

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकर अपील सं./ITA No.374/SRT/2018**

**निर्धारण वर्ष/Assessment Year: (2014-15)**

**(Physical Court Hearing)**

|  |            |   |
|--|------------|---|
| Sanjaykumar Ramanbhai Patel,<br>18/1249, Shamji Kanji Wadi, L. H. Road,<br>Varachha Road, Surat. | <b>Vs.</b> | Income Tax Officer,<br>Ward-3(3)(4), Aaykar<br>Bhavan, Majura Gate,<br>Surat. |
| <b>(Appellant)</b>   |            | <b>(Respondent)</b>   |
| <b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: AHYPP0618E</b>  |            |   |

|                              |                          |
|------------------------------|--------------------------|
| <b>Appellant by</b>          | Shri Sapnesh Sheth, CA   |
| <b>Respondent by</b>         | Shri Vinod Kumar, Sr. DR |
| <b>Date of Hearing</b>       | 24/02/2023               |
| <b>Date of Pronouncement</b> | 08/05/2023               |

**आदेश / O R D E R**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2014-15, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-3, Surat [in short “the Id. CIT(A)”], in Appeal No. CAS/3/347/16-17, dated 30.03.2018, which in turn arises out of an assessment order passed by Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 12.12.2016.

2. The grounds of appeal raised by the assessee are as follows:

*“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in making addition of Rs.22,46,615/- as unexplained investment in property during the year under consideration.*

*2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in making addition of Rs.19,66,000/- as unexplained cash deposits in savings bank account maintained by assessee with Varachha Co-Op Bank Ltd.*

*3. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in enhancing the total income of assessee by Rs.9,98,885/- by treating booking advances received in cash as unexplained cash credits.*

*4. It is therefore prayed that above addition made by assessing officer and confirmed by Commissioner of Income-tax (Appeals) & also the enhancement made by Id. Commissioner of Income-tax (Appeals) may please be deleted.*

*5. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

3. Now we shall take Ground Nos.1 and 2 raised by the assessee, which are interconnected and identical, therefore we shall adjudicate them together.

4. Brief facts *qua* ground nos. 1 and 2 are that assessee before us is an individual and filed return of income on 04.02.2016, declaring total income of Rs.5,85,390/- for assessment year 2014-15. The return of income was processed under section 143(1) of the Act. Later on, assessee's case was selected for scrutiny through CASS and notice under section 143(2) of the Act was issued on 10.08.2016 which was duly served upon the assessee. The assessee is engaged in the business of purchasing land, plotting and sale to the customers during the year under consideration. During the course of assessment proceedings, it was noticed by Assessing Officer that assessee had purchased immovable property at block No.447/A, Gam Kamraj, Surat for a consideration of Rs.84,85,600/-. The Letter under section 133(6) of the Act was issued by Assessing Officer to the sub-Registrar Office, Kamrej, Surat on 10.11.2016 to submit the details of the said property. The Sub-Registrar, Kamrej vide letter dated 15.11.2016 submitted the registered documents of the property along with the calculation sheet. On verification of the same, it was noticed by the Assessing Officer that the assessee along with three other co-owners have purchased the above mentioned property at Kamrej for a consideration of Rs.84,85,600/-. The assessee has not furnished any details of the property and source of investment. Accordingly, the assessee

was asked to show cause vide letter dated 02.12.2016 as to why the purchase consideration of Rs.84,85,600/- should not be treated as his unexplained investment and added to his total income.

5. In response to show cause notice of the Assessing Officer, the assessee, vide letter dated 09.12.2016 furnished his submission before Assessing Officer, the extract of which is reproduced as under:

*“You have stated in para 3 of the above notice that the whole purchase consideration and the source of the same of the said property was not submitted.*

*First of all, please note that the amount of Rs.84,85,600/- is not the investment of the assessee along. He has purchased the land with other three co-owners and his share in the same is 25% i.e. Rs.21,21,400/-. Therefore, there is no question of making addition of Rs.84,85,600/- to the income of the assessee.*

*Further, the assessee is doing business of purchasing land, plotting of the same and its sale to the customers.*

*The assessee had purchased the said land at Rs.480/481, Bl. No.447/A, Kamrej, Surat during the previous year but could not make payment of the said land. This land was purchased with other co-owners.*

*The NA process was also done and the assessee and his co-owner had also started booking the sale of the plots. However, the full and final payment of the land purchase was not yet made and the purchase deed was pending. Out of the collection from sale of plots of this land, the assessee made final payment to the land owners and executed the sale deed on 07.06.2013. The sale of plots was also made by accepting cash from customers. The same cash was used in making payment of the land purchased.*

*Please find attached the statement showing the source of the property purchase along with copy of 3 of the sale deeds of the property purchase along with copy of 3 of the sale deeds of plots, randomly selected which are the source of the purchase of land.*

*Also, find enclosed statement showing list of parties from whom the booking advance was received in cash before the payment made for purchase of land on 07.06.2013 along with confirmations of the same and their ID Proof.*

*As the assessee has already proved the above source with supporting evidence, the assessee requests not to make addition on this account.”*

6. However, Assessing Officer rejected the contention of the assessee and observed that assessee has furnished stereotype certificate along with copy of

identify proof in the form of PAN card or election identity card from the customer confirming the purchase of plot and payment of advance in cash and remaining payment in five installments. The so-called certificates furnished by the assessee which is claimed to be from the customers are nothing but self-made certificate. The assessee has furnished three sale deeds of plot. On verification of the same, it is noticed that the said plot has been registered on March and May 2015. In the said deeds also there is no clarity of the payment details and the date of payment. On further verification of the sale deeds, it is noticed that the said land has been converted to N.A on 14.10.2014 via order No.4/DP/N.A/Regd. No.60/14 of District Development Officer, Surat. Hence, before 14.10.2014, the land was agricultural land which cannot be sold by plotting. The assessee has not furnished any authentic and credible evidence to show that the advance booking amount received in cash from the customers are genuine. By furnishing cyclostyle confirmation certificates, the assessee is trying to mislead the department and adopting colourful device to camouflage the unaccounted investment made in the property. It is pertinent to mention here that assessee has 1/4<sup>th</sup> share in the property and his share is shown at Rs.21,21,400/-. On perusal of the purchase deed, it is seen that the stamp duty paid by assessee along with co-purchasers is Rs.4,15,800/- and registration fees at Rs.85,060/-. Therefore, the 1/4<sup>th</sup> share of the assessee works out to Rs.22,46,615/-. It has been mentioned in the purchase deed that the entire purchase consideration has been made in cash and the source of investment in the property is again cash received from customers from booking advance of sale of plots. It is interesting to note that while purchasing the property, the assessee has shown 1/4<sup>th</sup> share but while selling the same property, his share in the property is shown at 50% of the total booking advance received i.e. Rs.52,02,500/-. This contradiction itself indicates the entire investment in property is bogus and the source of investment is also bogus. It is again pertinent to mention here that vide the above referred show cause notice dated 02.12.2016 the assessee was asked to explain the source of cash deposit of Rs.19,66,000/- made in saving bank account No.100010055925

of the Varachha Co-operative Bank, Surat. In response, vide above referred letter dated 09.12.20165 the assessee stated as under:

*“....the assessee had started booking the sale of plots by accepting cash from the customers. The said receipt of cash from customers was utilized for payment of the purchase consideration of land and the remaining cash balance was deposited in bank on different dates. Thus cash deposited in bank was the cash received from the customer and booking advance from sale of the said land.....”*

7. From the above submission, the Assessing Officer noted that the assessee has shown fictitious source of investment in the said property. The so-called advance booking received in cash and the same invested in property are all fabricated to mislead and evade the due taxes to the department. The cash deposit of Rs.19,66,000/- in saving bank account is nothing but unaccounted income of the assessee. It is not understood as to how the 1/4<sup>th</sup> share in the purchase of property becomes 1/2<sup>th</sup> share on sale of the property. Further the evidence furnished by the assessee are simply laughable i.e. self-serving confirmation certificates and booking advance received from so called customer. The assessee has completely failed to prove that the source of investment made in property and the source of cash deposited in saving bank account are from booking advance received from the customers for sale of plots. In view of the above facts, the submission of the assessee was rejected by Assessing Officer and the amount of Rs.42,12,615/- (22,46,615 + 19,66,000) was added to the total income of the assessee.

8. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has confirmed the addition made by the Assessing Officer, observing as follows:

***“8. DISCUSSION AND DECISION OF THE APPELLATE AUTHORITY***

*8.1 I have perused the details on records, and I find that the appellant has claimed to have received Rs.52,02,500/- as booking advance whereas the Ld. AO has made addition of only Rs.42.12 lacs only. Hence, enhancement notice dated 12.03.2018 was issued. The relevant paras are reproduced below:*

2. It is noticed that the Assessing Officer has made on addition of Rs.42,12,615/- u/s 68 of the Act on account of the sale consideration paid in cash and cash deposits in bank account. It is seen that you have claimed that the source for both the above is cash advances received for booking of plots Rs.52,02,500/-. The finding of assessing officer is that these cash advances are not explained in terms of 3 ingredients of sec 68 of the Act. After giving this finding the learned assessing officer by mistake added only Rs.42,12,615/-, when he had to add Rs.52,02,500/-. The entire cash advances for booking of plots are unexplained under section 68 of the Act as per the finding given by the Ld. AO. In view of this, you are hereby required to furnish you explanation as to why Rs.52,02,500/- being the alleged total advances for booking received in cash should not be added u/s 68 as they stand unexplained. This will result in enhancement of assessed income by Rs.9,89,885/-. In view of the provision of section 251(1) r.w.s 251(2) of the IT Act, 1961 , your submission along with documentary evidence, if any, is required to be produced on or before 26.03.2018.

8.2 The AR vide letter dated 26.03.2018 has filed explanation as under;

With reference to your notice for enhancement of income u/s 251(1) r.w.s 251(2) dated 12.03.2018, we are under instructions from our client to submit as funder:

Sir, you have stated in your notice that the learned assessing officer by mistake added only Rs.42,12,615/-, when he should have added Rs.52,02,500/- of cash advance received for booking of plot as unexplained as per sec. 68 of the Act.

Submission of the appellant:

Cash used and its source was to be explained for Rs.42,12,615/-.

The assessee had purchased a land along with other three co-owners during the year under consideration. The assessee's share of Rs.2246615/- (Rs.21,21,400 being 1/4<sup>th</sup> of the total Rs.84,85,600/- plus 1/4<sup>th</sup> share in stamp but Rs. 125215/-) in the cost of the property purchased was paid by him in cash.

In addition to this, cash of Rs.1966000/- was also deposited in bank by the assessee during the year under consideration.

Thus, the source of cash used in the above two was to be explained which comes to Rs.42,12,615/-.

Source explained Rs.52,02,500/-

Sir, during the year under consideration, the assessee had received total amount of booking advance Rs.1,04,04,000/- out of which the assessee, share being 50% was Rs.52,02,000/-.

Out of the cash received on booking of the plots, the payment for the purchase consideration of land, its stamp duty and registration fees were paid. From the balance amount from booking advance received during the year, the assessee had deposited the amount of Rs.1966000/- in his bank account.

*The list of the parties from whom the booking amount of plots was received in cash was submitted to the AO alongwith the confirmation of all these parties and their identity proofs.*

*Thus, the source of cash of Rs.42,12,615/- was explained by the booking advance of Rs.52,02,500/-.*

*Hence, the assessee had proved his source of cash deposit in the bank and source for purchase of the plots.*

*AO did not consider the explanation of the source as genuine:*

*Sir, the AO has in his assessment order stated that “the assessee has not furnished any authentic and credible evidence to show that the advance amount received in cash from the customers are genuine.”*

*Thus, the AO did not find this booking advance as genuine. Hence, he had made addition as unaccounted investment of land and cash deposited in bank and not of the booking advance as unaccounted cash credit. The addition was made for the unaccounted investment under section 69 and not as unexplained cash credit u/s 68.*

*Section 68 does not come into picture:*

*The assessee has not earned any business income during the year under consideration.*

*He had made investment in the property and started the booking of the same. However, no sale deed had been executed during the year under consideration. Hence, there is no income from business for which he has to maintain books of accounts.*

*The assessee did not maintain any books of accounts, and hence, there is so such cash credit in his books amounting to Rs.52,02,500/-.*

*The amount deposited in bank is only Rs.19,66,000/- and the investment in property is Rs.22,46,615/-. Hence, nothing more is with the AO to prove the cash credit. Hence, the addition cannot in any case made of an amount in excess of Rs.42,12,615/-.*

*When there are no books, there is no unexplained credit in books. Other cash credit is the amount deposited in bank which also does not support the amount of Rs.52,02,500/-. Hence, the said amount cannot be treated as cash credit.*

*If source is not genuine how can the amount of source be taken as base?*

*Amount of Rs.52,02,500/- is the source as unexplained by the assessee. The AO has completely disagreed to the said source.*

*If the source is not considered genuine by the AO, there is no question of relying upon the amount of this source.*

*Or in other words, if your considers the said amount to be genuine, then there is no question of making addition of the same as the said amount is the amount of the booking advance as claimed by the assessee.*

*Your proposal to add Rs.52,02,500/- to the income means that the source i.e. booking advance is being considered by you as the genuine cash received by the assessee. In that case, the source of the purchase of property and the cash deposit in bank is already explained. Hence, there is no requirement to make any addition to the total income of the assessee.*

*If the amount of Rs.52,02,500/- is the genuine booking advance, then there is no question of making any addition to the total income of the assessee and the appeal will stand allowed in the case.*

*All the booking advance is genuine with sales in future:*

*Sir, please also note that the assessee had submitted the confirmations of the parties from whom the said cash booking advance was selected. The identity proof of the persons are also submitted to him.*

*Subsequently, the sale deeds are also executed in the names of these customers. These sale deeds as reflect the cash booking advance given by them to the assessee and his co-owner.*

*Sir, if the booking advance was not genuine, then how could the assessee sell the said plot of land in the subsequent years? Thus if the booking amount is not accepted as genuine, does it mean that the assessee will not have to show the income from sale of plots in subsequent years?*

*Thus, if the source of the said investment in land and in bank are not accepted as genuine, the genuine sale deeds in subsequent years should also not be treated as the income of the assessee then. This is not the correct situation.*

*Moreover, the assessee has already explained the booking advance by submitting the confirmations, ID Proof and copies of sale deeds executed subsequently. Hence, there should be no enhancement and the addition made should also be deleted in toto.*

*8.3 I have perused the assessment order, submissions of AR and the reply of AR to enhancement notice. The facts are as under:*

*(i) The assessee deposited cash of Rs.19,66,000/- in bank and also paid cash Rs.21,21,400/- for purchase of property. Total application of cash is Rs.42,12,615/- in the year.*

*(ii) To explain the source of same the assessee claimed to have received booking advances for plots in cash of Rs.52,02,500/-.*

*8.4 The booking advances are claimed to be received in cash. The cash transactions are always suspect. The natural presumption is that they are not genuine. Cash transactions are inherently unverifiable regarding their genuineness and also regarding the date/time. They can always be ante-dated as no verifiable records are created during the transactions or as a part of transaction. No contemporary evidence is created. It is well known, that cash*

*loans/advances are claimed as an afterthought to explain/cover up shortage of accounted funds in hands of assessee. It is also a known fact that cash expenses are booked/debited to suppress profit or to camouflage inadmissible expenses.*

*8.5 In the instant case, the appellant claims to have received cash advances for booking of plots, which he used to pay for buying the land and deposit in claims that he received plot booking advances in cash for the plots on land, which he does not even own. The appellant here is clearly putting the cart before the horse. It is unthinkable that any one will give such booking advances in cash, for plots to anybody who doesn't even own the said land. Moreover, appellant appears to be an afterthought to cover up investment made of his own unaccounted funds. The Ld. AO in para 4.2 to 4.5 are made on sound basis and I hereby confirm the same. The Ld. AO has also rightly pointed out the anomaly in the claim of the appellant regarding share in purchase of land share in sale of land. This anomaly exposes the flaw in the explanation of the appellant. The addition of Rs.42,12,615/- made by Ld. AO is hereby confirmed.*

9. Aggrieved by the order of Ld. CIT(A), the assessee is in appeal before us.

10. Shri Sapnesh Sheth, Learned Counsel for the assessee submitted that first of all, the assessee is co-owner of the land and in the hands of the co-owners, the assessment was made by the Assessing Officer and while making the assessment, in the hands of co-owners, the Assessing Officer has not made any addition.

The Ld. Counsel pointed out that one of the co-owners is assessee's mother wherein the department has accepted the transaction as a genuine transaction and did not make any addition, therefore the assessee should not be treated differently.

11. On merits, Ld. Counsel submitted that during the assessment stage, the assessee submitted the statement of source of cash deposits and the list of the parties from whom booking advances were received in cash and assessee also submitted the ID Proof along with the confirmation of parties from whom advance booking amount was received. If the Department wants to make further enquiry, the Assessing Officer could have issued notices to these persons from whom assessee has received advances and could have made the further enquiries.

12. In respect of ground no.2, the Ld. Counsel submitted that cash was deposited to the tune of Rs.19,66,000/-, the assessee submitted the sources of the amount were from the cash was received was explained before the Assessing Officer, therefore no addition should be made.

13. On the other hand, Learned Departmental Representative (Ld. DR) for the Revenue submitted that assessee is a co-owner of the land and other co-owners are not allowed to sale the property unless it is determined and agreed by other co-owners. Therefore, this kind of a cooked story made by the assessee should not be believed. The ld. DR also submitted that assessee has not explained the source of the cash deposit, hence the entire cash deposit was added in the hands of the assessee.

14. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. We note that Ld. Counsel submitted before us the following documents:

- (i) Letter filed before the Assessing Officer (vide paper book page nos. 9 to 13).
- (ii) Statement showing the source of purchase of Agriculture Land situated at Block No.447/A, Moje Gaam Kamrej, Surat (vide paper book page no.17)
- (iii) Statement of source of cash deposits made by assessee during AY 2014-15 (vide paper book page no.18)
- (iv) List of parties from whom booking advance were received in cash (vide paper book page nos.19 to 20)
- (v) ID proofs along with the confirmation of parties from whom advance booking amount received (vide paper book page nos. 21 to 163)

(vi) ITR Form of assessee for AY.2014-15 (vide paper book page nos.164 to 165)

(vii) Assessment Order passed in case of Kaushikaben Sanjaybhai Patel for AY.2014-15 (vide paper book page nos.166 to 169)

(viii) Assessment Order passed in case of assessee for AY.2015-16 (vide paper book page nos.170 to 172)

(ix) Letter filed before Assessing Officer (vide paper book page nos. 173 to 176)

16. The assessee also submitted the statement showing source of purchase of agricultural land which is placed at paper book page no.17, which is reproduced below:

A. Y. 2014-15

Statement Showing the source of purch:

tural land at Block No. 447/A, Moje Gaam Kamrej, Surat

| Total   | Assessee's Share (25%) | Particulars            | Mode and details of payment |
|---------|------------------------|------------------------|-----------------------------|
| 8485600 | 2121400                | Total Purchase Cost of | Paid in cash on 7-6-2013    |

Details of source of the payment of the above Rs. 2121400 cash on 7-6-2013

| Date          | Amount Rs. | Particulars  | Proof attached  |
|---------------|------------|--|---|
| 01-04-13      | 499875     | Opening cash on hand as per ITR-4 of AY 2013-14  | Copy of ITR of AY 2013-14   |
| Upto May 2013 | 1621525    | Out of Rs. 52,02,500/- Booking advance received in cash for sale of plots of this land - 1/2 share | Copy of randomly selected 3 sale deeds are attached for your reference alongwith the conformation of the persons to whom the plots are sold and the booking advance is received. The assessee has done plotting on the said purchased land land alongwith one co-owner. His share of 50% in the booking advance received from sale of plots *is utilised to make payment of the purchase of land. |
|               | 2121400    |  |   |

17. The Ld. Counsel for the assessee also submitted before the Bench the statement showing the parties from whom booking advances were received which is reproduced below:

Statement showing list of parties from whom booking advance received in cash: (19)

| Sale Party Name                                | Amount (Rs.) received as booking advance before 7-6-2013 | Total Amount of Sale deed |
|--|--|---------------------------|
| 8 Lalitbhai Savalia                            | 165,000  | 195,000                   |
| 9 Gordhanbhai Chovatiya                        | 105,000  | 130,000                   |
| 11 Ratishbhai Parsotambhai Kabariya            | 165,000  | 195,000                   |
| 13 Pravinbhai Arjanbhai Sorathia               | 165,000  | 195,000                   |
| 14 Pravinbhai Arjanbhai Sorathia               | 105,000  | 130,000                   |
| 17 Mansukhbhai Parshottambhai Surani           | 105,000  | 130,000                   |
| 18 Kaushal R. Shah/Arvindbhai Kumbhani         | 165,000  | 195,000                   |
| 19 Mukeshbhai Pranjibhai Gajera                | 165,000  | 195,000                   |
| 20 Mukeshbhai Pranjibhai Gajera                | 165,000  | 195,000                   |
| 22 Rameshbhai D. Sorathia                      | 165,000  | 195,000                   |
| 23 Rameshbhai D. Sorathia                      | 165,000  | 195,000                   |
| 24 Rajubhai Bhavanbhai                         | 165,000  | 195,000                   |
| 26 Prafulbhai D. Kachadiya                     | 165,000  | 195,000                   |
| 27 Vinubhai D. Kachadiya                       | 105,000  | 130,000                   |
| 28 Hanshaben Bhupatbhai Vasani                 | 105,000  | 130,000                   |
| 29 Hansaben Bhupatbhai Vasani                  | 105,000  | 130,000                   |
| 30 Chaturbhai Bachubhai Ramani                 | 165,000  | 195,000                   |
| 31 Pravin G. Chovadiya                         | 165,000  | 195,000                   |
| 34 Bhaveshbhai Himmatbhai Padshala             | 105,000  | 130,000                   |
| 35 Mayurbhai Dhirubhai                         | 165,000  | 195,000                   |
| 36 Mukeshbhai Korat                            | 165,000  | 195,000                   |
| 37 Pravinbhai Siddhpura                        | 105,000  | 130,000                   |
| 39 Anjanaben Bhaveshbhai Butani                | 165,000  | 195,000                   |
| 41 Hareshbhai Kantibhai Godhani                | 165,000  | 195,000                   |
| 42 Vijaybhai M. Kaswala                        | 105,000  | 130,000                   |
| 43 Rameshbhai / Vipulbhai Shantinagarwala      | 105,000  | 130,000                   |
| 45 Bharatbhai B. Dhorajiya/Nileshbhai Golaviya | 165,000  | 195,000                   |
| 46 Vijaybhai M. Kaswala                        | 165,000  | 195,000                   |
| 47 Narmadaben Dahyabhai Patel                  | 105,000  | 130,000                   |
| 49 Bhavesh Jayantibhai Nakarani                | 165,000  | 195,000                   |
| 50 Kailashbhai Dhadhuk                         | 165,000  | 195,000                   |
| 52 Dharamshibhai Kanjibhai Patel               | 105,000  | 130,000                   |
| 53 Ashokbhai Vitthalbhai Limbasiya             | 105,000  | 130,000                   |
| 55 Mukesh A. Chanchad                          | 165,000  | 195,000                   |
| 56 Bharatbhai M. Desai                         | 105,000  | 130,000                   |
| 57 Shantilal Korat                             | 105,000  | 130,000                   |
| 58 Shantilal Korat                             | 105,000  | 130,000                   |
| 59 Shantilal Korat                             | 105,000  | 130,000                   |
| 60 Shantilal Korat                             | 105,000  | 130,000                   |
| 64 Upendra Jitubhai Desai                      | 165,000  | 195,000                   |
| 65 Rasik Dhirubhai Korat                       | 165,000  | 195,000                   |
| 66 Jaysukhbhai B. Timbadiya                    | 105,000  | 130,000                   |
| 67 Vijaybhai M. Kaswala                        | 105,000  | 130,000                   |
| 68 Surashbhai Shiroya                          | 105,000  | 130,000                   |

|     |  |                   |         |
|-----|--|-------------------|---------|
| 71  | Bhailalbhai Kalubhai Vanecha                           | 165,000           | 195,000 |
| 72  | Chaturbhai Nathabhai Sagar                             | 165,000           | 195,000 |
| 73  | Madhavji P. Rangpariya                                 | 165,000           | 195,000 |
| 74  | Vishalbhai Vitthalbhai                                 | 110,000           | 130,000 |
| 75  | Natubhai M. Gediya                                     | 110,000           | 130,000 |
| 76  | Sumitra M. Hariyani                                    | 110,000           | 130,000 |
| 80  | Ashwinbhai Lavjibhai Trada                             | 165,000           | 195,000 |
| 81  | Rameshbhai Durlabhbhai Vaghela                         | 105,000           | 130,000 |
| 82  | Bharatbhai G. Vaghasiya                                | 110,000           | 130,000 |
| 83  | Bharatbhai G. Vaghasiya                                | 110,000           | 130,000 |
| 84  | Ashaben Girishbhai Rathod                              | 165,000           | 195,000 |
| 85  | Rameshbhai Devrajbhai                                  | 165,000           | 195,000 |
| 89  | Rameshbhai Devrajbhai                                  | 165,000           | 195,000 |
| 90  | Jayantibhai P. Savaliya                                | 165,000           | 195,000 |
| 91  | Gobarbhai Savaliya                                     | 105,000           | 130,000 |
| 92  | Rasikbhai Muljibhai Motisariya                         | 110,000           | 130,000 |
| 96  | Girishbhai Pate!                                       | 105,000           | 130,000 |
| 97  | Bhavesbhai Devshibhai                                  | 110,000           | 130,000 |
| 99  | Dipakbhai Gaudani                                      | 165,000           | 195,000 |
| 100 | Kartik Pavasia   | 165,000           | 195,000 |
| 101 | Kartik Pavasia   | 165,000           | 195,000 |
| 102 | Akshay Pavasiya  | 110,000           | 130,000 |
| 103 | Akshay Pavasiya  | 110,000           | 130,000 |
| 104 | Rajeshbhai Ratibhai Polara                             | 165,000           | 195,000 |
| 105 | Harshil J. Patel                                       | 110,000           | 130,000 |
| 106 | Vishal P. Shekhada                                     | 110,000           | 130,000 |
| 107 | Vishal P. Shekhada                                     | 165,000           | 195,000 |
| 108 | Brijesh M/ Hirpara                                     | 165,000           | 195,000 |
| 109 | Keshavbhai Bhimjibhai Ghevaria                         | 130,000           | 130,000 |
| 110 | Sanjaybhai kalubhai Rakholiya                          | 110,000           | 130,000 |
| 111 | Sandipbhai Korat                                       | 110,000           | 130,000 |
|     |  |                   |         |
|     | <b>Total</b>   | <b>10,405,000</b> |         |
|     |  |                   |         |
|     | <b>50% share of Sanjaykumar Patel in sale of plots</b> | <b>5,202,500</b>  |         |

18. Apart from this, in respect to each person from whom the booking advances were received, the assessee submitted the certificate /confirmation PAN Card/Election Card and their full name and address and if the Assessing Officer wants to conduct further enquiry, he could have conducted further enquiry from the persons from whom the assessee has received booking advances. However, we note that Assessing Officer has failed to conduct the enquiry and issue the notice u/s 131 of the Act to the persons from whom the assessee has received booking advances.

19. We note that assessee's mother is one of the co-owners of the land and whose assessment was framed under section 143(3) of the Act, dated 09.12.2016 wherein the Assessing Officer has not made any addition in her hand. The

assessment order of Smt. Kaushikaben Ramanbhai Patel (one of the co-owners) is reproduced below:

*“The assessee had e-filed her return of Income (ROI) for A.Y.2014-15 on 31.03.2015 declaring total Income of Rs.3,58,870/-. The case was processed u/s. 143(1) of the I.T. Act, 1961 accepting returned Income. Thereafter the case was selected for scrutiny under CASS. Accordingly, notice u/s 143(2) was issued on 04.09.2015 fixing hearing on 22.09.2015. The notice was duly served upon the assessee through speed post. Subsequently, notice u/s 142(1) of the Act was issued on 30.05.2016 fixing date of hearing on 08.06.2016 and the notice was duly served upon the assessee through speed post.*

*2. In reply to the above notices, Shri Mayank Desai, Chartered Accountant, A.R. of the assessee attended on 08.07.2016 on response to notice the office, the case was discussed with him. During the assessment proceedings, relevant details/clarifications/documents were called for from the assessee from time to time which has been submitted by the assessee/A.R.*

*3. Fact of the case:*

*During the year under consideration the assessee engages in the business of labour contract as well as agriculture income. Assessee got the contract for miscellaneous building construction work and other miscellaneous work.*

*4. Subject to the above remarks and after verification of various details and data available on record, the income of the assessee is accepted at returned income as under:*

|   |                        |
|---|------------------------|
| <i>Total Income as per ITR filed for A.Y. 2014-15</i> | <i>: Rs.3,58,872/-</i> |
| <i>Total Assessed Income</i>                          | <i>: Rs.3,58,872/-</i> |
| <i>Rounded off u/s. 288A.</i>                         | <i>: Rs.3,58,870/-</i> |
| <i>Agriculture Income</i>                             | <i>: Rs.3,00,470/-</i> |

*Assessed u/s. 143(3) of the I.T. Act., tax and interest charged as per the provisions of I.T Act. Charged interest u/s. 234A, 234B and 234C of the Act, if any Credit to the prepaid taxes is being given Calculation sheet ITNS 150 is part of the order. Issue demand notice and challan accordingly.”*

20. Therefore, we note that the Department did not make the addition in the hands of the co-owners, therefore the assessee under consideration should not be treated differently. Based on these facts and circumstances, we allow ground nos. 1 and 2 raised by the assessee.

21. In the result, ground nos. 1 and 2 raised by the assessee are allowed.

22. Regarding ground no. 3, we note that notice of enhancement has been issued by the Ld. CIT(A) during the assessment proceedings to enhance income of the assessee by Rs.9,89,885/- (Rs.52,02,500- Rs.42,12,615) as the cash advances received or booking of plots were Rs.52,02,500/- instead of Rs.42,12,615/-. The enhancement notice issued by the Ld. CIT(A) has placed at paper book page no.5. In response to the enhancement notice, the assessee submitted its reply which is placed at paper book page no.12, the relevant para of the reply is reproduced below:

- *“In para 4.3 the AO further states as under*
  - *The assessee’s share in 1/4<sup>th</sup> in the purchase of property but he has shown 50% share in sale of plots. This contradiction itself indicates that the entire investment in property is bogus and the source of investment is also bogus.*

*It is already explained in the submission to AO that the land was purchased by the 4 co-owners and therefore his share in the property is 1/4<sup>th</sup>.*

*Out of the total 4 co-owners, only 2 have made application to convert the land in NA and make plotting. They have sold only their part of land by making plots on it. Hence, the share of each of them in sale of plots is 50% each.*

*It is a question of simple logic which the AO has not understood.*

- *Further, the case of the other co-owner Kaushikaben Ramanlal Patel was also selected for scrutiny and same source for cash received and paid for purchase of land was explained in her case.”*

23. The Id CIT(A) after considering the reply of the assessee has enhanced the assessment, observing as follows:

*“ 8.6 The appellant’s reply for enhancement notice is perused. AR basically objects on two points:*

*(i) Appellant does not maintain books, the amount of advances is not credited to books, so no addition can be made u/s 68.*

*(ii) If the advances are treated as non genuine then only application/investment need to be taxed u/s 69 and the advances cannot be added u/s 68.*

*I have perused the arguments of the AR. The advances received in cash is claimed by the appellant on his own before the Ld. AO to explain his investments. The reason for claiming Rs.52,02,500/- as against Rs.42,12,615/-*

*(investment made) is better known to him. It is not for the I.T. Authorities to go into this realm. However, once the claim is made, by the appellant then the section 68 is attracted. The excess amount claimed may be to explain cash in hand or some investment made subsequent years. In subsequent years, no such booking advances could be received in cash because of section 269 ST of the Act. So the same plea could not be taken to explain the investments made subsequent year, hence the same is probably claimed this year. In any case since the claim is made this year, the same will be used to explain some asset, investment or cash in hand. Hence, the appellant cannot claim that amount is not credited in books. Not taxing it this year under section 68 will give appellant a free pass to explain the same as source for some other application in future. In view of this, the explanation of the AR is rejected. The amount Rs.9,98,885/- is hereby added to total income assessed by Ld. AO. The assessed income is accordingly enhanced.*

*8.7 In view of the above discussion, I am satisfied that appellant (assessee) has furnished inaccurate particulars of income pertaining to the amount enhanced in this order. Hence, penalty proceedings u/s 271(1)(c) is initiated issuing notice u/s 271(1)(c) of the Act.*

*9. In the result, the appeal is dismissed and assessed income is enhanced.”*

24. Learned Counsel reiterated the submission made before lower authorities and stated that out of the total 4 co-owners, only 2 have made application to convert the land in NA and make plotting. They have sold only their part of land by making plots on it. Hence, the share of each of them in sale of plots is 50% each. Further, the case of the other co-owner Kaushikaben Ramanlal Patel was also selected for scrutiny and same source for cash received and paid for purchase of land was explained in her case, therefore no enhancement should be made. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. We have heard both the parties and observed that there is merit in the submission of ld Counsel. We note that out of the total 4 co-owners, only 2 have made application to convert the land in NA and make plotting. They have sold only their part of land by making plots on it. Hence, the share of each of them in sale of plots is 50% each. Further, the case of the other co-owner Kaushikaben Ramanlal Patel was also selected for scrutiny and same source for cash received and paid for purchase of land was explained in her case was accepted by the Assessing Officer, hence different

treatment is not allowed in case of assessee. Therefore, we allow ground no.3 raised by the assessee.

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

Order pronounced on 08/05/2023 by placing the result on the Notice Board.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 08/05/2023

SAMANTA /Dkp Outsourcing Sr.P.S

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-  
(Dr. A.L. SAINI)  
ACCOUNTANT MEMBER

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat