

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

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

I.T.A. No.131/Ahd/2020  
(Assessment Year: 2011-12)

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| Shri Sunil Hakumat Rajdev<br>301, Earth-2, Makarba Behind<br>Sanidhya Bunglows, Bopal,<br>Ahmedabad-380058 | Vs. | ITO<br>Ward-2(1)(3),<br>Ahmedabad |
| [PAN No.ADHPR9138E]  |     |                                   |
| (Appellant)  | ..  | (Respondent)                      |

|                              |                                |
|------------------------------|--------------------------------|
| <b>Appellant by :</b>        | Shri S. N. Shah, A.R.          |
| <b>Respondent by:</b>        | Shri Dr. Mukesh Jain, Sr. D.R. |
| <b>Date of Hearing</b>       | 14.09.2022                     |
| <b>Date of Pronouncement</b> | 02.11.2022                     |

**ORDER**

This appeal is filed by the assessee against the order dated 25.11.2019 passed by the Ld. CIT(Appeals)-2, Ahmedabad for A.Y. 2011-12.

2. The grounds of appeal raised by the assessee read as under:

“1. On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in holding that there is no infirmity in the order passed by the Learned A.O. even though there was no material on record to show that the appellant had paid cash for booking of flat.

2. The Learned CIT(A) acted contrary to the facts, submissions made and the provisions of the Act in holding that the appellant had paid on money of Rs. 14,00,000/- even though no such money was paid and flat booking was subsequently cancelled.

3. The appellant craves leave to add, amend, alter, delete, change or modify any or all grounds of appeal before or at the time of the hearing.”

3. The assessee filed original return of income for A.Y. 2011-12 on 18.02.2012 showing total income of Rs. 9,63,028/-. As per the information, search was conducted by the department on 25.02.2016 at various premises of J. P. Iscon Group and related assesseees, wherein incriminating documents/materials, evidence were seized in respect of “on-money” received from various customers of the projects developed by J. P. Iscon Pvt. Ltd. and its group concerns. During the course of search the computer

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excel sheet with planted (1) cheque and Planned (2) in excel containing details of various projects have been found in the form of digital data from computer of Kalindi S Shah, Marketing Manager of the company. The digital data which was seized during the course of search mentioned as Platinum Final Booking Chart 28.03.2015 clearly established the Planned (1) cheque and Planned (2) received as an unaccounted cash. On verification of the data it was found that the assessee had advanced/paid cash for booking/purchase of Unit of Rs. 56,26,000/- during the F.Y. 2010-11. The assessee filed return submissions which was not accepted by the Assessing Officer and the Assessing Officer made addition of Rs. 14,00,000/- as unexplained investment.

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

5. The Ld. A.R. submitted that the assessee booked the Flat No. G-401, Iscon Platinum in the scheme floated by J. P. Iscon Ltd. and paid initial booking money of Rs. 2,00,000/- to J. P. Iscon Ltd. on 19.02.2011 by A/c payee Cheque from his Bank of Baroda Account. The assessee further paid amount of Rs. 1,00,000/- and Rs. 26,000/- on 03.01.2012 & 06.03.2012 by A/c payee Cheques from the Bank of Baroda Account to the party. The assessee had made payment of Rs. 40,00,000/- on 01.04.2012 by obtaining loan from Reliance Home Finance which was paid by the Finance Company to the party account directly. In total the assessee paid Rs. 43,26,000/- to the banking account of the party. The Ld. A.R. submitted that the assessee has explained all the details regarding the payment and the relevant documents to the Assessing Officer during the assessment proceedings and the assessee did not made any further payments to the said party. The books of the said flat was cancelled by the assessee on 16.02.2016 and the party i.e. J. P. Iscon Ltd. had returned the assessee's entire sum of Rs.

43,26,000/- on 21.04.2016 by A/c payee cheque. The sum of Rs. 43,26,000/- paid for booking of flat was duly accounted in the books of assessee as investment. The sum was returned by the party was duly credited in assessee's Bank of Baroda Account which was duly accounted in the books of the assessee. During the search of the premises of J. P. Iscon Ltd. i.e. on 25.02.2016 subsequent to the search, J. P. Iscon Ltd. issued refund letter of Rs. 43,26,000/- on 19.04.2016. The Ld. A.R. submitted that the details of the payment and the receipt of the payment after the cancellation of the booking was duly reflected in the books of the assessee. There is not necessity of calling the same as "on-money" transaction and making the addition as unexplained investment as the assessee has totally explained the said booking of flat which was an investment at that particular period but subsequently got cancelled. The Ld. A.R. relied upon the decision of Hon'ble Gujarat High Court in case of PCIT vs. Vivek Prahladbhai Patel (2016) 66 taxmann.com 41 (Gujarat), Chintan Jadavbhai Patel vs. ITO (2017) 79 taxmann.com 302 (Gujarat), ITO vs. Chintan Jadavbhai Patel (2018) 91 taxmann.com 426 (SC).

6. The Ld. D.R. submitted that the cancellation of the flat booked by the assessee does not have any bearing regarding the cash given to the said company i.e. J. P. Iscon Group as the amount of Rs. 14,00,000/- was in cash. The Ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee has given the details related to payment of Rs. 43,26,000/- which was never doubted by the Revenue as the said payment was made through cheque. The cancellation of the flat was during the search period for which after the search the assessee was paid the exact amount through cheque by J. P. Iscon Ltd. The

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assessee has pointed various documents including the agreement to sale wherein it was clearly set out that the flat was booked for Rs. 68,26,000/- but due to certain reasons there was cancellation of flat. The Ledger Account of J. P. Iscon Ltd. from 01.04.2010 to 31.03.2017 from assessee's books of accounts showing complete details of mode of payments/received and amount paid/received back was given by the assessee during the assessment proceeding. Merely finding the name of the transaction in the excel sheet during the search cannot held the assessee responsible for cash of Rs. 14,00,000/- which was never tracked down by the Assessing Officer from assessee's books of accounts. The assessee has denied any payment of cash portion during the assessment proceeding. The Assessing Officer has never pointed out from the accounts of the assessee that Rs. 14,00,000/- were paid to J. P. Iscon Ltd. in cash, thus, the Assessing Officer as well as CIT(A) was not right in making this addition. The appeal of the assessee is allowed.

8. In result, the appeal of the assessee is allowed.

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| <b>This Order pronounced in Open Court on</b> | <b>02/11/2022</b> |
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Sd/-  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Ahmedabad; Dated 02/11/2022

TANMAY, Sr. PS

**TRUE COPY**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad