

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
**ITA No.1830/AHD/2016 (AY 2012-13)**  
(Hearing in Virtual Court)

The Assistant Commissioner of Income Tax, Circle-2, Bharuch.	Vs	Shri Amrutlal Babaldas Patel, i) A/96, Jalkamal Apartment, Near Manav Mandir, GIDC, Ankleshwar, Gujarat – 392002. ii) 32, Surdhara Bunglow, Near Sai Hospital, Thaltej, Ahmedabad. PAN: AEBPP 2999 E
Appellant/ Revenue		Respondent/ Assessee

Assessee by	Shri Jimit Shah – CA
Revenue by	Shri Sita Ram Meena – Sr.DR
Date of hearing	22/02/2022
Date of pronouncement	12/05/2022

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the Revenue is directed against order of Id. Commissioner of Income Tax (Appeals)-3, Vadodara dated 29.04.2016 for the A.Y. 2012-13.

The Revenue raised the following grounds of appeal:

- “1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in deleting the disallowance of Development expenses of Rs.1,79,19,550/- without appreciating that the purported expenditure was on account of contractual payment to four related parties.*
  - 1.1 *The Ld. CIT(A) erred in not appreciating that the payment of the labour expenses to the contractors were held up for three years of sale of land and payment was made in the calendar year 2015 only after the A.O. sought proof of payment.*
  - 1.2 *The Ld. CIT(A) erred in not appreciating the fact that contractors of the assessee have also held up payment to their creditors for a long span of three years, which is not acceptable on any surmise.*

1.3 *The Ld. CIT(A) erred in ignoring vital fact that the creditors of the four related contractors have withdrawn the entire amount deposited immediately leaving probability of remitting back the amount to the assessee.*

1.4 *The Ld. CIT(A) has not appreciated the fact that the circumstantial evidences are in favour of the Revenue.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) erred in deleting the disallowance of Rs.6,78,749/- made u/s 14A of the Act without appreciating that the disallowance was on the basis of working submitted by the assessee in the assessment proceedings.*

3. *The appellant craves to add, amend or alter the above grounds as may be deemed necessary.*

*Relief claimed in appeal.*

*The order of the CIT(A) on the above issue be set aside and that of the Assessing Officer be restored.”*

2. Brief facts of the case are that the assessee is an individual, filed his return of income for the assessment year (A.Y.) 2012-13 on 31.07.2013 declaring income of Rs.1.22 crore. In the return of income the assessee has shown income from ‘salary’ from Ganesh Real Financial Ltd and Shree Ganesh Real Marketing, income from ‘house property’, share of profit from firm, income from ‘other source’ and ‘capital gain’. The case was selected for scrutiny. During the assessment, on verification of details in computation of income, the Assessing Officer(AO) noted that assessee has shown Long Term Capital Gain(LTCG) of Rs.20,13,754/-. On asking detailed working of LTCG and calculation of index cost of acquisition and the improvement of asset, the assessee furnished sale deed of non-agricultural land executed on 09/09/2011

with regard to land situated at revenue survey no.7, 8, 9, 10/11/11-2, 11-3, 14 Paiki 15, 16 and 21 situated at Taluka Himmatnagar sold at a sale consideration of Rs. 7.15 Crore. On perusal of sale deed, the AO noted that assessee was having 50% share in the said land. Thus, the share of assessee is Rs.3.57crore. On further verification of working of long term capital gain, the AO found that assessee claimed cost of improvement incurred during the year for land filling, excavation, digging and other Miscellaneous Charges incurred for development of such non-agricultural land. The assessee claimed total indexed cost of improvement cost at Rs.2,80,90,089/-. The assessee claimed development expenses of Rs.1,79,19,550/- was incurred during this year. The said expenses were claimed to have paid to Gosal Vinodpuri G Rs.54,96,800/-, Patel Rajnikant Manilal Rs.30,16,600/-, Pioneer Construction of Rs.46,25,900/- and Pioneer Seva Mandal of Rs.47,80,250/-. On verification of payment details, the AO find that assessee has not paid a single rupee to the above four contractors during the year under consideration on account of development expenses and land [improvement cost]. The expenses was shown in the list of sundry creditors. The invoices furnished by all four contractors was not having registration number of service tax details. The AO, on the basis of his observation took his view that all work executed to develop the

said land was totally a labour work. The payment of daily casual labour cannot hold for whole of the year. The contractor has hold the payment of casual labour which is not possible in uncontrolled business activity. The assessee has deliberately cooked up the whole story to increase cost of improvement and suppress the value LTCCG.

3. The AO examined the details of all four contractors. Against Gosai Vinodpuri, the AO noted that he has undertaken only labour contract work and showing exactly the same contract income of Rs.54,965,800/- against the direct expenses of Rs.53,50,986/-. Further, sundry creditors and debtors are Rs.61,60,563/- and Rs.54,96,800/- respectively. Thus, he has not made any payment to his labour during the relevant period, which is impossible looking at the nature of work done. Against Patel Rajnikant Manilal, the AO noted that his return of income along with computation of income has been submitted by assessee, the detailed financials that i.e. balance sheet, profit and loss account has not furnished. Therefore, the genuineness of transaction remained unexplained. For Pioneer Construction, the AO held that during the period under consideration, Smitaben Vinodpuri Gosai Proprietor of Pioneer Construction had undertaken labour contract of assessee's work and exactly showing the contract income of Rs.46,25,900/- against the direct expenses of

Rs.44,51,700/-. Further, sundry creditors and debtors stood to Rs.53,63,650/- and Rs.46,25,900/- respectively, thus, it is clear that contractor has not made any payment to her labourer which is impossible looking at the nature of work. And for Pioneer Seva Mandal, the AO noted that the Pioneer Seva Mandal is a trust having Resignation Number. F/2929/Mehsana and having one of the trustee Mr. Vinodpuri Govindpuri Gosai, who is also one of the contractors. Pioneer Seva Mandal has undertaken labour contract exactly showing the contract income of Rs.47,80,250/- against the direct expenses of Rs.4,46,03,171/- [seems to be wrong figure]. Further the sundry creditors and debtors stood to Rs.11,56,315/- and Rs.47,80,250/- respectively. Thus, the contract had made part payment to its labour, but transport charges of Rs.10,97,225/- sundry creditors for transportation is to Rs.9,52,880/- which is also impossible looking at the nature of the work.

4. The AO further noted that development expenditure is apparently bogus, accordingly vide order sheet dated 12.02.2015, the assessee was asked to furnish the proof on subsequent payment to these contractors and the reason for not paying the amount to sundry creditors during the year under consideration. The assessee was also asked to explain the genuineness of expenses incurred during the year. The AO noted that assessee has not

furnished any satisfactory explanation and merely furnished ledger of all these contractors. The AO after going through the ledger accounts find that the assessee made payment to these contractors in the year 2015 as evident from the ledger accounts. The AO further noted that out of four contractors, three of them were directly or indirectly connected with Vinodpuri Govindpuri Gosai, who has shown total income of Rs.1,77,812/- in the return of income filed for AY 2012-13. It was not possible for that person who is having such meagre taxable income can hold the payment for more than 3 years against development expenses. The assessee was also asked to furnish the copies of bank statement of sundry creditors showing the payment received by them. On perusal of their bank statement, the AO noted that amount transferred to their accounts by assessee was immediately withdrawn by sundry creditors in cash on the same day. The AO was of the view that it establishes beyond doubt that assessee has transferred the amount to the account of sundry creditors merely to camouflage the bogus nature of expense claimed as genuine.

5. The AO also issued commission under section 131(1)(d) for seeking factual and quantitative details of actual work done on the land in order to develop the said land to DCIT, Sabarkantha Circle, Himmatnagar. The AO further noted that report of commission was received in his office on 27.03.2015, but

was lacking in factual details in order to arrive at a logical conclusion. The AO observed that in the report, it was stated that development expenditure were incurred on developing spot and making earth work by boundary work street road, water line, on which the assessee never claimed such expense. The assessee claimed improvement expenses for land filling, excavation, digging and other miscellaneous works. The AO took his view that the nature of development expenses reported in commission report, might have been incurred by subsequent buyers who purchased land from the assessee. On the basis of aforesaid observation, the AO disallowed the cost of improvement expenses of Rs.1,79,19,550/-. The AO also held that the assessee claimed such expenses to suppress LTCG.

6. The assessing officer further noted that the assessee has shown investment of Rs. 1.77 Crore. The assessee has shown exempt income of Rs. 77,620/- in the profit and loss account. The assessee has claimed interest expenses of Rs. 3.27 Crore in his profit and loss account. The assessing officer issued show cause notice as to why disallowance under section 14A be not made. In response to the show cause notice the assessee filed its reply and furnished its working under Rule 8D. The assessing officer worked out disallowance if interest expenses under Rule 8D(2)(ii) of Rs. 6,22,025/- and disallowance of indirect

expenses under Rule 8D(2)(iii) of Rs. 56724/-, thus total of Rs. 678,749/- and added to the income of assessee.

7. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id.CIT(A). Before the Id.CIT(A), the assessee filed detailed written submission as recorded in para 2.2 at page no.8 to 14 of the order of Id.CIT(A). In written submission, the assessee in sum and substance submitted that the AO disallowed the development expenses of Rs.1.79 crore during the year towards land filling, excavation, digging and other miscellaneous charges for development of non-agricultural land which were sold during the year. The assessee produced all the invoices for such expenses and made payment to sundry creditors for the expenses incurred. The AO made disallowances of improvement expenses merely on the ground that payment to such contract had been delayed for a period of time. The assessee had given contract to labour contractor for carrying out development expenses on non-agriculture land at Himmatnagar. The AO in the assessment order recorded that no payment of labour contract was made during the relevant period. The assessee explained that payments of outstanding the said transaction was shown as liability in his books of account. When the payments were made to the creditors, it was squared up and no liability exist. The AO erred in not

considering the report of DCIT, Sabarkantha Circle about factual and quantitated details. The entire improvement cost have been incurred during the year and the assessee claimed index cost of improvement expenses to Rs.2.80 crore out of which Rs. 1.79 crores in this year. The assessee provided details/bifurcation of expenses paid to four parties. The AO held that assessee has not paid any single amount to the contractor for carrying out the said work during the relevant period and paid in 2015 and not possible to hold such expenses and disallowed the same. The total area of land under various revenue survey number is 1,68,452/- square metre. Considering the large size of the land, the improvement expenses amounting expenses amounting to Rs.1.79 crore, which is Rs.212/- square metre approximately, which is very insignificant compared to size of land.

8. On the allegation of the AO that assessee increased the cost of improvement to suppress the LTCG. The assessee stated that he has sold the said land at Rs.425/- per square metre, whereas the stamp duty value at the particular area was Rs.375/- per square metre, thus, considering the same, the assessee had no intention to evade the tax, otherwise, he would be executed the sale agreement at the rate prevailing stamp duty value and would have saved Rs.82,11,300/-. On the allegation of AO that assessee has not made payment

to labour contract for development charges, the assessee explained that he has finalised the rate with contractor keeping in view the term of payment in mind. The assessee made all such payments by way of account payee cheques. The AO has not disputed the payment made through cheques, but as disputed only because of the late payment.

9. In alternative submission, the assessee explained that the development expenses were outstanding and were shown as liability in the books of the assessee. When the payments were made and the transaction of the creditors were squared up no liability exist. Had there been the creditors carried forward in the succeeding year and if the liability seized to exist, then the said amount would be treated as the creditors written and accordingly taxable under section 41 of the Act. Neither the creditors have been written off nor any liability ceased to exist. Rather all the creditors have been paid by way of account payee cheques only. Because the payments were made after a period of time, would not be surprised enough to consider the expenses are non-genuine. On the report of DCTI, Sabarkantha [commission report], the assessee explained that as per report he visited the site and concluded the development activity has been incurred on developing plots and making earth and work and boundary work, street road, and water lines etc.. Thus, on a spot

visit, the DCIT, Sabarkantha Circle found that expenses were incurred on the development of land. Since the report was not favouring the AO, thus, the AO ignored the report. The assessee also explained that during the assessment, individual creditors were produced before the AO. The AO asked Vinodpuri Gosai to bring his balance sheet and profit and loss account. He submitted the details called-for and gave the details up to the satisfaction of the AO. The AO did not recorded his presence on record. He has given a confirmation that he appeared before the AO. On the observation against R.K. Patel, the assessee explained that the AO reported that in absence of detailed financials in the form of Profit and Loss Account, genuineness of expenses remained unexplained. It was submitted that the suspicious of highest degree cannot take place of evidence and without any corroborative evidences no additions can be made on suspicious basis. Reliance was placed on the case law of Dhakeswari Cotton Mills Vs CIT (26 ITR 775 SC). The assessee explained that the addition made on account of disallowance of improvement expenses were liable to be deleted.

10.The 1d CIT(A) after considering the submissions of the assessee deleted the entire addition. The 1d CIT(A) before deleting the additions observed that total indexed cost of improvement claimed by the assessee on non-agriculture land

was Rs. 2.80 Crore. For the year under consideration the assessee claimed development expenses of Rs. 1.79 Crore. The Id CIT(A) also noted various discrepancies identified by assessing officer viz; the assessee claimed to have paid those expenses to four parties. On verification of details of payments the assessing officer noted that not a single rupee was paid by the assessee to those four contractor. The nature of expenses on development of land (claimed as improvement cost) was totally a labour work. The assessing officer was of the view that contractor hold the payment of labour for three years, which is not possible in uncontrolled business activity. Three contract parties was related with Vinodpuri Gosai being himself, his wife and one of his business concern. Vinodpuri Gosai in his return of income for the same assessment years was shown only income of Rs. 1.77 Lakhs, who has received the payment of huge contract money after three years, which is unusual. And that when the payments were made by the assessee to the said contractor it was immediately withdrawn in cash.

11. After recording the discrepancies identified by the assessing officer, the Id CIT(A) noted that as per the assessee he had produced all the invoices for the expenses. The expenses were made for development of non-agriculture land which was sold during the year. As per assessee he had made payments to

sundry creditors for expenses. The assessing officer disallowed the expenditure on the ground that the payments was made over a period of time. The Id CIT(A) held that in his opinion the assessing officer was not justified in making the disallowance of improvement expenses. The assessing officer made addition on presumption basis. The Id CIT(A) also held that the assessing officer has not disputed the payment to contractor. The payments have been made through cheques. The payment was not made during the currency of the period, cannot be a ground for disallowance. The observation of the assessing officer that the amount was immediately withdrawn for their bank account and received back by the assessee is also his presumption. During the assessment the assessing office issued commission for making inquiries and for seeking factual report. The DCIT Sabarkantha conducted inquiry and prepared report, on which the assessing officer raised doubt and not relied on such report. The report of commission executed by DCIT Sabarkantha is not different then the nature of work claimed by the assessee. On the basis of the above finding the Id CIT(A) held that the assessing officer was not correct in making addition of Rs. 1.79 Crore and deleted the entire additions.

12. On the other addition of Rs. 6,78,749/-, under section 14A, the submissions of the assessee is recorded at para 3.2 of his order. The assessee in his submissions stated that the assessing officer made disallowance of interest expenses and ½% of average value of investment at total aggregate disallowance of Rs. 6,78,749/- under section 14A. The assessee apart from the other submissions, submitted that the assessee has earned dividend income of Rs. 77,500/- from Gujarat Ambuja Cement Co-operative bank and Rs. 120/- from Ankleshwar Nagar Co-operative bank, thus, total income of Rs.77,620/-, which has been shown as taxable income and was included in the total income of the assessee for the year. The Id CIT(A) after considering the submissions of the assessee held that as the assessee had offered the income for taxation therefore, the provisions of section 14A will not be applicable and deleted the entire disallowance of section 14A.

13. Aggrieved by the order of Id CIT(A) the revenue has filed present appeal before Tribunal.

14. We have heard the submissions of the Id senior departmental representative (DR) for the revenue and the learned authorised representative (AR) of the assessee and have gone through the orders of the lower authorities carefully. Ground No. 1.1 to 1.4 to relate to deleting the improvement expenses of Rs.

1.79 Crore. The ld. DR for the revenue submits that during the assessment the assessing officer has brought sufficient facts on record that the improvement expenses claimed by the assessee are bogus. Such expenses was not paid during the currency of the assessment year. The assessee has shown such expenses to sundry creditors. The AO after noting that development expenditure is apparently bogus, vide order sheet dated 12.02.2015, asked the assessee to furnish the proof of subsequent payment to these contractors and the reason for not paying the amount to sundry creditors during the year. The assessee was also asked to explain the genuineness of expenses incurred during the year. The assessee merely furnished ledger of all these contractors. The payment to these contractors was made in the year 2015 as evident from the ledger accounts. Three of contractor were directly or indirectly connected with Vinodpuri Govindpuri Gosai. Vinodpuri Govindpuri Gosai was not having sufficient means to execute such work. The AO asked Vinodpuri Govindpuri Gosai to furnish his return of income. On examination his return of income, the AO found that he has shown total income of Rs.1,77,812/- in the return of income filed for AY 2012-13. It was not possible for that person who is having such meagre taxable income, can wait for the payment for more than 3 years against expenses incurred by him. The assessee was also asked

to furnish the copies of bank statement of sundry creditors showing the payment received by them. On perusal of their bank statement, the AO noted that amount transferred to their accounts by assessee was immediately withdrawn in cash on the same day, thus the expenses claimed by the assessee create doubt. The finding of Id. CIT(A) that the addition is based on assumption and presumption are baseless. From the circumstances it is proved that the expenses are bogus. The assessee has not shown the said asset in his balance sheet. The observation of Id. CIT(A) in respect of DCIT, Sabarkantha is misplaced. The asset shown in the balance sheet are different. The Id DR for Revenue prayed to set-aside the finding of the Id CIT(A) and to restore the order of AO.

15. On the other hand the Id AR for the assessee supported the order of the Id CIT(A). The Id AR for the assessee submits that during the assessment the assessee furnished details of the payments made to sundry creditors, against the development expenses of non-agriculture land. The payment was made through account payee cheques. The expenses were mainly incurred towards land filling, excavation, digging and other miscellaneous expenses. The assessee produced all the invoices for the expenses. The AO made disallowance on the main grounds that the payments was made belatedly i.e

in the year 2015. The total area of the land was 168452 square metre and the improvement expenses was approximately Rs. 212/- per square metre, which is reasonable. The assessee has sold the said land at Rs. 425/- per square metre. The stamp value rate in the area at the relevant time was Rs. 375/- per square metre only. Thus, the assessee has no intention to evade the tax. During the assessment the AO issued commission by exercising his power under section 131(d) to DCIT Sabarkantha. The DCIT Sabarkantha after spot visit filed his report, which was favourable to the assessee, however, the AO has not considered such report. The assessee was also asked to produce the contractor for verification. The assessee produced the contractor parties and all the parties filed their confirmation. Thus, all the expenses incurred by the assessee was substantiated. Still the AO made the disallowance of the improvement expenses. The Id CIT(A) after appreciation of facts deleted the entire addition by taking view that the AO made addition merely on the basis of his assumption and presumptions.

16. We have considered the rival submissions of the parties and have also considered the various documentary evidences filed by the assessee on record. We find that during the assessment the AO noted that the assessee has claimed long term capital gain (LTCG) of Rs. 20,13,754/- in his computation of

income. On being asked the working of capital gain and indexed cost, the assessee submitted that his has sold non-agriculture land at taluka Himmatnagar inn various surveys numbers. The total sale consideration was Rs. 7.15 Crore, the assessee is having ½ share so he received Rs. 3.57 Crore in his hand. The AO on further verification find that the assessee has claimed cost of improvement for land filling, excavation, digging and other miscellaneous expenses. The assessee claimed total development expenses of Rs.1.79 Crore paid to four parties namely; (i) Gosai Vinod Puri Rs. 54,96,800/-, (ii) Patel Rajnikant Rs. 30,16,600/-, (iii) Pioneer Construction Rs. 46,25,900/- and (iv) Pioneer Seva Mandal Rs. 47,80,250/-. On further verification of the details the AO find that not a single penny was paid to the above said contractor. The assessee has shown all the expenses under list of sundry creditors. The assessee was asked to furnish the proof of subsequent payment to these contractors and the reason for not paying the amount to sundry creditors during the year. The assessee was also asked to explain the genuineness of expenses incurred during the year. The AO noted that the assessee merely furnished ledger of all these contractors. The payment to these contractors was made in the year 2015 as evident from the ledger accounts. Three of contractor were directly or indirectly connected with Vinodpuri

Govindpuri Gosai. Vinodpuri Govindpuri Gosai was not having sufficient means to execute such work. The AO asked Vinodpuri Govindpuri Gosai to furnish his return of income. On examination his return of income, the AO found that he has shown total income of Rs.1,77,812/- in the return of income filed for AY 2012-13. It was not possible for that person who is having such meagre taxable income, can hold the payment for more than 3 years against development expenses. The assessee was also asked to furnish the copies of bank statement of sundry creditors showing the payment received by them. On perusal of their bank statement, the AO noted that amount transferred to their accounts by assessee was immediately withdrawn by sundry creditors in cash on the same day, thus the expenses claimed by the assessee are apparently bogus. On the aforesaid discrepancies the AO disallowed the entire expenses incurred on the development of the land which was claimed on account of improvement.

17.The Id CIT(A) deleted the entire disallowances by taking view that the assessing officer made addition on presumption basis and the addition is not based on evidence. The Id CIT(A) also held that the assessing officer has not disputed the payment to contractor. The payments have been made through cheques. The payment was not made during the currency of the period, cannot

be a ground for disallowance. The observation of the assessing officer that the amount was immediately withdrawn for their bank account and received back by the assessee is also his presumption. During the assessment the assessing office issued commission for making inquiries and for seeking factual report. The DCIT Sabarkantha conducted inquiry and prepared report, on which the assessing officer raised doubt and not relied on such report. The report of commission executed by DCIT Sabarkantha is not different then the nature of work claimed by the assessee. And it was held that the assessing officer was not correct in making addition of Rs. 1.79 Crore and deleted the entire additions.

18. We find that after selection of the case for scrutiny the AO issued notice under section 143(2) on 26.09.2014. During the assessment the AO examined the issue of LTCG claimed by the assessee. On being asked about the indexation cost and cost of improvement, the assessee came with the plea that a sum of Rs. 1.79 Crore is incurred on the development expenses. The AO found that not a single rupee is paid by the assessee during the currency of impugned assessment period and after detailed deliberations the AO disallowed the cost of improvement. As noted above the Id CIT(A) deleted the addition solely on the ground that the AO made additions on assumption and presumption. In

our view the finding of the Id CIT(A) is not sustainable. The AO has brought sufficient material on record to prove that the expenses are not genuine. Inordinate delay in making such payment to the contractor itself is sufficient to disbelieve the story of the assessee. Moreover, the payment to the so-called contractor was made only when the case was selected for scrutiny. The payments made to the contractor were immediately withdrawn from their account, which itself create doubt on the genuineness of the transaction. The work of improvement is basically is labour intensive. And we find force in the observation of the AO that the labour work is done by unorganised labour who cannot wait for their payments for years together. The assessee has not shown any document to substantiate that work was awarded to the said contractor or the scope of work to be undertaken by the said contractors. The assessee has spent huge amount and there is no documentary evidence except the vouchers against which payments were made. There is no proof in writing that the assessee his co-owners/ partners and the said contractors were agreed to receive the contract amount after execution of the work. Everything is based on oral story. No comparable stances of expenses was provided by the assessee except making claim that the payment is genuine and was made through cheques. The assessee has claimed that he has claimed the expenses

only to the extent incurred by him. The assessee has not disclosed as to how much expenses were incurred by the co-owners or partners in similar improvement. Or whether the similar expenses is allowed to the co-owners or not by the revenue authorities.

19. During the hearing of the appeal, we find that the land in question was not shown in the balance sheet of the assessee. The expenses are not debited in the P&L account and the same has been added in the fixed asset and debit balance in the capital account. We also asked for clarification with regard to delay in payment to creditors. The ld. AR of the assessee filed his written explanation through e-mail on 02/03/2022. On query with regard to the fact that impugned land is not reflected in the balance sheet, the ld. AR explained that the land was purchased in the F.Y. 2008-09 and shown in the balance sheet under "fixed assets". The land was sold in F.Y. 2011-12 and the balance sheet containing asset as on 31<sup>st</sup> March, 2012 is not reflected as on 31<sup>st</sup> March, 2012. On comparison of balance sheet file on record before Bench as per paper book 10 and the details of fixed asset filed alongwith explanation on 02/03/2022 are quite different. The assessee on the one hand is claiming that the said land was sold by the assessee in F.Y. 2011-12 and thus it was not shown in the balance sheet. However, the balance sheet filed now still shows

the land in the fixed asset. On the clarification with regard to expenses not debited in the P&L account, the assessee submitted that the expenses in relation to improvement cost are not debited to the P&L account and added to the cost of asset and filed detail in the form of annexure-3. The practice followed by assessee is not in accordance with the accounting practice, which further create doubts on the genuineness of the expenses. On the issue in relation to clarification in relation to debit balance of capital account, the ld. AR explained that the same is due to the mistake of the accountant as the accountant has debited the capital account of assessee while making investment activities in the LIC policies, which also creates doubt on the books of account maintained by the assessee. On the clarification with regard to delayed payment to creditors, the assessee claimed that it is his right to conduct the transaction which is appropriate to him and the revenue authority cannot step into his shoes. He was unable to make the spot payment and had negotiated the price of development activities and the payment was to be made in 3-4 years. No document to substantiate such contention was furnished except making self serving statement, which is unused. The reply furnished by assessee further strengthen the non-genuinenity of the payment to contractor.

20. However, we find that the Assessing officer has not disputed the nature of work on which expenses on account of improvement was incurred. Though, the DCIT, Sabarkantha in his report submitted that some development work on the non-agricultural land was carried out 3-4 years back from the date of his visit, however, the items of works claimed by assessee and reported by DCIT is different. Therefore, keeping in view the entire facts and circumstances of the case, instead of restoring the matter to the file of Assessing Officer, we deem it appropriate to disallow the part of cost of improvement expenses to avoid the possibility of revenue leakage. Considering the fact that neither the assessee could substantiate with documentary evidence about the genuineness of expenses nor the Assessing Officer brought comparable instances for similar improvement expenses on record, therefore, the order of Id. CIT(A) is modified and A.O. is directed to disallow 50% of improvement expenses out of total improvement expenses.

21. In the result, ground No. 1 .1 to 1.4 of the appeal is partly allowed.

22. Ground No. 2 relates to deleting the disallowance under section 14A. The Id DR for the revenue submits that during the relevant period the assessee made huge expenses for earning exempt income. The assessee has debited interest expenses in its profit and loss account, thus, the assessing officer after issuing

show cause notice to the assessee made disallowance under section 14A. The ld CIT(A) deleted the entire disallowance by holding that the assessee has included the exempt income in his total income. The ld DR for the revenue Prayed for restoring the order of assessing officer and to reverse the order of ld CIT(A).

23. On the other hand the ld AR for the assessee supported the order of ld CIT(A).

The ld. AR for the assessee submits that the assessee has received dividend income of Rs. 77,620/- which is taxable and the assessee already included the exempt income Rs.14,522/- exempt dividend income in his total taxable income. Thus, no disallowance under section 14A is warranted. The assessing officer has not disputed that fact explained before him and directly invoked the provisions of Rule 8D and made disallowances without disregarding the working of disallowances furnished by assessee under section 14A. The ld CIT(A) granted relief to the assessee on appreciation of facts.

24. We have considered the rival submissions of the parties and have perused the orders of the lower authorities carefully. We find that the assessing officer invoked the provisions of Rule 8D and made disallowance under section 14A. We further find that the assessee in reply to the show cause notice provided working of disallowance under Section 14A. The assessing office neither

recorded the working of assessee nor disregarded it before making disallowance under section 14A. Before Id CIT(A) the assessee explained that the assessee has earned dividend income of Rs. 77,620/- from Gujarat Ambuja Cement Co-operative bank, which is taxable. We find that the other dividend of Rs. 14,522/-, which has been included by assessee in his total income for the year. We find that the Id CIT(A) after considering the submissions of the assessee held that as the assessee had offered the income for taxation therefore, the provisions of section 14A will be applicable. We find that when no exempt income is claimed by the assessee in its computation of income no disallowance under section 14A is warranted. Thus, we affirm the order of Id CIT(A) on this ground. In the result, ground No. 2 of appeal raised by the revenue is dismissed.

25. In the result, the appeal of the revenue is partly allowed.

Order announced on 12<sup>th</sup> May, 2022 in the open court and the result was also placed on the notice board.

Sd/-  
**(Dr ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Surat, Dated: 12/05/2022

\*Ranjan

Copy to:

1. Appellant

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr.Pvt. Secretary, ITAT, Surat