

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “D” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND  
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.366/Ahd/2014  
Assessment Year: 2010-11**

The Income Tax Officer,  
Ward-8(3), Ahmedabad.  
  
(Appellant)

vs. Shree Kanhai Realty Pvt. Ltd.,  
Above Audi Show Room,  
Near Rajpath Club,  
S.G. Highway, Ahmedabad.  
[PAN – AAMCS 2408 K]  
(Respondent)

Appellant by : Shri Atul Pandey, Sr. DR  
Respondent by : Shri Tushar Hemani, Sr. Advocate &  
Shri Parimalsinh B. Parmar, AR

Date of hearing : 20.07.2022  
Date of pronouncement : 26.08.2022

**ORDER**

**PER SUCHITRA KAMBLE, JUDICIAL MEMBER :**

This appeal is filed by the Revenue against the order dated 28.11.2013 passed by the CIT(A)-I, Ahmedabad for the Assessment Year 2010-11.

2. The Revenue has raised the following grounds of appeal :-

- “1) *The Ld. Commissioner of Income Tax (Appeals)-I, Ahmedabad has erred in law and on facts in deleting the addition of Rs.2,32,83,190/- out of total addition of Rs.2,90,00,150/- made on account of unaccounted investment by allowing incorrect set off of Rs.3,00,00,000/- paid to Relic Property Pvt. Ltd., which was in the nature of loan in Assessee’s books of accounts & not party to the MOU between Assessee & B. Nanji Enterprises Pvt. Ltd., for purchase of Godhavi land.*

- 2) *On the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals)-I, Ahmedabad ought to have upheld the order of the Assessing Officer.*
- 3) *It is therefore, prayed that the order of the Ld. Commissioner of Income Tax (Appeals)-I, Ahmedabad may be set aside and that of the order of the Assessing Officer be restored."*

3. The assessee filed return of income on 15.10.2010 declaring total income at Rs. Nil. During the assessment proceedings, the Assessing Officer observed that the assessee has also entered into "on-money" transaction in the project of Landmark Scheme situated at Godhavi, Taluka Sanand. The Assessing Officer further observed that substantial addition was made on account of on-money paid by the assessee and the transactions which were falling during the A.Y. 2009-10 has already been assessed by making addition on account of on-money given by the assessee company. The Assessing Officer made addition of Rs.2,90,00,150/- in respect of unaccounted investment thereby observing that the assessee has understated the purchase price of the land by Rs.2,90,00,150/- as worked out in Annexure SKRPL. The unexplained investment in purchase of land was made by the assessee in cash component to B Nanji Enterprise for purchase of land over and above the disclosed sale consideration.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) has erred in deleting the addition of Rs.2,32,83,190/- made on account of unaccounted investment by allowing correct set off paid to Relic Property Development P. Ltd. which was in the nature of loan in assessee's books of account and no party to the MOU between assessee and B. Nanji Enterprises P. Ltd for purchase of Godhavi Land. Ld. DR relied upon the Assessment Order.

6. The Ld. AR submitted that the Assessing Officer made addition in respect of alleged unexplained return of income being on-money paid towards purchase of land at Village Godhavi from B. Nanji Enterprise Limited through Sanjay Thakkar i.e. for

A.Y. 2009-10 at Rs.67,16,810/- and for A.Y. 2010-11 at Rs.2,90,00,150/-. The CIT(A) after finding that Rs.3 Crores has already been recorded in the books of account over and above the documented price of land, though under the head Loans and Advances to Relic Property Development P. Ltd., the company in which Sanjay Thakkar is Director, and in the said books of account the assessee gave credit of such amount of Rs.3 Crores which was deleted by the CIT(A) to the extent of Rs.2,32,83,119/- for the A.Y. 2010-11 and confirmed the addition of Rs.57,16,960/-. The Ld. AR further submitted that search action took place in the case of B Nanji Enterprises Limited on 04.03.2010 during the course of which Memorandum of Understanding (MOU) dated 23.07.2009 was executed between B. Nanji Enterprises Limited and Devadiya Realty Pvt. Ltd. and the assessee with respect to purchase of land situated at Village Godhavi was found. The said land belonged to B. Nanji Enterprises Limited and the assessee bought the same from B. Nanji through Devadiya Realty Pvt. Ltd. and aits Director Sanjay Thakkar. The said land was purchased by way of registered conveyance deeds and was also recorded in assessee's books of account. During the course of search carried out at the residence of Sandip Padshala (Director of B. Nanji Enterprises Limited), as per the noting on the pages found during the search the land deal took place at Rs.3,900/- per sq. yard whereas sale consideration reflected in registered conveyance deed was lower as compared to the same. The Assessing Officer adopted the rate at Rs.3,900/- per sq. yard and concluded that purchase price of land has been understated by the assessee. Accordingly additions came to be made with respect to the differential sum in A.Y. 2009-10 and 2010-11. Thus, the entire addition has been made based on the rate of Rs.3,900/- per sq. yard negotiated with respect to the said land was carried out through Sanjay Thakkar. As per the rate of Rs.3,900/- per sq yard, total amount payable over and above the consideration recorded in the registered conveyance deed was Rs.3,57,16,960/- which was not to be recorded in the books of account. Part of such on-money was to be retained by Sanjay Thakkar and part of the same was to be passed on to B. Nanji group. The said facts have been confirmed by Sanjay Thakkar vide two letters addressed to CIT(A). Accordingly the sum of Rs.3 crores was paid by three cheques to Relic Property Development P. Ltd. in FY 2008-09 and details of the same appear on page no.29 of the CIT(A)'s order. Balance sum of Rs.57,16,960/- was paid in cash and the same has not been recorded in the books of account. At this stage, it is clarified that

addition of Rs.57,16,960/- has been confirmed by the CIT(A) and assessee is not in appeal. Since the said sum was not to be recorded as purchase consideration of the said land, the sum of Rs.3 crores paid to Relic Property Development P. Ltd. was recorded under the head loans and advances. Ld. AR further submitted that the sum of Rs.3 crores is duly reflected in assessee's books of account. Since the same has been paid towards the purchase consideration of the concerned land in A.Y. 2008-09, the assessee is eligible for set-off of the same against the impugned addition made in respect of unexplained investment. The Ld. AR pointed out that the purpose of advance to Relic Property Development P. Ltd. was explained to the Assessing Officer and the Balance Sheet of the same was also furnished before the Assessing Officer. Thus, the assessee has discharged its onus in respect of the payment of Rs.3 Crores. The Ld. AR further submitted that the addition was made by the Assessing Officer merely based on page no.16 of the Annexure BS-1 without bringing any cogent material on record. Thus, the Ld. AR submitted that the CIT(A) has rightly deleted the impugned addition to the extent of Rs.3 Crores and confirmed the balance addition of Rs.57,16,960/- for A.Y. 2010-11.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee has already recorded in the books of accounts over and above the documented price of land under the head loans and advances of Relic Property Development P. Ltd. in which Sanjay Thakkar is Director and the deal with purchase of land from B. Nanji Enterprises Limited was through Sanjay Thakkar. This fact was never disputed by the Revenue at any time. The contention of the Department that the CIT(A) deleted the addition thereby incorrectly giving set off of Rs.3 Crores paid to Relic Property Development P. Ltd. is not justifiable merely on the ground that Relic Property Development P. Ltd. is not party to MOU between assessee and B. Nanji Enterprises Limited. The CIT(A) has already observed that the assessee paid sum of Rs. 3 Crores by cheque to Relic Property Development P. Ltd. which is also directly related to the purchase of the very same land and, therefore, the same was rightly adjusted against the purchase price. The CIT(A) has given detailed finding and there is no need to interfere with the same. Hence, appeal of the Revenue is dismissed.

8. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on this 26<sup>th</sup> day of August, 2022.

*Sd/-*  
**(ANNAPURNA GUPTA)**  
Accountant Member

*Sd/-*  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 26<sup>th</sup> day of August, 2022**

***PBN/\****

*Copies to:*

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad*