

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.62/Ahd/2020  
Assessment Year: 2011-12**

Urmilaben Bharatbhushan Agarwal, vs. Income Tax Officer,  
7, Saket Bungalow, Ward 5(3)(5), Ahmedabad.  
Nr. Takshshila Tower,  
Premchand Nagar Road,  
Vastrapur,  
Ahmedabad.  
[PAN – ABCPA 2925 R]  
(Appellant) (Respondent)

Appellant by : Shri Sudhir Mehta, Advocate  
Respondent by : Shri N.J. Vyas, Sr. DR

Date of hearing : 01.09.2022  
Date of pronouncement : 23.09.2022

**ORDER**

This appeal is filed by the Assessee against the order dated 13.12.2019 passed by the CIT(A)-5, Ahmedabad for the Assessment Year 2011-12.

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

- “1. That the learned Commissioner of Income Tax Appeal has grossly erred in not discussing the issue of re-opening of the assessment u/s.148.
2. The learned Commissioner of Income Tax (Appeals) has erred on facts as well as in law in confirming the additions of Rs.8,65,237/- made by the learned ITO, Ward 5(3)(5) u/s.69 of the I.T. Act.
3. That the appellant contends that all the documentary evidences in support of purchase of shop. The entire payment was made through cheques and there was no on money has been paid by the appellant.
4. That the CIT(A) as well as AO has placed reliance on information received from ACIT Central Circle 2(4), Ahmedabad which has no nexus to the appellant’s case.”

3. The case of the assessee was reopened under Section 147 of the Income Tax Act, 1961 and notice under Section 148 of the Act was issued on 26.03.2018. In response to the notice issued under Section 148 of the Act, the assessee filed details such as purchase deed of property, bank statement, ledger account etc. The Assessing Officer observed that the assessee paid cash of Rs.8,65,237/- towards the booking of Shop No.301, Swaminarayan Park, Narol-1, Ahmedabad. The Assessing Officer further observed that Swaminarayan Park-1 is a residential cum commercial township project of Dharmadev Infrastructure Limited consisting of 205 housing units and 93 Shops. During the course of search in Dharmadev Group on 15.10.2013, an excel file ""PARK.1.xlsx"" was recovered from forensic image and found that difference of receipts which were reflected in the books of accounts. The Assessing Officer made addition of Rs.8,65,237/- on account of on money paid and treated the same as unexplained investment under Section 69 of the Act.

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

5. The Ld. AR submitted that the Assessing Officer did not supply the reasons recorded for issuing reassessment notice. Therefore, the assessee was deprived of filing of objection and objections were not disposed. The Assessing Officer passed reassessment order without hearing the assessee and, therefore, it would be a breach of principles of natural justice. The Ld. AR further submitted that non-granting of opportunity of cross examination of the persons who made statement against the assessee is breach of principles of natural justice. Ld. AR further submitted that Assessing Officer has not provided the seized material to the assessee. The Ld. AR further submitted that the assessment order was passed based on statement of Shri Umang Hiralal Thakkar and the said statement was never provided to the assessee. Despite requesting for 16 occasions, the Assessing Officer has not allowed the assessee to cross-examine Shri Umang Hiralal Thakkar. The admission on the part of Shri Umang Hiralal Thakkar before the Settlement Commission cannot be accepted in toto without confirming the same to the assessee. The assessee's case is independent case and the assessee cannot be punished for higher tax liability

because some third person has made admission. The assessee denied vehemently that any on money was paid to Shri Umang Hiralal Thakkar for purchase of shop. In fact, the evidences related to registered sale deed on which stamp duty paid was before the Assessing Officer and there is no other evidence on record to prove on money was paid to Shri Umang Hiralal Thakkar or the concerned group. Thus, the Ld. AR submitted that the addition made by the Assessing Officer was not just and proper.

6. The Ld. DR submitted that the CIT(A) has categorically observed that the assessee had invested huge amount in the property but which does not commensurate with the income declared with the return of income. From the material seized from Dharmadev Infrastructure Limited during the course of search, it was established that the assessee has given on money to Dharmadev Infrastructure Limited in cash for purchase of property. Ld. DR relied upon the Assessment Order and the order of CIT(A).

7. I have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee has given all the details related to purchase of property in the project of Swaminarayan Park and paid Rs.8,65,237/- in cash towards booking amount. This fact was never disputed, but the Assessing Officer analysed the same as assessee's investment in the property in respect of on money to Dharmadev Infrastructure Limited. In fact, the details of cash payment were established by the assessee as the said amount was not paid in cash but through proper channel. Mere admission on the part of Shri Umang Hiralal Thakkar before the Settlement Commission, the assessee cannot be denied the cross examination of the said party. Thus, the Assessing Officer was not right in making addition on that basis. Therefore, appeal of the assessee is allowed.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 23<sup>rd</sup> day of September, 2022.

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

**Ahmedabad, the 23<sup>rd</sup> day of September, 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*