.10.10 crores as unexplained investment which is not sustainable in law. Further, it can be seen from the loose sheet that working made are stated to be estimation only that cannot be a base for making addition by the AO under section 69 of the Act.

13. Further, as held by the Id.CIT(A) in his order, the partnership firm has been constituted on 3.2.2011 with no business and no receipt of any booking for the project, cannot have the fund at its disposal to have the amount to the tune of Rs.10.10 crores to pay to Smt.Nitaben Patel. Therefore, this particular hypothesis does not hold water and stand the probability. We also concur with the finding that the Id.CIT(A) that, if Rs.10.10 crores is added in the hands of the assessee, as done in the impugned assessment, the

project cost and the work-in-progress have to be enhanced by that amount, and consequently the profit would go down or the project would end up in loss and that the effect of addition made in the hands of the assessee's firm as made in the assessment order would get neutralized/nullified over the period of the project. On this count also the addition made is not correct.

14. Further more during the search action under section 132 on 7.1.2014 in Bafna Panchal group of cases which covered the residential premises of Smt.Nitaben Patel, there is no record to show any incriminating materials relating to the purchase of this land was seized by the Revenue/Income Tax Department. Therefore, the addition made u/s.69 of Rs.10.10 is not sustainable in law and we are in conformity with the orders passed by the Id.CIT(A) on this issue.

15. In the result, the appeal filed by the Revenue is dismissed and consequently, the Cross Objection filed by the assessee is also dismissed.

**Order pronounced in the Court on 16<sup>th</sup> March, 2022 at Ahmedabad.**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

**Sd/-  
(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

Ahmedabad, dated 16 /03/2022

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