

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Shri Siddhartha Nautiyal, Judicial Member
And Shri Makarand V. Mahadeokar, Accountant Member**

Sr. No.	ITA No.	Asstt. Year	Name of Appellant	Name of Respondent
1	2281/Ahd/2016	2011-12	Shri Bhagwanbhai R. Makwana PAN: ADIPM8574C	The ITO, Ward-14(2), A'bad
2	511/Ahd/2018	2011-12	Bhaktiben Bhagwansinh Chavda (L/H. of Late Bhagwatsinh J Chavda) PAN: AANPC0201G	The ITO, Ward-14(2), A'bad
3	1075/Ahd/2019	2011-12	Late Bhagwatsinh Jibhubhai Chavda (L/H. of Late Smt. Bhaktiben Bhagwatsinh Chavda) PAN: AANPC0201G	The ITO, Ward-5(1)(2), A'bad
4	1076/Ahd/2019	2011-12	Bhagwanbhai Ranchhodbhai Makwana PAN: ADIPM8574C	The ITO, Ward-5(1)(2), A'bad

**Assessee by: Shri Tushar Hemani, Sr. A.R. &
Shri Parimalsinh B. Parmar, A.R
Revenue by: Shri Ashok Kumar Suthar, Sr. D.R.**

Date of hearing : 16-07-2024
Date of pronouncement : 25-07-2024

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

These four appeals filed by the assessee are against the order of the ld. Commissioner of Income Tax, CIT(A), Ahmedabad-5, in proceeding u/s. 250 of the Act vide order dated 01/07/2016 & 25-03-2019 passed for the assessment year 2011-12.

ITA No. 2281/Ahd/2016

2. The assessee has taken the following grounds of appeal:-

“ 1 The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of the AO of disallowing 50% of following expenses legal, land leveling and development, compound wall and boundary, bore-well and electric and security and supervisor salary amounting to Rs.47,20,489/-

2 The learned CIT(A) has erred both in law and on the facts of the case in confirming the addition of Rs.3,64,566/- made by the Assessing Officer u/s 69 on account of unexplained investment.

3. Ld. CIT(A) has erred in law and on facts in not granting benefit of telescoping while confirming the additions on account of disallowance of various expenses and unexplained investment.

4. Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.

5. The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s 234A/B/C of the Act

6. The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s.271(1)(c) of

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

3. The primary issue for consideration is the cost of improvement taken against sale of immovable property by the two co-owners Shri Bhagwanbhai R. Makwana and Late Shri Bhaktiben Bhagwatsinh Chavda who jointly sold the property which is under consideration before us. Since common facts and issues for consideration are involved for both the year under

consideration, appeals filed by both the assesseees are being taken up together. In addition to the above appeals filed by the assessee against the quantum additions confirmed by the Id. CIT(A) in part , both the assesseees are also in appeal before us against the levy of penalty u/s. 271(1)(c) of the Act in connection with the additions confirmed by the Id. CIT(A)

We shall first take up ITA No. 2281/Ahd/2016 (Bhagwanbhai R. Makwana vs. ITO)

4. The brief facts of the case are that during the year under consideration, the assessee sold property at Vejalpur, Ahmedabad, which was jointly purchased with Shri Bhagwatsinh Chavda. During the course of assessment, the Assessing Officer called for various details and on the basis of inquiries made by the Assessing Officer, he observed that the assessee had earned short term capital gain on sale of such property along with the several co-owners and the assessee's share of such short term capital gains comes to Rs. 1,72,04,064/-. In addition, the assessing officer also disallowed certain expenses towards cost of improvement of the aforesaid land sold during the year under consideration while computing the capital gain amounting to Rs.1,54,07,417/- The Assessing Officer held that since the assessee was equal co-owner of such property, the assessee's share of expenses was Rs. 77,03,708/-.

5. In appeal before Id. CIT(A), on the basis of details submitted by the assessee, he allowed two expenses towards cost of improvement, in respect of payment for vacating tenants (Rs. 57,64,516/-) and non-agricultural expenses (Rs. 2,01,878/-). Id. CIT(A) also adjudicated the issue regarding

taxability of sale of impugned property as “Long Term Capital Gains” in favour of the assessee. However, the Id. CIT(A) confirmed the disallowance of the rest of the expenses which were disallowed by the Assessing Officer. While confirming the additions, Ld. CIT(A) made the following observations:-

“The appellant has further contended that total cost of improvement of the property comes to Rs. 1,54,07,417/- which is spent by Shri Jawantbhai D. Patel on behalf of the appellant and the appellant has one half share of the property and therefore expense of Rs.77,03,708/- allowed u/s.48 of the Act while determining the long term capital gain. The appellant has further contended that the AO has issued summons u/s.131 of the Act to Jaswantbhai d. Patel and asked to furnish details in respect of expenses incurred. Shri Jaswnaqtbhai D. Patel had stated that all the expenditure made by him on behalf of the appellant and he had furnished source of payment with name and address. With regard to the payment of Rs.57,64,561/-, for vacating of tenant the appellant has submitted that the property originally sold to Gopalbhai Chaturbhai Amin & others and the owner of the land has received Rs.10 lakhs and acknowledge the same on notaries stamp on 18.09.1997. It is further submitted that first purchaser Shri Gopalbhai Chaturbhai Amin and others has right in that land and in this regard on behalf of the appellant Shri Jaswantbhai D. Patel has spent Rs.57,64,561/- towards vacating of tenant and peaceful possession. The appellant has submitted copy of receipts from these persons. With regard to the legal expense of Rs.4,25,000/- the appellant has submitted that due to proceedings under Section 33 of Revenue Act the appellant has incurred several i.e. expenses which were paid by Shri Jaswantbhai D. Patel. Further with regard to the land leveling and development expenses of Rs.65 lakhs it is submitted that Shri Jaswantbhai D. Patel has spent this amount during the period 2000 to 2005 and the land leveling work carried by Shri Dineshbhai Mohanbhai Patel and Sureshbhai C. Patel. Further Shri Dineshbhai Mohanbhai Patel has filed an affidavit and confirmed the land development work carried by him with Sureshbhai C. Patel and received Rs.65 lakhs itbhai D. Patel. With regard to the compound wall/boundary expense of the appellant has contended that Shri Jaswantbhai D. Patel has furnished name and address of contractor and detail of-mode of payments. With regard to the Bore Well and electric expenses of Rs.4,07,978/- the appellant has submitted that bore well expense paid to Shri Bharat Patel and Electric expense paid to AEC Ltd. for which copy of challan attached. With regard to non-agriculture expense of Rs.2,01,878/-, the appellant has submitted that this expenditure is made to convert the land from agricultural land to non-agricultural land and fees paid as per non-agricultural land order dtd. 2.01.2010 copy of which with proof of payment were attached.

4.3. With regard to security and supervisor salary of Rs.6,25,000/- it is submitted that it is paid to Prahladbhai Lilabhhai Raval. The appellant has relied upon following judgments in support of his contention:-

298 ITR 268 (Karn) Mrs. June Perrett v. Income-tax Officer
241 CTR 364 (Mad.) V. LAKSHMIREDDY Vs. INCOME TAX OFFICER
359 ITR 644 (Mad) CIT v/s. Spencers & Co. Ltd.
132TTJ 468 (Mum) Ms. Neeta A Patel v/s. ITO
205 Taxman 449 (Del) CIT V/s. Eagle Theater
137 TTJ 307 (Del) Praveen Gupta v/s. Assistant commissioner of Income Tax.
62 ITR 657 (GUG) CIT vs. Anilaben Upendra Shah
2 79 ITR 552 (Guj) CIT vs. Jindas Panchand Gandhi

4.4. The facts of the case and the submissions are considered. The AO has mainly rejected the claim of the assessee on the ground that all these payments were made before 15.04.2008 the date on which sale deed was executed and the assessee has not furnished any additional detail for the expenses incurred on or after 15.04.2008. This view of the A.O. is not correct as it is already held that the transfer has taken place in the year 2000 when the agreement to sale was executed • therefore the assessee is eligible for the expenses incurred towards the improvement of land while calculating the long term capital gain. However, for allowability of expenditure it is to be seen that whether the expenditures were incurred or not. From the submission of the appellant it with regard to the legal expenditure of Rs.4,25,000/-, land leveling and expenses of Rs.65 lakhs, compound wall and boundary expenses of Rs. 14,83,000/-, bore-well expenses of Rs.4,07,978/- and security and supervisor salary of Rs.6,25,000/-, no evidence was furnished by the assessee during the assessment proceedings as well as during the course of appellate proceedings. The only contention of the appellant is that these expenses incurred for the improvement of land and it is paid by Shri Jaswantbia D. Patel on behalf of the appellant and he has confirmed the same before the A.O. This contention of the appellant cannot be accepted unless until it is supported with further evidences. Considering this, all these expenditure are not allowable to the assessee while calculating the long term capital gain. However, with regard to the payment to vacating of tenant of Rs. 57,64,561/- and conversion of agricultural land to non-agricultural land of Rs. 2,01,878/- the appellant has furnished sufficient details and evidences to prove that these expenditures have been incurred by Shri Jaswantbhai D. Patel on behalf of the appellant. Further the AO has not controverted the evidences furnished by the assessee and no further enquiries were made. Therefore, these two expenditures are allowable while calculating the long term capital gain. Thus the ground of appeal is partly allowed.

6. The assessee is in appeal before us against the aforesaid order passed by Id. CIT(A), confirming the disallowance of certain expenses towards cost of improvement. Before us, the Counsel for the assessee submitted that the Ld. CIT(A) failed to appreciate that so far as land leveling and development expenses were concerned, these expenses were incurred by Shri Jashwanthbhai D. Patel on behalf of the assessee. In respect of land leveling and development expenses, Shri Jashwantbhai D. Patel paid a sum of Rs. 65

lakhs during the period 2000 to 2005. The land leveling work was carried out by Shri Dineshbhai MohanBhai Patel. In respect of the same, Shri Dineshbhai Mohanbhai Patel has filed an Affidavit and confirmed that the land leveling and development work was carried out by him along with Shri Suresh Bhai Patel and he received a sum of Rs. 65 lakhs from Shri Jashwanthbhai D. Patel. However, in the said Affidavit, Shri Dineshbhai Mohanbhai Patel has submitted that he cannot produce any proof regarding the same. Before us, the Counsel for the assessee argued that Shri Jashwanthbhai D. Patel has confirmed the factum of incurring expenditure of Rs. 65 lakhs towards land leveling and development expenses and has also filed an Affidavit in support of the same. The Counsel for the assessee submitted that neither at the assessment stage nor at the remand stage, the Assessing Officer took any pains to confront the factum of incurring of such expenses from the concerned persons i.e. Shri Dineshbhai Mohanbhai Patel to whom such sum was paid by Shri Jashwanthbhai D. Patel. The Counsel for the assessee placed reliance in the case of **Glass Lines Equipments Co. Ltd. vs. CIT 253 ITR 454 (Gujarat)(HC)** with regards to the proposition that since the Authorities did not cross-examine the deponent with reference to the statement made in Affidavit, under these circumstances it would not open to the Revenue to challenge the correctness of the statement made by the deponent in the affidavit. Accordingly, it was submitted that unless the contents of the affidavit have been rebutted by the Department, additions cannot be sustained in the hands of the assessee. Before us, the Counsel for the assessee, however, submitted that all the payments were made in cash and not through banking channels and there is no documentary evidence apart from the Affidavit that the sum of Rs. 65 lakhs was paid by Shri

Jashwanthbhai D. Patel to Shri Dineshbhai Mohanbhai Patel on behalf of the assessee. Further, it was also submitted before us that there is no specific proof of land leveling and development being actually carried out by the assessee, during the period 2000 to 2005.

7. In response, the Id. Departmental Representative submitted that in the instant facts, certain points are noteworthy. Firstly, the entire expenses have been incurred by the assessee in cash. At the time of making payment for substantial amount of expense of Rs. 65 lakhs, TDS has also not been deducted at the time of incurring of such expenses. The assessee has not furnished any supporting evidences in support of genuineness of payments made by him. Accordingly, Id. Departmental Representative placed reliance on the observations made by the Assessing Officer and Id. CIT(A) while confirming the additions/disallowance towards land leveling and development amounting to Rs. 65 lakhs.

8. We have heard the rival contentions and perused the material on record. We shall go into each of the individual expenses to ascertain whether or not the Id. CIT(A) has correctly disallowed the same. With regards to amounts incurred towards land levelling and development expenses of Rs. 65,00,000/-, the assessee has filed Affidavit of contractor who carried out such land levelling work. We observe that in the assessment order, the Assessing Officer has observed that in respect of payment of Rs. 65,00,000/-made for land development, bills and receipts are not available with the assessee due to a long time gap and therefore the entire expenses have been claimed to be genuine only on the basis of Affidavit produced by Shri Jashwantbhai Patel to the effect that a sum of Rs. 65,00,000/- was paid

by him to Shri Dinesh Patel for land development work during the period 2001 to 2005. In appeal before the Id. CIT(A), again reliance was only placed by the assessee on the aforesaid Affidavit and no further supporting evidences were furnished by the assessee in support of actual incurrence of such land development expenses. We observe that all the land development expenses have been incurred in cash by Shri Jaswantbhai on behalf of the assessee and no taxes have been deducted at the time of incurring of such land development expenses. Further, apart from a general Affidavit stating that this amount was paid towards land development expenses, no supporting documents, details of expense incurred, supporting invoices/vouchers etc were furnished by the assessee in support of genuineness of such expenses. Further, we observe that even in the Affidavit the deponent has categorically admitted that he had unable to produce any prove regarding the factum of payment. Before us, during the course of proceedings, the Counsel for the assessee has also admitted that there is no substantive proof of land leveling having actually been done over the period 2000-2005. Accordingly, in our considered view, no credence can be given to the affidavit placed on record by the assessee in absence of any prove of actual work being carried out, and in absence of any documentary evidence to support the payment of Rs. 65 lakhs for the expenses incurred towards land leveling during the period 2000-2005. Before us, the Counsel for the assessee had submitted that reasonable amount of expenses may be considered to be allowed in the hands of the assessee, looking into the instant facts. On going through the instant facts, certain facts are noteworthy. The assessee has statedly incurred expense of a sum of Rs. 65 lakhs on land leveling work between the period 2000-2005 on a land

admeasuring 7.183 sq. mtr. (1.775 acres approximately). However, it is not clear that why such substantial amount of land leveling expenses were incurred on a piece of land which is less than 2 acres in size. Admittedly all payments have been made in cash, no TDS has been deducted at the time of making of payments and further, there is no proof of actual work of land levelling work having been carried out by the assessee. The only proof which the assessee has given is on the basis of Affidavit filed by a third party. We also note that the assessee had acquired the aforesaid land on 15.04.2008 for a total consideration of Rs. 5.25 lakhs. However, as against the purchase consideration of the cost of land of Rs. 5.25 lakhs paid in April 2008, the assessee has statedly incurred land levelling expenses of Rs. 65 lakhs, for which no evidence either with regards to the actual work being carried out or incurrance of expenses has been submitted, but for the Affidavit. We further observe that during the course of assessment proceedings the Assessing Officer has specifically observed (page 15) that Shri Jashwantbhai Patel has not submitted why and how the land development was done along with total amount of expenses incurred party wise. Shri Jashwantbhai Patel has filed an Affidavit stating that a sum of Rs. 65 lakhs was paid to Dineshbhai Patel, however, even PAN of Shri Dinesh Bhai Patel was not mentioned in the Affidavit. In the appellate order, Ld. CIT(A) has observed that regarding land improvement expenses the contention of the assessee cannot be accepted unless the same is supported by further evidences. In the instant case, as observed by us there is no proof of actual land development work being carried out by the assessee, all expenses have admittedly made in cash, no TDS has been conducted at the time of actual payment for land levelling expenses and the assessee has not

been able to give any justifiable reason as to why as against the total purchase consideration for the above land for a sum of Rs. 5.25 lakhs on 15.04.2008, a substantial sum of Rs. 65 lakhs was expended towards land levelling expenses and that too on a piece of land admeasuring less than 2 acres, during the period 2000-2005. Looking into the instant facts, in our view in absence of incurrance of the expenses being supported by any actual proof of work having been done on site, Ld. CIT(A) has correctly held that such expenses cannot be allowed merely on the basis of strength of an Affidavit. Therefore, we are of the considered view, that in the instant facts, the Affidavit had no evidentiary value and in absence of any proof of expenses having been incurred by the assessee, the contents thereof are liable to be rejected. So far as reliance by the assessee on the case of **M/s. Glass Lines Equipments Co. Ltd. vs. CIT 253 ITR 454 (Gujarat)(HC)** is concerned, the said decision was rendered on a different set of facts, wherein it was observed that when the contents of one part of the Affidavit have been accepted, the tax authority had erred in not accepting the contents of the balance part of the Affidavit. Accordingly, the said decision was rendered on it's own particular set of facts and we are unable to accept the proposition, that all affidavits filed by the assessee have to be accepted by the tax authority whether or not they are supported by any proof of actual work done or any proof of actual expenses having been incurred, and in case, the deponent has not been confronted with the contents of the Affidavit, howsoever irrelevant, the additions are not liable to be sustained in the hands of the assessee. In the instant case, we also note that once Shri Jashwantbhai Patel had filed the affidavit in relation to land leveling expenses, the Assessing Officer had issued summons to him asking details

of his expenses and Shri Jashwantbhai Patel had specifically submitted that land development bills and receipts are not available due to lapse of time and hence only Affidavit is being filed in support of expenses. Further, the Assessing Officer has specifically observed that despite being given an opportunity, Shri Jashwanthbhai Patel has not submitted as to why and how the actual land development was done. Accordingly, in our considered view, looking into the instant facts, the Affidavit filed by the assessee, without any supporting evidence / documents with regards to actual work being carried out on site and without any proof of incurrence of expenses, holds no value and the tax authorities have not erred in facts and in law in disregarding the same as evidence. However, considering the plea of the Counsel for the assessee that a reasonable amount of expenses may be allowed in the hands of the assessee, in the interest of justice, we are hereby allowing 50% of the cost of land purchased by the assessee amounting to Rs. 5,25,000/- on 15.04.2008 (50% of Rs. 5,25,000/-) towards land leveling and development expenses.

9. In the result, this ground of appeal of the assessee is partly allowed.

10. With regard to borewell and electricity expenses, the assessee has claimed borewell expenses of Rs. 4,07,978/- paid to Shri Bharat Patel and electricity expenses paid to AEC Ltd for Rs. 29,580/-. In support of the claim, the assessee has submitted bill issued by AEC Ltd. for a sum of Rs. 29,580/-. However, no supporting documents regarding the incurring of borewell expenses of Rs. 4,07,978/- paid to Shri Bharat Patel have been furnished. Before us, the Counsel for the assessee, during the course of hearing admitted that there is no actual proof of borewell and electricity

expenses. However, the factum of borewell having been installed at the site has not been denied by the Department. Therefore, looking into the instant facts, it needs to be presumed that at least some expenses towards construction of borewell and electricity expenses for running the same must have been incurred by the assessee. Accordingly, it was submitted that some expenses may be allowed to the assessee on a reasonable basis.

11. On going through the facts of the instant case, we are of the considered view that in absence of any supporting documents with respect to borewell expenses of Rs. 4,07,978/- paid to Shri Bharat Patel, Id. CIT(A) has correctly disallowed these expenses. However, with regards to the contention of the Ld. Counsel for the assessee that the entire expenses may not be disallowed in toto, in the interest of justice, 25% of such expenses as claimed are allowed to the assessee, in the interest of justice. With regards to electricity expenses of Rs. 29,580/-, the assessee has submitted a bill issued by AEC Ltd. in the name of name of Shri Kantilal Malaji. However, it is not clear whether this bill pertains to the assessee and accordingly, the Assessing Officer is directed to verify the genuineness of the aforesaid bill of Rs. 29,580/- and allow relief to the assessee in accordance with law.

12. With regards security and supervisor salary expenses of Rs. 6,25,000/, the assessee has submitted a one page document at page 84 of the paper book stating that the certain amount was paid in cash for these services. Apart from that, as correctly noted by the Assessing Officer and Id. CIT(A), no concrete evidence has been submitted by the assessee in support of the genuineness of the above expenses. Accordingly, looking into the instant facts, we concur with the views of the Id. CIT(A) that in absence of any

supporting documents of actual incurrence of expenses, the same are liable to be added in the hands of the assessee. Accordingly, we concur with the views of the Id. CIT(A) while confirming the addition.

13. With regards to legal/litigation expenses of Rs. 4,24,000/-, the assessee has submitted certain documents evidencing that certain litigation in respect of the property was going on. However, no supporting evidences regarding actual incurrence of legal expenses were furnished by the assessee. Even before us, no details/supporting documents or evidences have been furnished with regard to any of the litigation expenses having been incurred by the assessee. Accordingly, we concur with the views of Id. CIT(A) that in absence of any supporting documents to demonstrate actual incurrence of expenses, which have all been paid in cash, the aforesaid disallowances are liable to be confirmed. However, since the assessee has produced some documentation to show that there was an ongoing litigation with regards to the property in question, on an estimated basis, in absence of any documentary evidence 25% of such expenses are allowed to the assessee, in the interest of justice.

14. With regard to compound wall and boundary expenses of Rs. 14,83,000/-, the assessee submitted that in respect of such expenses, Shri Jashwant Patel has furnished name and address of contractee. However, the Assessing Officer disallowed the claim of expenses in view of the fact that PAN of contractee has not been furnished. We observe that again in respect of these expenses, all expenses have been incurred by the assessee in cash, there is no proof of deduction of tax at source at the time of making payment, no supporting details/bills/vouchers etc. have been furnished and

accordingly, Id. CIT(A) confirmed the addition made by the Assessing Officer. Before us, the Counsel for the assessee drew our attention Pages 19-20 of the Assessment Order and submitted that it has not been disputed by the Department that boundary wall had in fact been constructed by the assessee. Therefore, looking into the arguments put forth by the Counsel for the assessee and in absence of any proof of actual incurrence of expenses, since the impugned land under question was purchased by the assessee on 15.04.2018 for a total consideration of RS. 5,25,000/- (page 29 of the Assessment Order), in the interest of justice 50% of the cost of purchase of land may taken as the cost of construction of boundary wall on such land. Hence, in the interest of justice, and in absence of any documentary evidences having been produced by the assessee 50% of the cost of land is hereby allowed as cost of construction of boundary wall (i.e. 50% of Rs. 5,25,000/- is allowed to the assessee).

15. In the result, Ground No. 1 of the assessee's appeal is partly allowed for statistical purposes.

Ground No. 2 & 3 : Addition of Rs. 3,64,566/- u/s. 69 of the Act and the benefit of telescoping:

16. The brief facts of the case are that the during the course of assessment, the Assessing Officer observed that the assessee is having two saving bank accounts, in which there were cash deposits to the tune of Rs. 3,64,566/-. The assessee was asked to submit documentary evidence with regards to the source of deposits in the bank account. However, the assessee submitted only the bank book with narration of entries for both the bank accounts, not

supported with any documentary evidences for the source of deposits made. The Assessing Officer observed that assessee has not submitted any documentary evidence for the source of deposits. Accordingly, in absence of any supporting documents regarding the source of cash deposits in the bank account, the Assessing Officer added a sum of Rs. 3,64,566/- as undisclosed income u/s. 69 of the Act.

17. In appeal, the assessee submitted that it had submitted details in respect of cash deposited in the above bank accounts with narration of the bank statement. The assessee submitted that the Id. Assessing Officer failed to appreciate that cash withdrawals from Axis Bank by ATM had been reinvested in the same bank account. The assessee submitted that from the bank statement, it is evident that the assessee has sufficient cash balance on date of cash deposits in its bank account and this fact was ignored by the Assessing Officer. However, the Id. CIT(A) dismissed the appeal of the assessee with the following observation:-

“5.3. I have considered the facts of the case and submission made by the appellant. The only contentions of the appellant is that cash withdrawn from Axis Bank by ATM was reinvested in bank account and furnished a chart in this regard. However no supporting evidences were furnished by the appellant to establish his contention. Considering the above, the additions made by the AO is confirmed Thus, the ground raised by the appellant is dismissed.”

18. The assessee is in appeal before us against the aforesaid order passed by Id. CIT(A). The counsel for the assessee submitted that there is sufficient evidence to prove the source of cash deposit viz. cash flow statement (pages 28-29 of CIT(A)'s order) bank statement (page 85 to 90 of paper book). Accordingly, it was submitted that the assessee has sufficient cash balance on the date of cash deposits, there is no evidence to disbelieve or disprove

the aforesaid fact and there is no evidence to suggest that cash was used for any other purposes. In the alternate, the counsel for the assessee submitted that in case the Bench does not agree with the aforesaid contention of the assessee, then the benefit of telescoping may be granted to the assessee in accordance with law. In response, the Id. Departmental Representative placed reliance on the observations made by the Assessing Officer and Id. CIT(A), in their respective orders.

19. We have heard the rival contentions and perused the material available on record. While we agree with the contention of the Id. CIT(A) that regarding the source of cash deposit, no supporting evidences were furnished by the assessee, but at the same time, we equally agree with the Id. counsel for the assessee that the Assessing Officer erred in overlooking the fact that substantial withdrawals were also made by the assessee from the bank account and nothing has been brought on record to show that this cash withdrawn by the assessee was utilized by the assessee elsewhere and that this cash could not have been deposited by the assessee in the bank account. The assessee has furnished details of date-wise withdrawals from the ATM bank. In absence of any evidence to suggest that this cash was utilized by the assessee for some other purpose, it would be reasonable to presume that to the extent of withdrawals made by the assessee from the same bank account, the same could be deemed to be the source of cash deposited in the bank account. Accordingly, we concur with the view of the Id. counsel for the assessee that benefit of telescoping may be allowed to the assessee in accordance with law. In the result, Ground Nos. 2 of the assessee's appeal is

dismissed and Ground No. 3 of the assessee's appeal is allowed for statistical purposes.

20. In the combined result, the appeal of the assessee is partly allowed for statistical purposes.

ITA No. 511/Ahd/2018

21. The assessee has taken the following grounds of appeal:-

“1. The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of the AO of disallowing 50% of expenses on account of legal, land leveling and development, compound wall and boundary, bore-well and electric and security and supervisor salary amounting to Rs 47,20,489/-.

2. The learned CIT(A) has erred both in law and on the facts of the case in confirming the addition of Rs. 26,06,641/- made by the AO u/s. 69 of the Act on account of unexplained investment.

3. Ld. CIT(A) has erred in law and on facts in not granting benefit of telescoping while confirming the additions on account of disallowance of various expenses and unexplained investment.

4. The learned CIT(A) has erred both in law and on the facts of the case in confirming the addition of Rs 84,000 made by the AO on account of income from house property.

5. The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of the AO of disallowing howing loan interest of Rs 23,032 u/s 24(b) of the Act

6. The learned CTT(A) has erred both in law and on the facts of the case in confirming the action of the AO of disallowing deduction under Chapter VI-A of Rs 1,01,914/-.

7. Both the tower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order.

This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.

8. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest us 234A/B/C of the Act.*

9. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty 271(1)(c) of the Act*

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

22. We observe that the instant appeal is time barred by 547 days and the assessee has filed application for condonation of delay in filing of the present appeal. The assessee submitted before us that the order passed by Id. CIT(A) was received on 07-07-2016, however the assessee had expired on 25-07-2015 and the legal heirs of the assessee were not aware about the income tax proceedings. Copy of death certificate of the assessee has been filed before us for our records. The legal heir of the assessee has submitted that it was only later when notice dated 24-10-2018 initiating penalty proceedings u/s. 271(1)(c) of the Act was received, that the legal heir of the assessee approached the tax consultant with regard to the response to summon/notice issued by the Tax Department. It was only then that the tax consultant advised the legal heir of the assessee to approach the Hon'ble ITAT against the order passed by first appellate authority. Accordingly, it was submitted that it was for the aforesaid reason that there is delay in filing of the present appeal, since the assessee had expired and the legal heirs were not aware about the on-going tax proceedings.

23. On going through the facts of the instant case, we are of the view that this is a fit case for condoning the delay in filing of the present appeal.

Accordingly, the delay in filing of the present appeal is hereby being condoned, in the interest of justice.

Ground No. 1 (confirming the disallowance of 50% of cost of improvement aggregating to Rs. 47,20,489/-

24. In this regard reference is made to ground no. 1 of the assessee's appeal in the case of Shri Bhagwanbhai Makwana, since the assessee Bhaktiben Bhagwatsinh Chavda was the co-owner of the land. Accordingly, ground of the assessee's appeal is partly allowed for statistical purposes, in line with our observations made in the preceding part of our order.

Ground No. 2 (Confirming the addition of Rs. 26,06,641/-)

25. The brief facts in relation to this ground of appeal are similar to ground no. 2 of assessee's appeal in the case of Shri Bhagwanbhai R Makwana in ITA 2281/Ahd/2016. During the course of assessment proceedings, the Assessing Officer observed that there were deposits to the tune of Rs. 26,06,641/- in the bank accounts held by the assessee during the impugned year under consideration. The assessee was asked to submit the source of such cash deposits. However, the assessee submitted only bank book with narration of entries for both the bank accounts, in which the deposits were made, however, no supporting documentary evidences regarding the source of cash deposit was furnished. The Assessing Officer observed that the assessee did not submit any documentary evidences in connection with the source of deposits. Accordingly, in absence of any supporting evidence filed by the assessee explaining the source of deposit,

the deposits amounting to Rs. 26,06,641/- were added to the income of the assessee u/s. 69 of the Act.

26. In appeal, the Id. CIT(A) confirmed the additions with the following observations:-

“5.3. I have considered the facts of the case and the submission made by the appellant. The only contention of the appellant is that cash withdrawn from State Bank of India and Bank of Baroda by ATM were reinvested in bank account and furnished a chart in this regard. However, no supporting evidences were furnished by the appellant to establish his contention. Considering the above, the additions made by the AO is confirmed. Thus the ground raised by the appellant is dismissed.”

27. The assessee is in appeal before us against the additions confirmed by Id. CIT(A). The counsel for the assessee submitted that the cash deposits were out of cash available with the assessee on account of cash withdrawn from the bank and also on account of consideration received on sale of immovable property sold by the assessee. However, both the Assessing Officer and CIT(A) did not given any specific finding in this regard.

28. On going through the facts on record, we observe that despite several opportunities of hearing, the assessee offered no explanation/no supporting documents in respect of the source of cash deposited in the bank. Therefore, Id. CIT(A) confirmed the addition by observing that the only contention of the assessee was that the cash withdrawn from the bank account was reinvested in the bank account and only a chart in this regard was furnished. Therefore, in absence of any supporting documents, we find no infirmity in the order of Id. CIT(A), since despite granting of several opportunities of

hearing, the assessee did not furnish any supporting evidences in support of the source of cash deposits.

29. But as noted by us by dealing with ground no. 2 of assessee's appeal in the case of Shri Bhagwanbhai Makwana supra, the benefit of telescoping may be granted to the assessee and due credit should be given in respect of withdrawals made by the assessee from the bank account, in which the cash was re-deposited after carrying out necessary verification. Accordingly, ground no. 2 of assessee's appeal is partly allowed for statistical purposes.

Ground No. 4 (Id. CIT(A) erred in confirming addition of Rs. 84,000/- and addition of Rs. 23,032/- in respect of income from house property and in respect of housing loan interest u/s. 24(b) of the Act

30. The brief facts in relation to this ground of appeal are that during the course of assessment, the assessing officer observed that the assessee was in possession of two properties during the impugned year under consideration and both the house properties were utilised by the assessee for his personal use. The assessee has not declared any income under the head "income from house property" for the second house property held and utilized by the assessee during the period under consideration. Accordingly, the Assessing Officer computed the deemed annual rent of the property of Rs. 84,000/- and added the same as income from house property in the hands of the assessee. Further, the Assessing Officer observed that the assessee had claimed deduction of Rs. 23,032/- u/s. 24(b) of the Act in respect of interest on borrowed capital, however, the same was disallowed by the Assessing Officer since the assessee did not furnish the relevant supporting documents from the bank, in support of claim of deduction u/s. 24(b) of the Act.

31. In appeal, CIT(A) confirmed both the additions by observing that the assessee has admitted to holding of two house properties and has not given any explanation as to why no income was declared by the assessee under the head “income from house property”. Regarding the deduction in respect of interest on borrowed capital u/s. 24 (b) of the Act, the assessee was unable to furnish the relevant certificate from the bank in support of claim of deduction u/s. 24(b) of the Act. Accordingly, the Id. CIT(A) confirmed both the additions with the following observations:-

“Decision:

6.3. I have considered the facts of the case and submission made by the appellant. The appellant has admitted that he has held two house properties and no income declared under the head income from house property. Considering the above, the AO has rightly added the deemed income under the head income from house property. Accordingly, the addition is confirmed and ground of appeal is dismissed. The appellant has also raised the contention that the appellant should be allowed deduction in respect of interest on borrowed capital u/s. 24(b) of the Act. The AO has categorically mentioned in the order that the assessee has not furnished the relevant certificate from bank in support to his claim for deduction u/s.24(b) of the Act. Accordingly, the contention of the appellant is upheld. Thus, these grounds are dismissed.”

32. The assessee is in appeal before us against both the additions confirmed by Id. CIT(A). Before us, no plausible explanation has been given as to why the aforesaid additions should not be added in the hands of the assessee with respect of claim of deduction u/s. 24(b) of the Act. It was submitted that such claim of interest expenses appeared in Form 16 (salary certificate), which implied that such claim was verified by employer of the assessee while issuing Form 16. Accordingly, the aforesaid disallowances is not justified.

33. On going through the facts of the instant case, we observe that the assessee has not given any plausible explanation/supporting documents in support of the aforesaid ground of appeal. Accordingly, looking into the instant facts, we find no infirmity in the order of Id. CIT(A) so as to call for any interference.

34. In the result, ground nos. 4 and 5 of the assessee's appeal are dismissed.

Ground No. 6 (Disallowance of Rs. 1,01,914/- under Chapter VI-A

35. The brief facts in relation to this ground of appeal are that during the course of assessment proceedings, the Assessing Officer disallowed a sum of Rs. 1,01,914/- claimed as deduction under Chapter VI-A of the Act on the ground that the assessee has not furnished supporting documents of investments made by him during the impugned year under consideration. In appeal, the CIT(A) dismissed the appeal of the assessee on the ground that since the assessee has failed to furnish any supporting documents regarding investment made by him on which deduction under chapter VI-A was claimed, the appeal is liable to be dismissed. While passing the order, the Id. CIT(A) observed as under:-

“7.3. I have considered the facts of the case and submission made by the appellant. The AO has categorically stated that the assessee has failed to furnish supporting documents. In the absence of supporting documents the AO has rightly disallowed the deduction^ amounting to Rs.1,01,914/-. Thus the ground of appeal is dismissed.”

36. The assessee in appeal before us against the aforesaid addition confirmed by the Id. CIT(A). It was submitted before us that such claim of

deduction under Chapter VI-A was in respect of contribution to PF/GPF medical claim etc. appearing in Form 16 (salary certificate) which implied that such claim was duly verified by the employer at the time of issuing Form 16. Accordingly, it was submitted that under such circumstances, the impugned addition is not justified and is hence liable to be deleted.

37. On going through the facts of the instant case, in our considered view in absence of supporting documents having been furnished by the assessee during the course of assessment/appellate proceedings and even before us, we find no infirmity in the order of Id. CIT(A) so as to call for any interference.

38. In the result, ground no. 6 of the assessee's appeal is dismissed.

39. In the combined result, the appeal of the assessee is partly allowed for statistical purposes.

ITA Nos. 1075/Ahd/2019 & 1076/Ahd/2019

40. ITA Nos. 1075/Ahd/2019 & 1076/Ahd/2019 are against order of Ld. CIT(A) confirming levy of penalty made by the Assessing Officer. While making the addition, Ld. CIT(A) has made the following observations:

“3.3. I have carefully considered assessment order, penalty order and submission made by the appellant. The AO made the addition u/s. 143(3) treating the receipt from sale of land as short term capital gain. It is noted that in the quantum appellate proceedings, the CIT(A) has held the transaction of sale of land as long term capital gain. However the CIT(A) has given categorical finding that since no evidence was filed either in the assessment proceedings or in the appellate proceedings to prove the genuineness of legal exp. of Rs.4,25,000/-, land leveling and development expenses of R.65 lakhs, compound wall and boundary expenses of Rs.14,83,000/-, bore-well expenses of Rs.4,07,978/- and security and supervisor salary of Rs.6,25,000/- therefore, the same cannot be treated as genuine expenditure. During the penalty proceeding the AO levied

the penalty on the non-genuine expenses as it is amount to filing of inaccurate particulars and concealment of income.

3.4. *The AO also levied penalty on addition on account of unexplained investment of Rs. 26,06,631/-. The appellant only submitted that the cash deposit in the bank account is out of the ATM withdrawal. However, no such evidence was submitted to establish the nexus between the cash withdrawal and cash deposit. Hence the sources of cash deposit in the bank remain unexplained.*

3.5. *The AO also levied the penalty on undisclosed house property income and held that the assessee was having two house properties but the income from other house property was not disclosed and the appellant admitted before the CIT(A) in the quantum appellate proceedings that he was having two house properties and deemed income of the house property was not disclosed. Regarding not showing income from second house appellant submitted that every disallowance in the assessment cannot be tantamount to the concealment or furnishing the inaccurate particular of income.*

3.6 *The appellant submitted that the disallowance of expenditure and not accepting the explanation filed before the AO does not fall within the ambit, scope and rigors of the provisions of Section 271(1)(c) of the Act and relied on the decision of Reliance Petro Products Ltd. and others. However, the contention of the appellant is not tenable in view of the facts discussed by the AO and the CIT(A) in the quantum appellate proceedings where it has been established that the assessee has furnished inaccurate particular to conceal the income as the expenditure as mentioned above were found non-genuine. The contention of the appellant is general and vague and do not explain the genuineness and bonafide hence not tenable. It is clearly noted that the appellant has failed to disclose the true and correct income by way of claiming bogus expenditure and hiding the income from house property.*

.....

3.12. *The law relating to penalty was amended w.e.f. 01.04.1976 and original Explanation 1 of section 271(1)(c) was replaced by the present one. After this amendment, the revenue is not required to prove that assessee is guilty of any fraud or has committed a willful neglect i.e. mens rea is not to be proved by the revenue. As per the present Explanation 1, if the assessee offers an explanation in respect of any facts, material to the computation of total income which he is not able to substantiate and fails to prove that such explanation is bonafide and that all the facts relating to the same and material to the computation of his total income has been disclosed by him then the amount added are disallowed in computing the total income of such person as a result thereof shall be deemed to represent the income in respect of which inaccurate particulars have been filed.*

3.13. *In view of the above facts and discussions, the penalty levied by the AO is confirmed.*

The ground of appeal is dismissed.”

41. In the preceding paragraphs, we have partly allowed the appeal of the assessee by taking a reasonable estimate of expenses that may have been incurred by the assessee towards cost of improvement claimed against sale of property and appropriate benefit of telescoping has been granted to the assessee, in accordance with law. Therefore, to that extent, it may be deemed that the assessee has not concealed his income / furnished incorrect particulars of his income and the penalty may disposed of accordingly in light of our observations in preceding paragraphs.

42. In the combined result, all the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 25-07-2024

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER
Ahmedabad: Dated 25/07/2024

Tanmay, Sr. P.S.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

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आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद