

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.478/Ahd/2019  
Assessment Year: 2009-10**

Prakashkumar Bhikhusinh Parmar, vs. Income Tax Officer,  
Savida Sadan Pushpa Watis, Ward – 1, Palanpur.  
Hanuman Tekri,  
Abu Road,  
Palanapur Highway,  
Palanpur – 385 001.  
[PAN – ACQPP 0077 L]

**ITA No.472/Ahd/2019  
Assessment Year: 2009-10**

Income Tax Officer, vs. Prakashkumar Bhikhusinh Parmar,  
Ward – 1, BK Range, Palanpur. Savida Sadan Pushpa Watis,  
Hanuman Tekri,  
Abu Road,  
Palanapur Highway,  
Palanpur – 385 001.  
[PAN – ACQPP 0077 L]  
(Appellants) (Respondents)

Assessee by : None  
Revenue by : Shri Vijay Kumar Jaiswal, CIT (DR)

Date of hearing : 21.11.2022  
Date of pronouncement : 02.12.2022

**ORDER**

**PER SUCHITRA KAMBLE, JUDICIAL MEMBER :**

These are cross appeals filed by the assessee and Revenue against order dated 21.01.2019 passed by the CIT(A)-4, Ahmedabad for the Assessment Year 2009-10.

2. The assessee in it's appeal has raised the following grounds :

**“DISALLOWANCE DUE TO UNACCOUNTED INCOME**

- (1). *That the learned AO erred in law and on fact in making addition of Rs.7,00,00,000/- without appreciating the fact that the bearer cheque have been issued by Sujan Developers Pvt. Ltd. in the name of Amjadali Gajanfarali Bhukhari and the appellant has only encashed the same on behalf of Amjadali Gajanfarali Bahukhari and hand over the amount to Amjadali G. Bhukhari who has accounted for this amount in his regular books of account. It is stated that Bukhari who has accounted for this amount in his regular books of account. It is stated that Bukhari Amjadali Gazanfarali has executed M.O.U. with M/s. Sujan Developers Pvt. Ltd. and he is the person to receive the payment made by the company. A detail contra confirmation in this regard duly signed by Amajadali Baukhari was not considered and unwarranted addition u/s.68 was made which is not legal, hence is required to be deleted to meet the end of justice.*

**DISALLOWANCE ON ACCOUNT OF UNSECURED LOAN TREATED AS UNEXPLAINED CREDIT.**

- (2) *That the learned A.O. erred in law and on fact in making addition of Rs.1,92,80,000/- on account of unsecured loan taken from Amjadali Gajanfarali Bukhari without appreciating the fact that the above amount has been received as an advance from Amjadali G Bhukhari for incurring litigation and land related expenditure has been duly shown in his books of accounts. Hence the addition made u/s.68 is unwarranted and need to be deleted to meet the end of justice. The appellant reserves the right to add, amend, charge any/other grounds at the time of final hearing.”*

The Revenue in it's appeal has raised the following ground:

- “1). *That the learned CIT(A) has erred in law and on the facts in deleting the addition of Rs.1,92,80,000/- u/s.68 of the Income Tax Act, 1961.”*

3. The assessee is engaged in the land and construction activity. It was found that the assessee has shown loans from Shri Amjadali Gazanfarali Bukhari in his Balance Sheet for F.Y. 2008-09 & 2009-10 of Rs.1,92,80,000/- and Rs.7,06,80,000/-. The said source of such transactions was found unexplained in the hands of the assessee. Notice under Section 148 of the Income Tax Act, 1961 was issued on 30.03.2016. The assessee filed original return of income on 31.03.2010 and stated that the same should be taken in response to notice under Section 148 of the Act. The Assessing Officer after taking cognisance of the evidences given by assessee observed that the amount of Rs.5 Crores and Rs.7 Crores was not approved in respect of advances taken from Amjadali Gazanfarali Bukhari by the assessee. The assessee has not produced any books of account before the Assessing Officer

to evidence that the amount of Rs.7 crores has been accounted for in the books of account of the assessee and hence made addition under Section 68 of the Act at Rs.7 crores. The Assessing Officer also made addition of Rs.1,92,80,000/- under Section 68 of the Act related to unsecured loans given to Amjadali Gazanfarali Bukhari and treated the same as unsecured loans.

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. At the time of hearing, none appeared on behalf of the assessee despite serving notice through Registry as well as Department through Ld. Departmental Representative who has filed the service report dated 18.10.2022. Therefore, we are proceeding on the basis of submissions made by the assessee before the Assessing Officer as well as before the CIT(A).

6. We have heard the Ld. DR and perused all the relevant material available on record. The assessee submitted before the CIT(A) that the assessee executed Memorandum of Understanding (MOU) with Mr.Saiyad Amjadali Gazanfarali Bukhari for purchasing their ancestral land owned by more than 25 owners. A MOU was executed on 23.02.2007. Since the land dispute was disposed of after 50 years, the assessee executed MOU and the assessee paid an amount of Rs.75 lakhs out of which Rs.50 lakhs was paid on 16.02.2007 and 19.02.2007 by demand draft of Bank. Finally the land was sold to Sujan Developers Pvt. Ltd. jointly by the assessee and Amjadali Bukhari and 24 legal heirs and their associates. The assessee was confirming party in the said MOU as party of the third part. The dispute in the land was required to be cleared jointly and after getting the land cleared and marketable the sale proceeds of the land will be shared by all the parties and payments will be made to the land owners according to their percentage of holding of each party. Sujan Developers made payment on various dates through bearer cheques of different Banks. Mr. Amjadali Gazanfarali Bukhari made withdrawal of the cheques given by the company on regular basis through certain person and in two occasions cash were withdrawn from the Bank by the

assessee on behalf of Amjadali Gazanfarali Bukhari. The cash withdrawn from the Bank was accounted for in the regular books of account of Amjadali Gazanfarali Bukhari. Thus, the amount of Rs.5 crores was withdrawn on 01.09.2008 and Rs 2 crores on 14.10.2008. The bearer cheques issued by Sujan Developers were encashed by the assessee and entire amount were handed over to Amjadali Gazanfarali Bukhari. The assessee produced cash book of Amjadali Gazanfarali Bukhari for the relevant period as well as copy of contra confirmation account from Amjadali Gazanfarali Bukhari and copy of bank account of Sujan Developers. The CIT(A) while deciding the matter has categorically mentioned that cheque no.585136 dated 01.09.2008 for Rs.5 crores and cheque no.585738 dated 14.10.2008 for Rs.2 crores which were drawn on Tamilnadu Mercantile Bank Limited was issued by Sujan Developers Pvt. Ltd. as advance against land purchased in A.Y. 2009-10. The CIT(A) also reproduced the confirmation of Amjadali Gazanfarali Bukhari at page no.23 wherein it was mentioned that the said cheques/amounts were debited in his account and the same is entered into the accounts of Sujan Developers on the very same day but the CIT(A) has not taken cognisance of the this particular aspect and confirmation and made addition of Rs.7 crores which is not just and proper. Thus, ground no.1 of the assessee's appeal is allowed.

7. As regards ground no.2, the evidence produced before the CIT(A) as well as before the Assessing Officer will reveal that the said amount was actually paid by the assessee on 16.02.2007 and 19.02.2007 to Amjadali Gazanfarali Bukhari and the relevant documents were also mentioned in the order of the CIT(A). Hence, the CIT(A) has rightly allowed the assessee's ground and deleted the addition amounting to Rs.1,92,80,000/- on the basis of evidences produced before him.

8. Ground no.2 taken by the assessee is not relevant in the present appeal and hence becomes infructuous.

9. The Department has filed the appeal in respect of amount of Rs.7 crores as well as Rs.1,92,80,000/- which was already decided by us hereinabove.

10. In the result, appeal of the assessee is allowed and appeal of the Revenue is dismissed.

Order pronounced in the open Court on this 2<sup>nd</sup> day of December, 2022.

*Sd/-*  
**(WASEEM AHMED)**  
Accountant Member

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

**Ahmedabad, the 2<sup>nd</sup> day of December, 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*