

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" B " BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No. 351/AHD/2023

निर्धारण वर्ष/Asstt. Year: 2012-2013

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| Neo Structo Construction Pvt. Ltd., 101-104, GCP Business Centre, Opp. Memnagar Fire Station, Vijay Cross Road, Ahmedabad. PAN: AAACN7717N | Vs. | The ACIT, Circle-1(1)(1), Surat. Now The ACIT, Circle-3(1)(1), Ahmedabad. |
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And

आयकर अपील सं./ ITA No. 496/AHD/2023

निर्धारण वर्ष/Asstt. Year: 2012-2013

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| The D.C.I.T, Circle-3(1)(1), Ahmedabad. | Vs. | Neo Structo Construction Pvt. Ltd., 101-104, GCP Business Centre, Opp. Memnagar Fire Station, Vijay Cross Road, Ahmedabad. PAN: AAACN7717N |
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|-------------|--|--------------|
| (Applicant) | | (Respondent) |
|-------------|--|--------------|

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|-------------|---|----------------------------|
| Assessee by | : | Shri Dhinal Shah, AR |
| Revenue by | : | Shri Sudhendu Das, CIT. DR |

सुनवाई की तारीख / **Date of Hearing** : **12/02/2024**

घोषणा की तारीख / **Date of Pronouncement**: **07/05/2024**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned cross appeals have been filed by the assessee and the revenue directed against the order of Id. Commissioner of Income-Tax (Appeals)/ National Faceless Appellate Center, Delhi (hereafter Ld. CIT(A), dated 12-04-2023 arising in the matter of assessment order passed under section 143(3) of the Income tax Act 1961 (in short, the 'Act') relating to Assessment Year 2012-13. Since issues are inter-connected, we dispose of both the appeals by way of this common order.

2. First, we take up assessee's appeal in **ITA No. 351/AHD/2018**. The assessee has raised following grounds of appeal:

1. The learned CIT(A) has erred in confirming the addition of Rs.1,21,50,000 to the returned income on the ground that the appellant that the appellant could not submit the documentary evidence for the sources towards such amount in as much as the appellant has explained the details along with all the documentary evidence towards such alleged cash credit and that all credits are duly explained.

2. The learned CIT(A) has erred in confirming the addition of Rs.7,33,07,611 to the returned income by alleging that the appellant has not proved the source of time deposits in the form of margin money and treating the same to be unexplained time deposits in as much as the appellant has furnished the explanation for such time deposits and that all deposits are duly explained.

3. The learned CIT(A) has erred in confirming the addition of Rs.3,25,08,000 to the returned income by alleging that the Appellant has failed to submit documentary proof for payments made towards the sale consideration of the purchase of land inas much as the consideration for such investment inland is from genuine sources and the entire transaction is duly explained with the documentary evidence.

4. The appellant craves to add, amend, alter, vary omit or substitute the aforesaid grounds of appeal or add new grounds of appeal at any time before or at the time of hearing of the appeal as they may be advised.

2.1 The first issue raised by the assessee is that the Ld. CIT(A) erred in confirming the addition of Rs. 1,21,50,000/- made on account of alleged unexplained cash credit.

2.2 The facts in brief are that the assessee, a private limited company, is engaged in the business of mechanical work on contract basis including job for maintenance of Trunkey projects. The AO during the assessment proceedings found that the following cash deposits were made in the standard chartered bank (SCB) of the assessee:

| <i>Sr. No.</i> | <i>Date of cash deposit in bank</i> | <i>Amount in Rs.</i> |
|----------------|--|----------------------|
| 1. | 28-11-2011 | 37,50,000/- |
| 2. | 27-02-2011(correct date is 15.11.2011) | 75,00,000/- |
| 3. | 12-03-2012 | 9,00,000/- |
| | <i>Total</i> | <i>1,21,50,000/-</i> |

2.3 On question about the source of cash deposits, the assessee contended that the alleged cash deposit of Rs. 37.5 lakhs dated 28-11-2011 is indeed a RTGS transfer from the assessee's bank account in IDBI bank to standard chartered bank. The second alleged cash deposit entry of Rs. 75 Lakh dated 27-02-2011 is incorrect as standard chartered bank was not opened at the relevant time. Likewise, the third alleged entry of Rs. 9 lakhs dated 12-03-2012 was not traceable in the bank statements. The assessee in support of its submission furnished a copy of the bank statement.

2.4 However, the AO held that the above details of cash deposits in the bank of the assessee were provided through AIR information. Therefore, the contention of the assessee that no cash was deposited in the bank is baseless. The AO further observed that the assessee merely submitted that the entry of Rs. 37.5 lakh dated 28-11-2011 is RTGS transfer, even assuming such entry is RTGS transfer, still the assessee was required to furnish the details of source of such credit entry, but the assessee failed. Regarding the cash deposit of Rs. 75 Lakh dated 15-11-2011, inadvertently written as 27-02-2011 in show cause notice, the assessee only stated that bank account was not available in February 2011. As such, the assessee tried to take excuse of wrong date mentioned in show cause notice due to inadvertent mistake. The assessee should have verified the bank statement to

explain the source of cash deposit of Rs. 75 Lakhs, but the assessee failed to do so, and also the assessee provided bank statement for the period starting from 16-11-2011 to 18-12-2011 leaving the portion of bank statement before 16-11-2011 when the cash deposit of Rs. 75 lakhs were made. Likewise, the assessee regarding the cash deposit of Rs. 9 Lakhs merely stated that the entry not traced in bank without providing supporting evidence. The AIR information generated clearly shows that such deposits were made in the bank of the assessee. Therefore, the onus was on the assessee to disprove the AIR information based on evidence. Hence, the AO made the addition of Rs. 1,21,50,000/- on account of cash deposits in standard chartered bank of the assessee based on AIR information.

3. On appeal by the assessee, the Id. CIT(A) found that the assessee claimed that deposit of Rs. 37.5 lakhs in its Standard Chartered Bank dated 28-11-2011 is RTGS transfer from its own bank account with IDBI. However, no such entry was found in the IDBI bank of the assessee. the assessee subsequently claimed that amount of Rs. 37.5 lakh is part of consolidated transfer from IDBI bank for an amount of Rs. 61,99,514/- to 20 parties. However, the assessee did not explain the reason for such consolidated transfer and failed to submit any evidence to establish that the amount of Rs. 37.5 lakh credited in standard chartered bank was included in the amount of Rs. Rs. 61,99,514/- debited in IDBI bank.

3.1 Regarding deposit of Rs. 75 Lakh dated 15-11-2011, the assessee claimed that it received loan of Rs. 5 crores from standard chartered bank and out of such loan an amount of Rs. 4.25 crore was transferred to IDBI bank and the remaining amount of Rs. 75 lakh was deposited in standard chartered as fixed deposit against the loan. However, the assessee failed to furnish a loan sanction letter showing the loan amount transferred to IDBI bank and deposited in standard chartered bank.

3.2 Likewise, the assessee did not furnish any documentary evidence to show that amount of Rs. 9 lakhs were not deposited in bank account as on 12-03-2012 but merely stated such entry not traced in bank account which is not sufficient. Hence, the Id. CIT(A), in view of the above, confirmed the addition made by the AO.

4. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

4.1 The learned AR before us filed a paper book running from pages 1 to 900 and contended that there was no cash deposit representing ₹ 37.50 lakhs in standard chartered bank rather, it was the inter-bank transfer. As such, there was a transfer of Rs. 37.50 lakh from IDBI bank to the Standard Chartered Bank which can be verified from pages 403 of the paper book.

4.2 The learned AR regarding the opposite of ₹ 75 lakhs contended that the margin money was placed with the Standard Chartered Bank out of the loan of ₹ 5 crores and the balance amount of loan of ₹ 4.25 crores was credited in the IDBI bank. The learned AR in support of his contention drew our attention to page 408 of the paper book where the certificate from the bank was placed. According to the learned AR, the bank account in the Standard Chartered Bank was opened dated 16 November 2011 and therefore, no bank statement for the alleged date was available.

4.3 Regarding the cash deposit of Rs. 9 lakhs, it was contended by the learned AR that there was no such entry in the bank account of the assessee and therefore the same cannot be added to the total income of the assessee merely based on the AIR information.

5. On the other hand, the learned DR vehemently supported the order of the authorities below.

6. We have heard the rival contentions of both the parties and perused the materials available on record. It was alleged by the revenue that there was cash deposit in the bank account of the assessee amounting to ₹ 1,21,50,000/- at different point of time during the year under consideration, the breakup of which has already been explained/furnished in the preceding paragraph.

6.1 Regarding the cash deposit of 37.50 lakhs dated 28 November 2011 in the bank account of the assessee namely Standard Chartered Bank, we have perused the bank statement of the Standard Chartered Bank placed on pages 403-405 of the paper book. On verification of the deposits in the Standard Chartered Bank dated 28 November 2011, it's transpired that such entry reflects the bank transfer from the other bank account of the assessee namely IDBI Bank. The narration in the bank statement of Standard Chartered Bank clearly records the name of the sender being Neo Structure Construction Ltd along with the IFSC code. Accordingly, we find that the contention of the assessee was correct. Furthermore, it was the duty of the revenue to disprove the contention of the assessee based on the documentary evidence. As such in the given fact and circumstances, no credence can be given to the information arising from AIR until and unless it is corroborated by the documentary evidence. Furthermore, the Id. DR has not brought anything on record contrary to the argument advanced by the Id. AR of the assessee. Thus, we are not convinced with the finding of the learned CIT-A and accordingly direct the AO to delete the addition made by him for ₹ 37.50 lakhs on account of cash deposit in the bank account of the assessee dated 28th of November 2011.

6.2 Regarding the allegation of the revenue of the cash deposit of ₹ 75 lakhs in the Standard Chartered Bank dated 15th of November 2011, we find relevant to refer the submission made by the assessee which are detailed as under:

- i. The bank account was opened in the Standard Chartered Bank effective from 16 November 2011.
- ii. There was a loan obtained from the Standard Chartered Bank amounting to ₹ 5 crores on 15 November 2011, out of which the sum of Rs. 4.25 crores were transferred to IDBI Bank, and the balance amount of ₹ 75 lakhs was deposited as margin money in the form of FD for 90 days. The relevant submission of the assessee is extracted as under:

The appellant has taken a short term loan amounting to Rs. 5 crores from SCB on 15 November 2011 and for the purpose of obtaining loan it had to keep margin money of Rs.75 lacs in the form of Fixed Deposit. The deposit confirmation advice from bank is attached as additional evidence at page 937 of 10 paper book 1. Out of the total loan amount of Rs 5 crs, an amount of Rs 4.25 crores was deposited in IDBI Bank on 15.11.2011 (refer page 782 of paper book 1). The balance Rs. 75 lacs was maintained as FD on account of margin money with SCB (copy of bank advice enclosed as additional evidence).

The AO has alleged that as per AIR records, deposit is made on 15.11.2011 and appellant has provided bank statement from 16.11.2011, hence the appellant is trying to conceal the transaction made in the bank prior to 15.11.2011. In this connection, it is submitted that the bank account with SCB was opened on 16.11.2011 (which is evident from the opening balance of Rs. NIL as on that date). The amount of Rs. 75 lacs was kept as statement. The appellant states INCOME TAX FD and therefore not reflected in the current bank statement.

6.3 The FD issued by the Standard Chartered Bank for ₹ 75 lakhs was evident from the certificate placed on pages 408 of the paper book which was matured dated 27 February 2012. This fact can be verified from the details placed on page 406 of the paper book. From the above submission of the assessee, it is transpired that there was no deposit of cash in its bank account namely Standard Chartered Bank as alleged by the revenue but there was FD made by the assessee out of the loan obtained from the bank as discussed above. Such amounts of FD cannot be treated as unexplained cash deposit as alleged by the revenue based on the AIR information. Accordingly, the same cannot be made subject to the addition. Thus,

we set aside the finding of the learned CIT-A and direct the AO to delete the addition made by him.

6.4 Regarding the addition of ₹ 9 lakhs, the assessee based on the bank statements has submitted that there was no cash deposit in the bank account dated 12 March 2012. The contention of the assessee has nowhere been proved wrong by the revenue by bringing contrary material. The onus lies upon the revenue to bring necessary corroborative material suggesting that there was a deposit in the bank account of the assessee. As such, merely based on the AIR information, there cannot be any addition to the total income of the assessee until and unless some corroborative materials are brought on record. But the revenue failed to do so. Accordingly, we are of the view that no addition is warranted to the total income of the assessee based on the AIR information. Thus, we set aside the finding of the learned CIT-A and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is hereby allowed.

7. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of Rs. 7,23,07,611/- made on account of time deposits as unexplained.

7.1 The assessee during the year has made time deposits with IDBI bank on various dates amounting to Rs. 13,14,31,431/- only. The AO required the assessee to explain the sources of such time deposit. The assessee explained that it undertakes various job work which goes over the period from 18 to 24 months. Therefore, the customers require a letter of credit/ bank guarantees as performance guarantee. The bank for issuing LOC/bank guarantee requires deposit of margin money @ 10% of the guarantee amount in the form of time deposit. The assessee in support of its claim furnished sample copy of request letter to bank for issuance of guarantee/LOC and bank statement of IDBI bank.

7.2 However, the AO held that the assessee was required to explain the source of the time deposit even assuming such deposits were required to be made for issuance of LOC/Bank Guarantee but failed to do so. Hence, the AO made the addition of time deposit of Rs. 13,14,31,431/- as unexplained.

7.3 The aggrieved assessee preferred an appeal before the Id. CIT(A). The assessee before the Id. CIT-A submitted that during the assessment proceedings, it was not asked to explain the source of the time deposit. The assessee further submitted that its operating income for the year under consideration was Rs. 285.85 crores and in the immediate previous year, the same was of Rs. 227.34 crores. The bank statement was also available before the assessing officer which shows the credit of fund throughout the year. Hence, the source of such time deposits was from operating income. It was also submitted by the assessee that during the year new time deposit for Rs. 5,81,23,820/- were only made from bank account whereas an amount of Rs. 6,66,83,815/- was renewal of deposit made earlier and remaining amount of Rs. 66,23,796/- was misunderstood with 3 other fixed deposits. Therefore, the addition is required to be deleted.

8. The learned CIT(A) after considering the facts in totality deleted the addition to the extent of Rs. 5,81,23,820/- being new deposits made during the year out of fund from IDBI bank and confirmed the addition of remaining deposit for Rs. 7,33,07,611/- only as from unexplained sources. The relevant finding of the learned CIT(A) reads as under:

8.7 In addition to the above, other new time deposits made during the year under consideration have been verified with reference to the copies of bank account statement submitted by the appellant and found that all the new time deposits made during the year to the extent of Rs. 5,81,23,820/- were withdrawn from IDBI Bank of the appellant. Therefore, on perusal of the submissions made by the appellant and documentary evidences submitted by the appellant, it is noticed that the appellant made new time deposits of Rs.5,81,23,820/- from out of funds withdrawn from Its IDBI bank account, as such the sources for the new time deposits made during the year under consideration to the tune of Rs.5,81,23,820/- as treated as explained by the appellant. However, in respect of renewal of fixed deposits to the tune of Rs.6,66,83,815/- and Misunderstanding of three fixed time Deposits (as stated by the appellant) to the tune of Rs.66,23,796/- are not explained by the appellant with supporting documentary evidences. With regard to

Misunderstanding of three fixed time Deposits (as stated by the appellant), the appellant furnished its written submissions as under

| | <i>Others</i> | | | | |
|-----|--------------------|------------------|------------|-----|--|
| 119 | 15 | 13,95,113 | 13-06-2011 | 568 | <i>This is matured and credited in the bank account and such deposits is not made during this year.</i> |
| 120 | 116 | 21,78,678 | 26-05-2011 | 588 | <i>The FD made is of Rs. 218678 only which is reflected in bank statement and not Rs. 2178678 which is incorrectly mentioned in the assessment</i> |
| 121 | 38 | 30,50,005 | 02-11-2011 | | <i>This FD is wrongly stated since it is neither reflected in bank statement nor reflected as renewal and nor as per AIR information copy of which was supplied by AO.</i> |
| | <i>Subtotal(c)</i> | <i>66,23,796</i> | | | |

8.8 In view of the above, the appellant made detailed explanation in its written submissions and submitted documentary evidences in respect of new time deposits to the tune of Rs.5,81,23,820/- However in respect of renewal of time deposits to the tune of Rs.6,66,83,815/- and Misunderstanding of three fixed time deposits (as stated by the appellant) to the tune of Rs.66,23,796/-, the appellant has not submitted detailed explanation with supporting documentary evidence to prove the sources for the deposits of the same. Therefore, the contention of the appellant is not accepted in respect of the renewal of time deposits to the tune of Rs.6,66,83,815 and an amount of Rs.66,23,796/- are not accepted. Therefore, I direct the assessing officer to delete the addition of Rs.5,81,23,820/- and the balance addition of Rs. 7,33,07,611/- (Rs.6,66,83,815 + Rs. 66,23,796) is sustained. Accordingly, the appellant gets relief of Rs.5,81,23,820/- from out of total addition of Rs. 13,14,31,431/-

9. Being aggrieved by the order of the learned CIT(A), both the assessee and the revenue are in appeal before us. The assessee is in appeal against the addition sustained by the Id. CIT-A for Rs. 7,33,07,611/- whereas the revenue is in appeal against the deletion of addition for Rs. Rs. 5,81,23,820/-. The relevant ground of appeal of the revenue in **ITA No. 496/Ahd/2023** reads as under:

The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs.5,81,23,820/- out of 13,14,31,431/- made on account of unexplained time deposit.

10. The learned AR regarding the time deposits of ₹ 7,33,07611.00 contended that such time deposits were made from the running bank account where the operating income of the assessee was being deposited. The operating income

shown by the assessee for the year under consideration was Rs. 285.85 crores and in the previous year Rs. 227.34 crores which is sufficient to meet/ justify the source of such time deposits. These time deposits were made by the assessee in the course of the business as margin money in order to furnish the bank guarantee to the customers. It was also pointed out by the Id. AR that there were many time deposits which were matured in the year under consideration and were treated as unexplained but without disturbing the source of such time deposits when the originally made/ remade. As such, the renewable of time deposits cannot be disturbed without questioning the source of original time deposits.

10.1 The learned AR also contended that there was a wrong amount of fixed deposit recorded by the AO. As per the Id. AR, the fixed deposit of ₹ 2,18,678.00 was taken as the deposits of ₹ 21,78,678 wrongly. This fact can be verified from page 65 of the paper where the bank statement of the relevant date is available. As such, the fixed deposit of ₹ 2,18,678 was made out of the disclosed bank account of the assessee.

10.2 Likewise, the Id. AR also contended that there was no fixed deposit made during the year amounting to ₹ 30.50 lakhs and therefore the same cannot be treated as income of the assessee merely based on AIR information.

10.3 Regarding the time deposit of ₹ 5,81,23,820.00, the Id. AR contended that such time deposits were made out of the running bank account of the assessee which was duly disclosed in audited financial statement and therefore the learned CIT-A rightly deleted the addition made by the AO.

11. On the other hand, the learned DR contended that the assessee failed to justify the source of deposits made under the head time deposits /fixed deposits. Thus, all the additions are liable to be made/ confirmed.

11.1 Both the Id. AR and the DR before us vehemently supported the order of the authorities below to the extent favourable to them.

12. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the assessee has made time deposits/ renewed time deposits and fixed deposits in its bank account out of the bank account disclosed in the books of accounts. The details of such time deposits/fixed deposits stand as under:

For the purpose of easy reference, we give below the break-up of fixed deposits as per statement attached herewith as per Annexure-4

| | |
|---|------------------------|
| <i>Fixed Deposits made out of Bank Account</i> | <i>Rs.5,81,23,820</i> |
| <i>Renewal of Fixed Deposits</i> | <i>Rs.6,66,83,815</i> |
| <i>Misunderstanding of Three Fixed Deposits</i> | <i>Rs.66,23,796</i> |
| <i>Total</i> | <i>Rs.13,14,31,431</i> |

12.1 Regarding the time deposits of ₹ 5,81,23,820/-, we note that these deposits were made by the assessee out of its disclosed bank accounts in the books of accounts. As per the assessee, these time deposits were made against the bank guarantee furnished by it to its customers in connection with the job work/ contracts awarded to it. The assessee in the year under consideration has shown operating receipts amounting to Rs. 285.85 crores which is commensurate to the amounts of FDs made by the assessee. Thus, the Id. CIT-A rightly deleted the addition to the tune of ₹ 5,81,23,820/- made by the AO after giving detailed reasoning explained somewhere in the preceding paragraph. The learned DR at the time of hearing, has not brought anything contrary to the finding of the learned CIT-A. Accordingly, we do not find any reason to disturb the findings given by the learned CIT-A. Hence, the ground of appeal of the revenue is hereby dismissed.

12.2 Regarding the renewal of time deposits of ₹ 6,66,83,815/-, we note that the word renewal itself suggests that FDs, were made by the assessee on the earlier occasion which have been matured and renewed as fixed deposits in the

year under consideration. The revenue has not doubted on the original source of renewal of these time deposits. In our considered view, the renewal of time deposits cannot be questioned until and unless the original value of the FD is in doubt. The revenue has nowhere doubted the original total value of the FD, therefore in our considered view the matured value of such FD renewed in the year under consideration cannot be questioned. On this reasoning alone, the finding of the learned CIT-A is not sustainable.

12.3 Without prejudice to the above, we also note that the details of the renewal of FDs are placed on pages 406 to 450 of the paper book which evidences that all such FDs were made from the bank account which was disclosed in the regular books of accounts. There were regular receipts of money out of the business operation of the assessee in the impugned bank account. The books of accounts of the assessee were duly audited and the same are not rejected by the revenue. Thus, what transpired is this that all the entries reflecting in the bank statement were duly disclosed in the audited financial statements. Furthermore, the operating income shown by the assessee for the year under consideration amounted to Rs. 285 crore is sufficient to justify the source of such these FDs/ Time Deposits. Accordingly, in our considered view, the finding of the learned CIT-A is not sustainable.

12.4 Furthermore, it is equally important to note that there is a double addition by the revenue with respect to certain FDs which were renewed in the year under consideration. For instance, certain FDs were made by the assessee for the 1st time in the year in dispute and the same was added by the AO to the total income of the assessee. On the maturity of such these FDs/ renewals of such FD's, the revenue has made further addition which leads to the double addition. Such double addition is not desirable under the provisions of law until and unless the provision of law warrants so. Accordingly, we are of the view that, the renewal of the FDs cannot be made subject to the addition for the reasons discussed above.

12.5 Regarding the fixed deposits of ₹ 66,23,796/-, we note that the assessee before the learned CIT-A has submitted as under:

| | | | | | |
|-----|---------------------|------------------|------------|-----|--|
| 119 | 15 | 13,95,113 | 13-06-2011 | 568 | <i>This is matured and credited in the bank account and such deposits is not made during this year.</i> |
| 120 | 116 | 21,78,678 | 26-05-2011 | 588 | <i>The FD made is of Rs. 218678 only which is reflected in bank statement and not Rs. 2178678 which is incorrectly mentioned in the assessment</i> |
| 121 | 38 | 30,50,005 | 02-11-2011 | | <i>This FD is wrongly stated since it is neither reflected in bank statement nor reflected as renewal and nor as per AIR information copy of which was supplied by AO.</i> |
| | <i>Subtotal (C)</i> | <i>66,23,796</i> | | | |
| | | | | | |

12.6 As far as the FDs of ₹ 13,95,113/- is concern, it was created in the earlier year and matured in the under consideration. The mature value cannot be disturbed in the year under consideration. It is for the reason that such deposit made in the earlier period has nowhere been doubted by the authorities below. If at all, the revenue has any doubt about the source of such FDs, then the revenue can question the same by disturbing the assessment year in which such FD was made. Further, on perusal of bank statement placed on 45 of the paper books, we note this amount on maturity was credited in the bank account held with IDBI bank.

12.7 Regarding the FD of ₹ 21,78,678/-, we note that the revenue has considered the wrong value of such FD. As per the revenue the amount stands at ₹ 21,78,678/- whereas as per the assessee the amount stands at ₹ 2,18,678/-. In this connection the learned AR brought our attention at page 65 of paper book where the relevant extract of bank statement was placed and we find that the

amount transferred from IDBI bank on impugned date towards FD was of Rs. ₹ 2,18,678/- as stated by the assessee. Furthermore, we note that such FD was made by the assessee out of the disclosed bank account wherein there was sufficient deposits out of the operational receipts of the business. Thus, we are of the view that such an addition is not warranted in the given facts and circumstances.

12.8 Regarding the balance amount of FD of ₹ 30,50,000/- only, we note that there was no such FD made by the assessee. Furthermore, such amount was also not reflected in the AIR provided by the AO. Thus, we are of the view that such an amount cannot be made subject to the addition. Even at the time of hearing, the learned DR has not brought anything on record contrary to the arguments advanced by the assessee before the learned CIT-A which have been reproduced herein above. In view of the above and after considering the facts in totality, we hold that such addition of Rs. 6,66,83,815/- and Rs. 66,23,796/- on account of time deposits and fixed deposits respectively cannot be made to the total income of the assessee. Accordingly, we set aside the finding of the learned CIT-A and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is hereby allowed whereas the ground of appeal of the revenue is hereby dismissed.

13. The last issue raised by the assessee is that the Id. CIT-A erred in confirming the addition made by the AO for ₹ 3,25,08,000.00 on account of investments in the land property.

13.1 The AO during the assessment proceedings based on the AIR information observed that the assessee has purchased various lands amounting to ₹ 16,30,44,000 only. As per the assessee, the land of ₹ 13,05,36,000/- was purchased from 6 persons and consideration was paid by issuing shares at ₹ 120/- with the premium of ₹ 13,05,35,880/- only. The assessee for the remaining value

of the property for ₹ 3,25,08,000/- submitted that, it was purchased out of the payment made in cash by issuing cheques to the party. However, the AO was not satisfied with the submission of the assessee on the reasoning that the assessee has diverted its unaccounted money by issuing the shares at premium against the acquisition of land. As per the AO, the assessee must have paid cash to the landowners against which the assessee has issued shares at premium. Thus, the AO treated the transaction shown by the assessee as the colourable device. The AO also observed that the assessee has not proved the identity, creditworthiness of the parties and the genuineness of the transactions. Furthermore, the notices issued to the parties for the confirmation under section 133(6) of the Act were returned as unserved. Accordingly, the AO treated the credit of share capital/ premium for Rs. 13,05,35,880/- as unexplained under sections 68 of the Act and added to the total income of the assessee. Besides the above, the AO also observed that once the source of investment has not been proved, the investment made by the assessee in the land was also treated as unexplained investment and added the sum of ₹ 13,05,35,880/- to the total income of the assessee.

13.2 However, the AO while making the addition of the aforesaid amount has also treated the land property acquired against cash at ₹ 3,25,08,000.00 as unexplained investment and made the addition to the total income of the assessee. Thus, the AO made for effective addition of ₹ 13,05,35,880/- under section 68 of the Act on account of share capital/ premium and further addition of ₹ 16,30,44,000/- as unexplained investment in land property.

14. The aggrieved assessee preferred an appeal to the Id. CIT-A who deleted the addition made by the AO for ₹ 13,05,35,880/- under section 68 of the Act by treating share capital/ premium as explained. The learned CIT(A) found the issue of share at premium in lieu of purchase of property was supported by the documentary evidences such board resolution, minute of extraordinary meeting, sale/purchase deed and ROC filing relating to the allotment of shares at premium.

Further, the necessary details regarding the identity and creditworthiness of the share applicant/vendors were also provided in the form of their name & address, copy of their ITRs, balance sheet, computation of income. The parties have offered capital gain on the land transferred by them to the assessee in lieu of allotment of shares at premium.

14.1 Further, the Id. CIT(A) deleted the part addition to the extent of ₹ 13,05,35,880/- out of total addition of ₹ 16,30,44,000/- made on account of investment in land by observing that consideration for such investment was made by allotment of share at a premium as discussed above. The allotment of share at premium has been held as genuine, therefore the investment in land in lieu of allotment of share at premium cannot be held as unexplained.

14.2 However, the Id. CIT-A confirmed the addition for Rs. ₹ 3,25,08,000/- being investment in land other than by allotment of shares. The Id. CIT(A) found that as per the sale deed, the land property was purchased from 3 persons on 13-12-2011 for a consideration of Rs. 1,08,36,000/- each which was paid by issuing 3 cheques of IDBI bank bearing cheque Nos. 11802 to 11804 dated 01-12-2011. However, on perusal of bank statement from 1-12-2011 to 14-12-2011, such cheques amount was not found debited.

15. Being aggrieved by the order of Id. CIT-A, both the assessee and revenue are in appeal before us. The assessee is in appeal before us against the confirmation of the addition of Rs. 3,25,08,000.00 whereas the revenue is in appeal in ITA No. 496/Ahd/2023 against the deletion of the addition of ₹ 13,05,35,880.00 and 13,05,35,880/- respectively under the provisions of section 68 and unexplained investment in the land.

15.1 The Id. AR before us submitted that shares allotted at a premium to the promoters of the company were duly offered to capital gain against the transfer of

land to the assessee. This fact can be verified from the submission made before the Id. CIT(A).

15.2 The learned AR regarding the addition of ₹ 3,25,08,000 submitted that payment was made through the banking channels. Merely cheques cleared on a later date cannot be a ground holding that the investment was made in cash by the assessee from the unaccounted sources.

15.3 On the other hand, the Id. DR before us submitted that no prudent person shall transfer the land to the company against the shares at such a huge premium. As such, the share subscribers will acquire shareholding in the company disproportionate to the land transferred to the company which is not a normal practice. Thus, the Id. DR contended that there was an element of cash paid by the assessee against the transfer of land.

15.4 Both the Id. AR and the DR before us by vehemently supported the order of the authorities below to the extent favourable to them.

16. We have heard the rival contentions of both the parties and perused the materials available on record. Regarding the unexplained investment of ₹ 3,25,08,000/-, we note that as per sale deed such investment was made by the assessee after making payment to party by issuing 3 different cheques of IDBI bank dated 1-12-2011 which Id. CIT(A) found that same was not debited in the bank of the assessee. In this connection the Id. AR of the assessee drew our attention to the pages 347 and 349 of the paper books where the copy of IDBI bank statement was placed for the period of February 2012. On perusal of the same, we find that the cheque numbers as mentioned in sale deed (also held by the Id. CIT(A) in his finding) duly debited in the bank of the assessee as on 22 and 23 February 2012 against the name of vendor parties. At the time of hearing, the learned DR could not controvert the facts stated above. Thus, there cannot be

drawn any adverse inference against the assessee merely for the clearance of the cheques later. Hence, we set aside the finding of the Id. CITA and direct the AO to delete the addition made by him.

16.1 Regarding the deletion of the addition of ₹ 13,05,35,880.00 and 13,05,35,880 on account of unexplained cash credit under section 68 of the Act and unexplained investment in the land, we note that the persons to whom shares were allotted in lieu of purchase of land are the promoters of the assessee company. The promoters were members of the Sachine Udhyognagar Sahkari Mandali Ltd and they were holding lease hold property at Sachine Udhyognagar Sahkari Mandali Ltd and such lease hold rights were transferred by the promoters to the assessee in lieu of share capital and premium.

16.2 The assessee in support of share allotment on premium to these persons/promoters in lieu of purchase of land furnished copy of board resolution, minutes extra ordinary general meeting, transfer deed, copy of return of income and balance sheet of the promoters/vender. The promoters/vender in their return of income has declared capital gain on account of transfer of land to the assessee company. The identity of parties/share applicant/vender/promoters has been duly established by the assessee on strength of the above document. Credit worthiness was also not in doubt as these parties were regularly filing returns of income and showing substantial income. The onus regarding the genuineness of transaction was also discharged by the assessee by furnishing the board resolution, minutes of extraordinary general meeting, ROC filing. Furthermore, the above parties have duly accounted for the transactions in their books on which offered capital gain. It is also pertinent to highlight that the transaction of land for which consideration was paid by allotting share at huge premium was between assessee company and its promoters/owner. If we lift the corporate veil, ultimately, they were still the owners of the land transferred to the assessee. Thus, in given facts and circumstances, the genuineness of the transaction was also duly established.

Hence, in view of the above detailed discussion the ground of appeal of the assessee for Rs. ₹ 3,25,08,000/- is hereby allowed whereas ground of appeal of the revenue bearing ground Nos. 1 and 3 in connection with the share premium and investment in land are hereby dismissed.

17. In the result the appeal of the assessee is hereby allowed.

Coming to Revenue's appeal in ITA NO. 496/Ahd/2023

18. At the outset, we note all the issues raised by the revenue in captioned appeal has been adjudicated along with the assessee grounds of appeal in ITA No. 351/Ahd/2023. The relevant grounds of appeal of the assessee have been adjudicated by us vide paragraph Nos. 12 & 16 of this order wherein we have decided the issue against the revenue. For detailed discussion, please refer to the relevant paragraphs. Hence the grounds of appeal raised by the revenue are hereby dismissed.

19. In the result, the appeal of the revenue is hereby dismissed.

20. In the combined result, the assessee's appeal is allowed whereas the revenue's appeal is dismissed.

Order pronounced in the Court on 07/05/2024 at Ahmedabad.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated

07/05/2024