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

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No.7028/Mum/2019
(A.Y. 2006-07)

Income Tax Officer-23(3)(2) Room No. 119, 1st Floor, Matru Mandir, Grant Road, Tardeo Road, Mumbai – 400007	Vs.	Sandhya Enterprises, 107, A-Wing, Rizvi Chamber, Hill Road, Bandra (West), Mumbai - 400050
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No: ACHFS3893C		
Appellant	..	Respondent

C.O. No.54/Mum/2021
(A.Y. 2006-07)

Income Tax Officer-23(3)(4) Matru Mandir, Opp. Bhatia Hospital, Grant Road, Tardeo Road, Mumbai – 400007	Vs.	Sandhya Enterprises, 107, A-Wing, Rizvi Chamber, Hill Road, Bandra (West), Mumbai - 400050
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No: ACHFS3893C		
Appellant	..	Respondent

Appellant by :	Tejinder Pal Singh
Respondent by :	Prakash Jhunjhunwala

Date of Hearing	05.09.2022
Date of Pronouncement	29.09.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal and cross objection filed by the revenue are directed against the order of ld. CIT(A)-34, Mumbai, which in turn arises from the order passed by the A.O u/s 143(3) r.w.s 147 of the Act, for A.Y. 2006-07. The revenue has raised the following grounds before us:

> *"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 1,14,00,000/- u/s.69A of the Act made by the AO despite the fact that the addition made was based on specific information for the reasons discussed in detail in the assessment order".*
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> *2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in violating Rule 46A of the IT. Rules by not furnishing the Development Agreement dt 10.10 2006, 06.11.2006 & 10.05.2011 during remand proceedings thereby erred in deleting the addition of Rs. 5,91,43,554/- on account of sale of 7 plots".*
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> *3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.1,20,00,000/- out of Rs.1,84,65,000/- made u/s.68 of the Act on account of unexplained unsecured loans without appreciating the fact that the assessee could not prove their credit worthiness in respect of unsecured loans taken from M/s. Shankeshwar Enterprises, Sandhya Mehta and M/s. Siddhivinayak Developers."*
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> *4. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the A.O be restored.*
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> *5. The appellant craves to leave to amend or alter any ground or add a new ground which may be necessary."*

2. Fact in brief is that assessee firm has not filed return of income for A.Y. 2006-07. The case of the assessee was reopened u/s 147 of the Act after recording reasons that the assessee had not filed return of income for A.Y. 2006-07 and it was noticed from the documents obtained from assistant sub-registrar of assurance, Bhayander, Maharashtra, that assessee had entered into purchase transaction for purchase of 10 plots

of land for a total consideration of Rs.2,66,00,000/- vide agreement/deed of conveyance No. 4400/2011, dated 31.10.2005. The sale agreement was between the assesseeand with i.e (i) Bhalchanda A. Rackvi (HUF); (ii) Shri Vinayak A. Rackvi (HUF); (iii) Moreshwar A. Rackvi (HUF); and (iv) Ganesh A. Rackvi (HUF). It is mentioned in the reasons recorded that since the assesseee had not filed the return of income, thereforethe source of payment for purchase of land could not be verified. Therefore, notice u/s 148 dated 21.03.2013 was issued and served on the assessee. The assessee firm had filed its return of income for the year under consideration on 27.02.2014. Thereafter a notice u/s 143(2) of the Act was issued on 28.02.2014. In the return of income filed the assessee had shown purchase of plots at Rs.2.85 crores and work-in-progress of land development was shown at Rs.3.35 crores. As per the information received from sub-registrar office as mentioned above in this order the assessee firm had entered an agreement for purchase of 10 plots of land i.e (i) Bhalchanda A. Rackvi (HUF); (ii) Shri Vinayak A. Rackvi (HUF); (iii) Moreshwar A. Rackvi (HUF); and (iv) Ganesh A. Rackvi (HUF). The purchase deed was executed on 31.10.2005 for consideration of Rs.2.66 crores i.e80% of total consideration. The aforesaid 4 persons owned 4/5 of the share of the amount paid to each as per agreement totaling to Rs.66.50 lacs. Regarding 1/5 shares the assessee firm had entered into an agreement for purchase of plot from the 5thCo-owner. Rajiv G. Rackvi HUF vide agreement dated 25.10.2005 and paid consideration of Rs.1.10 crores for his shares. From the aforesaid information the A.O observed that assessee firm had purchased the plots from the 4 co-owners at lower rate in compared to the plot purchases from the 5thco-owners to whom it has paid Rs.1.10 crores. The A.O further observed that properties sold were the same property located in the same locality and the seller were

closely related party. Therefore, the A.O compared thethat purchasing of 4/5 shares at Rs.66.50 lac each from four co-owner with the 1/5 shares purchased from Shri Rajiv GRackviHUF at Rs. 1.10 crores. The details of ten plots purchased from Rackvi family are as under:

Sr. No.	Old Survey No.	New Survey No.	Hissa No.	Area (Sq. Mts)
1	661	262	3	3390
2.	692	283	1	1060
3.	693	282	2	780
4.	695	296	5	330
5.	696	298	5	1390
6.	702	295	2	2200
7.	675	279	1	760
8.	691	280	1	3530
9.	675	279	6	2360
10.	689	27	4A	1950

Therefore, the A.O issued show cause notice to the assessee as under:

> *"From the assessment record of Rackvi Family members it is noticed that for the 10 plots purchased by M/s. Sandhya Enterprises at a different rates For 4/5th share in the said plots the amount paid shoum Rs 2.66 crores which comes to Rs 66.50 lacs per member @ 20% each, whereas for 1/5 share (20%) the same was paid at Rs. 1.10 crores Therefore, you are hereby show caused as to why the value should not be taken at Rs. 1.10 x 5 Rs. 550 crores and the difference paid is apparently in cash from un known sources and by the same should not be treated as income in the hands of the firm as un explained investment u/s 69 of the I.T Ac."*

The A.O stated that assessee has not made any submission to the show cause notice. Thereafter the A.O has discussed the letter obtained on 20.11.2013 from few family members in respect of difference of amount received in cash from the sale of the impugned assests between April 2005 to October 2005. from sale of ownership rights of impugned plots of land for which their late fathers had entered in to agreement for sale.

In view of the aforesaid information and discussion the A.O observed that assessee firm had under value the property as per the agreement executed on 31.03.2005 with the above referred 4 members of Rackvi family for 4/5 shares (80%) for consideration of Rs.2.66 crores shown in the registered document. Whereas from the information gathered from various sources as mentioned above the assessee firm has not made any explanation to the shown cause issued on 28.02.2014. Therefore, assessing officer held that the assessee firm had paid an amount of Rs.1.14 crores to the above referred Rackvi family in cash. Therefore, amount of Rs.1.14 crores was added to the total income of the assessee firm under the head income from other sources u/s 69A of the Act.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A).The ld. CIT(A) has deleted the additions. The relevant part of the decision is reproduced as under:

> *"5.2 I have carefully considered the facts of the case, remand reports and submissions of AR The AO made the addition u/s 69A of unexplained investment made by the appellant for purchase of 80% undivided share of 10 plots of land vide agreement dated 31/10/2005 from 4 members of Rackvi family at Rs 2,66,00,000/-on comparing the purchase agreement dated 25/10/2005 executed by Shri Sanjay Punamiya with the 5 co-owner Rajiv G. Raclevi (HUF) of Rs.1,10,00,000 It is observed that the agreement dated 31/10/2005 executed by the appellant with 4 family members of Rackvi is an 'Agreement for sale' whereas the agreement executed by Shn Sanjay Punamiya with the 5th Co-owner is an 'Agreement for sale cum-development' It is observed that such 5+ Co-owner Rajiv G. Rackvi (HUF) had filed the suits before Civil judge, Thane and had disputed the title of the property and thus Shri Sanjay Punamiya, being a partner of appellant firm in his personal capacity, had acquired the 20% undivided share of Rajiv G Rackvi (HUF) with includes settlement of disputes to obtain clear title of entire property The Declaration-cum-Indemnity bond dated 25/10/2005 executed by Rajiv G. Rackvi (HUF) the settlement of disputes with other co parceners which also proves that Shri Sanjay Panamiya have paid the compensation to such 5th co-owner to settle the legal disputes The Decree issued by Civil Judge, Thane dated 24/10/2005 discloses the consent terms filed by Rajiv G. Raclevi for settlement of disputes with several parties. Accordingly, AO is not correct in making the comparison of the Agreement for Sale-cum-Development executed by Shri Sanjay Punamiya and 5th co owner Rajiv G. Rackvi (HUF) with the Agreement for sale executed by the appellant with4 co-owners. Further, the fair*

value of 80% share in property cannot be determined on the basis of standard formula based on the consideration paid by other party for acquiring 20% share in property as the terms and conditions of each agreement would differ from the other. The AO relied on the assessment orders of 3 co-owners wherein the addition, in their assessments, had been made on determining the value of 2 their respective share of property at Rs.1.10 crore, however it is observed that Hon'ble ITAT, Mumbai vide 2 orders dated 10/10/2012 and 11/03/2015 had deleted/set-aside the assessment Ners of 2 co-owners. In any case, the addition made in hands of the seller cannot be a sole reason to make the addition in the hands of the buyer, in particularly. when no contrary material is brought on record by the AO. The letters of 3 legal heirs of co-owners cannot be held as admissible evidence since the children of co-owners were not the party to the agreement. The contents of the letters vary substantially with the agreement executed by the appellant with 4 co owners on 31/102/005 since the consideration stated in the is of Rs.2.60 crores which the actual sale consideration as per agreement is of Rs 2.66 crores. Further, the letters refer about the transfer of 70% share of property made by their father whereas the actual agreement executed by the appellant states about purchase of 80% undivided share of plots of land. The AO had not issued the summon u/s.131 and had not examined such persons on oath. The AO had not provided the copies of such letters to the appellant for rebuttal and also had not allowed the opportunity of cross examination, thusthe information obtained by AO at back of the appellant cannot be relied upon. The Hon'ble Apex Court and High Courts in the case of Andaman Timber Industries v. Comm of Central Excise (Civil Appeal No 4288/2006), CIT v. Sunita Dhadda (ITA 197/2012 (SC), HR Mehta v. ACIT (Bom), R.W. Promotions Pvt Ltd vs ACIT (Bom HC) and KishandchandChellaram vs. CIT (125 ITR 713 (SC) had decided that statements of 3 parties cannot be held as an admissible evidence unless a copy is provided to the aggrieved party for rebuttal and opportunity of cross examination is provided to the suffering party. The AO, in assessment order, had not brought any credible material on record to prove the unexplained cash payments made by the appellant and that too during impugned year and AO had not discharged the onus cast upon him Also, in remand reports dated 05/04/2018 and 15/01/2019, AO had not proved with evidence and had not brought any material on record to justify the unexplained cash payment made by the appellant. It is observed that the ITO, wd-2013)(1), Mumbai, in the assessment order u/s. 14313) of Shri Sanjay Punamiya for A.Y.2006-07 while estimating the profit after dissolution of appellant firm, had estimated the profit @ 5% on considering the work-in-progress (WIP) as disclosed by the appellant in its balance sheet of Rs.3,24,99,577/- and there is no allegation of unexplained investment made by appellant firm The Hon'ble Apex Court in the case of P K Noorjahan 237 ITR 570 and Hon'ble Mumbai ITAT in the case of Pooja Bhatt v. ACIT (73 ITD 205) had decided that the suspicion of highest degree cannot partake the direct documentary evidences filed on record. The other judicial decisions relied by AR also supports the case of the appellant. Accordingly, I hold that AO, in absence of material, is not correct in making the addition u/a.69A of unexplained investment of Rs.1,14,00,000/-. I direct the A.O to delete the addition made u/s 69A of Rs.1,14,00,000/-. Thus, Ground no. 3 is allowed."

4. During the course of appellate proceedings before us the ld. Counsel submitted that A.O has wrongly compared the agreement of one person Shri Sanjay Punamiya for acquiring 20% undivided share of land with other 4 parties of Rackvi family from whom the assessee had acquired 80% undivided share of land. The ld. counsel submitted that Shri Sanjay Punamiya had executed the sale-cum development agreement whereas the assessee firm had executed the normal agreement for sale with other 4 parties. The ld. Counsel also submitted that information gathered from the legal heirs of 3 Rackvi brothers was not binding on the assessee as the same had not been furnished by actual purchasers and the contents of replies varied with the actual transaction. The ld. Counsel has also supported the finding of ld. CIT(A).

On the other hand, the ld. D.R. supported the order of A.O.

5. Heard both the sides and perused the material on record. During the course of assessment A.O observed that assessee had purchased 80% of shares in 10 plots from 4 members of Rackvi family vide purchase deed dated 31.10.2005 for Rs.2.66 crores. However, the A.O observed that vide agreement dated 25.10.2005 the assessee had purchased 1/5 shares from the other shareholder Shri Sanjay Punamiya for Rs.1.10 crores. On comparing the value of property acquired by the assessee from 4 co-owners with the sale consideration of 5th co-owner the A.O made addition of Rs.1.14 land u/s 69A of the Act as unexplained investment in the total income of the assessee. It is undisputed fact that assessee had executed sale-cum development agreement with the 5th co-owner Shri Sanjay Punamiya, therefore, higher amount of purchase consideration was made to Shri Sanjay Punamiya compared to the purchase consideration given to other 4 co-owners for simply purchasing

80% plot on land. During the course of assessment the A.O has also referred assessment made in the case of 3 co-owner for considering the value of share of sale consideration in their hands at Rs.1.10 crores. However, during the course of appellate proceedings the ld. Counsel has submitted that such addition had been deleted by the ITAT. Regarding information obtained from 3 legal heirs of the co-owners by the A.O in the assessment order the ld. CIT(A) has stated in his finding that the A.O has not examined such persons and no notice u/s 131 were issued and simply obtained such information at the back of the assessee without giving any opportunity for cross examination to the assessee. We have also gone through the paper book furnished by the assessee wherein at page no. 7 to 17 copies of purchase agreement executed by the assessee firm with 4 Rackvi brothers for acquiring 80% of shares for Rs.2.66 crores were placed. As per the agreement the vendor sell the 4/5 undivided shares in respect of the property for the price of Rs.2.66 crores. We have also gone through the agreement for sale-cum development executed for acquiring 20% shares of land from Shri Sanjay Punamiya. It is clearly mentioned in the agreement that vendor sell the 1/5 i.e 20% shares of the vendor in the said property for lumpsum consideration of Rs.1.10 crores. We have also gone through the copies of ITAT order passed in the case of two members of Rackvi family Shri Bhalachand A. Rackvi vide ITA No. 2374/Mum/2021 dated 10.10.2012 wherein the ITAT has sustained the order of ld. CIT(A) of deleting the addition made by the A.O by taking the 1/5 sale consideration of 10 plots at Rs.1.10 lac eachas against Rs.66,50,000/- as holding that no cogent material was brought on record and similarly also in the case of Bhalchand&Ganeshchand A. Rackvi. We have further perused the assessment order placed in the paper book pertaining to the assessment

made in the case of Shri Sanjay Punamiya for A.Y. 2006-07 wherein he has shown work-in-progress and the advance received against the sale of plot which demonstrate that payment was made for sale-cum development purpose. It is clear from the above facts and evidences that more payment for purchase of plot for 20% shares was made to Shri Sanjay Punamiya for Rs.1.10 crores as against Rs.66 lac made to the other persons because of sale-cum development of land. In the light of the above facts and findings, we don't find any error in the decision of ld. CIT(A), therefore, this ground of appeal of the revenue stand dismissed.

Ground No. 2:

6. During the course of assessment the A.O observed that assessee had executed two development agreements dated 25.11.2005 for sale of development rights to M/s Laxmivishu Developers and M/s Prachi Construction of two plots of land in old survey no. 691 and 689 for Rs.1,35,00,000/- and Rs.80 lac respectively. The A.O was of the view that assessee had also sold other 7 plots of land during the year. Therefore, the A.O applied the sale consideration of such two plots of land of Rs.2,15,00,000/- (Rs.1,35,00,000/- + Rs.80,00,000) and on considering the area of said two plots of land on 5480 sq. mtrs (3530 +1950), accordingly the A.O determined the average rate of sale of development rights at Rs.3923/- per sq. mtrs.

7. Therefore, the A.O determined the sale consideration of other 7 plots of land of the area of 11510 sq. mtrs and applied the average rate of 3923 sq. mtrs. Accordingly, determining the sale consideration of 7 plots of land at Rs.45,53,730/-. Therefore, sale consideration of 9 plots of land was determined by the A.O at Rs.6,66,53,730/- (2,15,00,000/- + Rs.4,51,53,730/-). After allowing the expenses of brokerage bank charges

etc of Rs.6,59,028/- the A.O determining the sale of development of 9 plots of lands at Rs.6,59,74,702/-.

8. The assessee filed the appeal before the ld.CIT(A). The ld. CIT(A) has deleted the addition. The relevant part of the decision of ld. CIT(A) reproduced as under:

> *"6.3 I have carefully considered the facts of the case and arguments advanced by AR. It is an undisputed fact that the appellant had sold the development rights of 2 plots of land bearing Survey No.691 & 689 on executing the development agreements on 25/11/2005 at a consideration of Rs.2,15,00,000/- However, there does not exist any material to prove that the development rights of other 7 plots of land had been soldduring impugned year. The AO, in page 7 of the assessment order, had prepared the tabular chart wherein had disclosed the sale consideration of only 2 plots of land bearing old Survey No.691 & 689 of Rs 1,35,00,000/- and Rs.80,00,000/- respectively which establishes the fact that the appellant had not sold the other 7 plots of land during current year. Further, AO had determined the sale consideration of other 7 plots of land on applying the average sale price computed on the basis of the 2 plots of land sold during the year and such fact also establishes that there does not exist any evidence to hold that the other 7 plots of land in sold during current year. The appellant, in the balance sheet, had disclosed the part sum received as "advances and correspondingly had disclosed as "closing work-in-progress The copies of development agreements dated 10/10/2006, 06/11/2006, 10/05/2011 of such other plots of land establishes the fact that the other plots of land had not been sold during impugned year. The AO had gathered the information from the Sub-Registrar, Thane, however no evidence had been brought on record to prove the sale of other 7 plots of land made by the appellant during impugned year. The AO, at para 3.11 of assessment order, had determined the sale consideration of 2 plots of land bearing old survey no.691 & 689 of Rs 2,15,00,000/-on considering the actual consideration disclosed in the development agreements. However, AO had determined the sale consideration of other 7 plots of land of Rs.4,51,53,730/- on applying the average rate of Rs 3923 per ag mtr computed on the basis of the sale price of 2 plots of land sold during the year. The AO had miserably failed to establish that the appellant had sold the rights of other 7 plots of land during current year The AO, in remand reports dated 05/04/2018 and 15/01/2019, had not adversely commented to appellant's submission and had not brought any material on record to prove the sale of development rights of other 7 plots of land made during impugned year. Accordingly. AO's finding that the appellant had sold the development rights of other 7 plots of land cannot be accepted.*
>
> *6.4 However, it is observed that the appellant had sold the development rights of 2 plots of land bearing old survey no. 691 & 689 on executing the development*

agreement on 25/11/2005 of Rs 2,15,00,000/- and therefore the income arising on sale of such 2 plots of land is to be taxed during current year. Accordingly, 1 hold that the income corresponding to sale of rights of 2 plots of land bearing old survey no.691 & 689 is to be taxed in impugned year and the addition made in assessment in respect of other 7 plots of land cannot be taxed in impugned year.

6.5 There is force in arguments of AR that entire sale consideration cannot be brought to tax and only the real income arising on sale of rights of 2 plots of land could only be brought to tax. The AO, at para 3.8 at page 10 of the assessment order, stated that: "These are the few clauses in the development agreement which goes to establish that the assessee firm have no rights whatsoever on the plot handed over to the developer based on the terms and conditions of the above referred development agreement executed between developer and the assessee firm In similar manner, AO at para 3.3 and 3.4 had again considered various clauses of the development agreement and held that the appellant has retained no rights after sale of plots under the development agreements, Therefore, AO ought to have allowed the deduction of the corresponding cost of acquisition attributable to sale of 2 plots of land. The Hon'ble High courts in the judicial decisions in the case of CIT vs. Simit P. Sheth 38 Taxmann .com 385 (Guj-HC), CIT vs. Bholanath Poly Fab Pvt Ltd 355 ITR 290 (Guj-HC), CIT vs. BalchandAjit Kumar 263 ITR 610 (MP-HC), CIT vs, Leaders Valves (P) Ltd 285 ITR 435 (P&H-HC), CIT vs. Nangalia Fabrics Pvt Ltd 40 Taxmann.com 206 (Guj-HC) and Man Mohan Sadani vs. CIT 304 ITR 52 (MP-HC) had decided that even if it is held that the appellant had received the alleged undisclosed sale consideration, then it would have incurred the undisclosed expenses, resultantly only the income on such undisclosed sales could be brought to tax, Accordingly, the profit on sale of rights of 2 plots of land after allowing the deduction of cost of acquisition/expenses is to be taxed in the hands of the appellant.

6.6 Further, AO, at para 2.4 of assessment order, had accepted the fact that the appellant is holding 80% undivided share of the property since the balance20 % undivided share is held by Shri Sanjay Punamiya and stated that: The purchase deed was executed on 31/10/2005 for consideration of Rs. 2.66 crores ie 80% of total 8)-34 consideration The development agreements dated 25/10/2005 and 31/10/2005 also discloses the fact that appellant is holding the 80% undivided share of 10 plots of land. The AO, while making the addition u/s 69A of unexplained investments, had accepted the fact that the appellant had acquired the 80 % undivided share of plots of land from 4 Rackvi brothers and Shri Sanjay Punamiya had acquired the 20% undivided share from Rajiv G Rackvi (HUF). Therefore, the 80% of total consideration of Rs 2,15,00,000/- i.e Rs. 1,72,00,000/- could only be considered as the sale consideration for transfer of right of 2 plots of land.

6.7 Accordingly, the profit on sale of rights of 2 plots of land is to be held as income of the appellant on considering the sale consideration of Rs.1,72,00,000/- and corresponding cost of acquisition of such 2 plots of land is to be allowed as deduction and balance profit is to be considered as the income of the appellant, as under:

Sale consideration of rights of 2 plots of land (80% of Rs.2,15,00,000/-)		*Rs.1,72,00,000/-*
Less: Cost of acquisition		
WIP as per balance sheet	*Rs.3,35,85,243*	
Total area of 10 plots	*17750 sq. mtrs.*	
Average	*@ Rs.1,892 per sq. mtrs*	
Area of 2 plots of land sold	*5480 sq. mtrs*	
Corresponding cost of acquisition (5480 sq. mtrs @ Rs.1892)		*Rs.(1,03,68,852/-)*

Profit		*Rs. 68,31,148/-*

6.8 Accordingly, I hold that the income of Rs.68,31,148/- on sale of rights of 2 plots of land is to be taxed as business income during the year. I direct the AO to sustain the addition of Rs.68,31,148/- and delete the balance addition made in assessment. Thus, Ground Nos. 4 to 8 are partly allowed."

9. During the course of appellate proceedings before us, the ld. Counsel vehemently contended that assessee had sold only two plot of land at Rs.2.15 crores and the A.O only on assumption basis assumed that assessee had also sold other 7 plots during the year. The ld Counsel also referred copy of agreement dated 25.11.2005 executed by the assessee with M/s Laxmi Vishnu Developer placed in the paper book for transfer of right of survey no. 691 at Rs.1,35,00,000/-. The ld. Counsel has also referred paper book wherein he has placed another agreement executed on the same date with M/s Prachi Construction on land of survey no. 689 for Rs.80 lacs. The ld. Counsel submit that apart from the above two agreement for selling of two plot on land there was no

other agreement for selling any 7 plot of land which was wrongly assumed by the assessing officer that assessee had sold during the year under consideration. The ld. Counsel has relied on the order of ld. CIT(A).

On the other hand, the ld. D.R relied on the order of the lower authorities.

10. Heard both the sides and perused the material on record. Without reiterating the fact discussed above it is undisputed fact that the A.O had particularly discussed actually selling of two plots of land for Rs.2,15,00,000/- during the year under consideration. The A.O on assumption basis determining the sale consideration of other 7 plots of land on the basis of sale price of two plot of land sold by the assessee. The assessee had also placed the copies of sales agreement dated 10.10.2016, 06.11.2006 and 10.05.2011 of other plots of land at page

118 to 187 in the paper book and also certified that these documents were filed before the A.O and ld. CIT(A). The A.O had not brought any evidence on record to substantiate that assesseehad actually sold other 7 plots of land. During the course of appellate proceedings before the ld. CIT(A) specific remand report was also called from the A.O, however A.O had not brought any material on record to demonstrate that assessee had actually sold the remaining 7 plots of land during the year under consideration. After taking into consideration the detailed facts and finding of ld. CIT(A) as elaborated above in this order it is clear that assessee had sold only 2 plots of land and the A.O failed to establish the selling of other 7 plots of land during the year under consideration, therefore, we don’t find any infirmity in the decision of the ld. CIT(A). Accordingly, this ground of appeal of the Revenue stand dismissed.

Ground No. 3: Deleting the addition of Rs.1,20,00,000/- out of Rs.1,84,65,000/-:

11. During the course of assessment the A.O observed that in the balance sheet as on 31.03.2006 the assessee had disclosed the unsecured loan of Rs.1,84,65,000/-. During the course of assessment proceedings because of non-compliance by the assessee the A.O treated the aforesaid amount of unsecured loan as unexplained and added u/s 68 of the Act to the total income of the assessee.

12. Aggrieved, the assessee filed the appeal before the ld. CIT(A). However, the ld. CIT(A) has partly allowed the appeal of the assessee. The relevant part of the decision is as under:

> *"7.2 I have carefully considered the facts of the case, remand reports, documents filed on record and arguments of AR. It is observed that the appellant firm had been dissolved on 23/01/2006 and entire assets and liabilities of the dissolved partnership firm had been taken over by a partner Shri Sanjay Punamiya The assessment proceedings had commenced from 21/03/2013 which is over 6 years from the closure of appellant's business and therefore the appellant was prevented with sufficient cause to furnish the details and documents on assessment record. Accordingly, in interest of justice and since the appellant was prevented with reasonable cause, thus the additional evidence filed by the appellant are hereby admitted.*
>
> *7.3 On perusal of the documents filed on record, it is observed that the disputed unsecured loans disclosed by the appellant as on 31/03/2006 are as under:*

Loans received in earlier year		
a)	*M/s Shankeshwar Enterprises*	*Rs.5,00,000/-*
b)	*Smt. Sandhay Mehta*	*Rs.10,00,000/-*
	Total (A)	*Rs.15,00,000/-*
Loans received during the year		
c)	*M/s Sankeshwar Enterprises (Assessment order passed u/s 143(3) of such lender)*	*Rs.65,00,000/*
d)	*Other parties*	*Rs.64,65,000/-*
	Total (B)	*Rs.1,29,65,000/-*
Advance from creditors received during the year		
e)	*M/s Sidhivinayak Developers (C)*	*Rs.40,00,000/-*
	Grand Total (A +B+C)	*Rs.1,84,65,000/-*

7.4 It is observed that the appellant had received the loans from 2 parties of Rs 15,00,000/-in earlier year. In support, Ld. AR filed the copies of confirmation of loan account and own bank statement of earlier year which evidences the fact that such loans of Rs 15,00,000/- had been received in earlier year. Also, the bank statements and balance sheet of abovestated 2 lenders discloses the loan provided to the appellant in earlier year viz.A.Y.2005-06. In remand reports, AO had not disputed the fact that the abovestated loans had been received by the appellant in earlier year. In the judicial decisions in the case of CIT vs. Prameshwar Bohra reported in 301 ITR 404 (Raj-HC) and CIT vs. Usha Stud Agricultural Farms Ltd reported in 301 ITR 384 (Del-HC) and Tulip Hotels Pvt Ltd vs. DCIT reported in 132 TTJ 633 (Mum-ITAT), Hon'ble High Courts and Han ble ITAT had decided that the opening balance cannot be added u/s 68 of 1.T Act, 1961. Respectfully, following the judicial decisions, I hold that the AO is not correct in making the addition of the loans received in earlier year from 2 parties of Rs 15,00,000/-. Thus, the addition made in assessment of loans received in earlier year of Rs. 15,00,000/-cannot be sustained and is hereby deleted.

7.5 As regards the loans received by appellant during the year of Rs 1,29,65,000/-,the appellant had furnished certain documents to prove the identity and credit-worthiness of the lenders and genuineness of the loans. The various documents furnished by the appellant is tabulated as under:

Sr. No.	Name of the Party	Amount of Loan (Rs)	Documents submitted
1.	Shankeshwar Enterprises	65,00,000	PAN, Confirmation of account, I.T. Act, receipt, balance sheet, Bank statements of lenders and assessment order of the lender and own bank statement.
2.	R.M. Enterprises	15,00,000	PAN, Confirmation of account and own bank statement.
3.	Manav Enterprises	23,00,000	PAN, confirmation of account and own bank statement
4.	T.K. Singh	9,00,000	PAN confirmation of account and own bank statement
5.	Sangeeta Jain	50,000	PAN, Confirmation of account and own bank statement.
6.	Usha H. Jain	50,000	Confirmation of account and own bank statement.
7.	Galaxy Pharm Chem	5,00,000	Confirmation of account and own bank statement.
8.	Kantilal C. Rawal	1,75,000	Confirmation of account and own bank statement.
9.	Motilal Jain	1,75,000	Confirmation of account and own bank statement.
10.	Harish Jain	1,00,000	Confirmation of account and own bank statement.
11.	Vimla Jain	50,000	Confirmation of account and own bank statement.
12.	Jagruti Jain	40,000	Confirmation of account and own bank statement.

13.	*Mek Labs*	*75,000*	*Confirmation of account and own bank statement.*
14.	*Varsha Jain*	*5,50,000*	*Confirmation of account and own bank statement.*
	Total	*1,29,65,000*	

7.6 As regards the loan received by the appellant from M/s Sankeshwar Enterprises of Rs 65,00,000/-,the appellant had furnished the confirmation of account, PAN, IT act receipt of the lender, Balance sheet of the lender. Bank statement of the lender and own bank statement to prove the identity, genuineness and credit-worthiness of the loan. The appellant also filed a copy of the assessment order u/s 14313) of such lender M/s Sankeshwar enterprises for impugned year viz.AY 2006-07 The AO, in remand report, had doubted the credit-worthiness of such lender since the total income disclosed by such lender of Rs. Nil and such lender had disclosed the nominal capital balance of Rs 1,00,000/-. On the other hand, AR submitted that once the assessment order u/s.14313) of such lender had been passed, then the identity, genuineness and credit worthiness of such lender stands proven. I find that the appellant had adequately discharged its onus on filing the confirmation of account, PAN, IT Act receipt, balance sheet and bank statement of the lender and own bank statement to prove the identity, genuineness and credit-worthiness of the lender. The entire loans had been received through banking channel and there are no cash deposits made in the bank account of such lender. Further, the assessment order had been passed of such lender u/s 14313) on 29/03/2014 wherein the total income had been assessed at Rs.14,11,718/-. The AO, in remand reports, had not disputed the correctness of the documents filed by the appellant. As the appellant had adequately discharged its onus to prove the identity, genuineness and credit worthiness of the loan, thus the addition u/s 68 of the loan received by the appellant from M/s. Sankeshwar Enterprises of Rs 65,00,000/- cannot be sustained and is hereby deleted.

7.7 As regards the loans received by the appellant during the year from other parties of Rs 64,65,000/- (1,29,65,000 - 65,00,000), the appellant had furnished the PAN, confirmation of account and own bank statement which had proved the identity and genuineness of the loans, However, the appellant had not furnished any evidence to prove the credit-worthiness of lender parties. The primary onusis on the assessee to prove the credit-worthiness of the lenders and since the appellant had failed to prove the credit-worthiness of the lenders, thus the loans received by the appellant of Rs.64,65,000/- is in doubt. The appellant had not furnished the copies of IT ack receipts, bank statements and balance sheets of the lenders to prove their capacity to advance the loans to the appellant. The mere receipt of loans through banking channel would not prove the credit worthiness of the lenders. The appellant, inspite of ample opportunities granted during course of assessment and appellate proceeding, had not been able to prove the credit worthiness of the lenders. The judicial decisions relied by Ld. AR are distinguishable on facts. Thus, the addition u/s 68 of the loans received by the appellant of Rs 64,65,000/- is hereby sustained."

13. During the course of appellate proceedings before the ld. CIT(A), the assessee had filed written submission along with supporting evidences in support of its claim of unsecured loan to prove the identity, creditworthiness and genuineness of the loans. The ld. CIT(A) has forwarded the information and document furnished by the assessee and called remand reportfrom the AO. The ld. CIT(A) has stated that assessee firm was dissolved on 23.01.2006 and entire assets and liabilities of the dissolved partnership firm had been taken over by a partner Shri Sanjay Punamiya. In this regard we have gone through the paper book and noticed that assessee has placed the dissolution deed dated 23.01.2006 as per which the assessee firm was dissolved from 23rd January, 2016 and the assets including goodwill and liabilities of the firm was taken over by Shri Sanjay Punamiya the partner of the assessee firm. The assessment in the case of the assessee firm was commenced on 21.03.2013 after 6 years of the dissolution of the partnership firm. It is undisputed fact that assessee firm had received loan from two parties of Rs.15 lac in earlier years. In support of the same the assessee has filed copy of confirmation of loan account, copy of bank statement of earlier year evidencing that loan had been received in the earlier year. Therefore, the ld. CIT(A) has deleted Rs.15 lac which cannot be sustained during this year because the loan was received in the earlier years. As regards loan of Rs.1,29,65,000/- received during the years the assessee had furnished detail i.e PAN, confirmation account, bank statement etc. as elaborated in the finding of ld. CIT(A). In the case of M/s Shankeshwar Enterprises the assessee has filed the complete details like i.e PAN confirmation of account I.T. acknowledgement receipt, balance sheet bank statement of the lender and assessment order of the lender and own bank statement. The ld. CIT(A) has elaborately discussed in his

finding at para 7.6 of the order that assessment order had been passed in the case of lender u/s 143(3) on 29.03.2014 and the assessee had adequately discharged its onus to prove identity genuineness and creditworthiness of the land, therefore, the addition of Rs.65 lac was deleted. Regarding the remaining loan of Rs.64,05,000/- (12965000 – 6500000) obtained from 13 parties it had been mentioned in the finding of the ld. CIT(A) at para 7.5 that assessee had only furnished confirmation account and his own copy of bank statement but not furnished the other relevant evidences i.e copies of I.T. acknowledgment bank statement of the lender, balance sheet of the lender etc. to prove the genuineness of the loan transaction, therefore, we don't find any infirmity in the decision of ld. CIT(A) in sustaining the addition to the extent of Rs.64,65,000/-. In the light of the above facts and finding we don't find any error in the decision of ld. CIT(A), therefore, this ground of appeal of the revenue stand dismissed.

C.O. No. 54/Mum/2021

14. At the outset of the hearing the ld. Authorized Representative, has withdrawn its C.O. and therefore the same stand dismissed.

15. In the result, the appeal of the revenue and C.O. of the assessee both are dismissed.

Order pronounced in the open court on 29.09.2022

Sd/-	Sd/-
(PAVAN KUMAR GADALE)	(AMARJIT SINGH)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dated 29.09.2022
PS: Rohit

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ The CIT(A)
4. आयकरआयुक्त(अपील) / Concerned CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, अहमदाबाद/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/BY ORDER,
सत्यापितप्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai