

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' SM/DB- ' Bench, Hyderabad

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA Nos.258 & 259/Hyd/2022**
(निर्धारण वर्ष/Assessment Years: 2016-17 & 2017-18)

M/s. S.A. Builders & Developers, Hyderabad PAN:ACUFS3331A (Appellant)	Vs.	ACIT Central Circle 2(1) Hyderabad (Respondent)
--	-----	--

आ.अपी.सं / **ITA Nos.295 & 296/Hyd/2022**
(निर्धारण वर्ष/Assessment Years: 2016-17 & 2017-18)

ACIT Central Circle 2(1) Hyderabad (Appellant)	Vs.	M/s. S.A. Builders & Developers, Hyderabad PAN:ACUFS3331A (Respondent)
निर्धारिती द्वारा/Assessee by: Shri K.C. Devdas, CA		
राजस्व द्वारा/Revenue by: Shri B Bala Krishna, CIT(DR)		
सुनवाई की तारीख/Date of hearing: 19/02/2025		
घोषणा की तारीख/Pronouncement: 15/05/2025		

आदेश/ORDER

Per Bench:

These two sets of cross appeals are directed against the two separate orders of the learned CIT (A)-12, Hyderabad both dated 29/04/2022, arising from the assessment framed u/s 143(3) r.w.s. 153A of the I.T. Act, 1961 for the A.Ys 2016-17 and

2017-18 respectively. For the A.Y 2016-17, the assessee and the Revenue have raised the following grounds of appeal:

ITA No. 258/Hyd/2022 – A.Y 2016-17 (Assessee)

“1. The learned CIT (A) erred both in law and facts in deciding the appeal

2. The learned CIT(A) erred in coming to a finding that there was a search in the case of appellant-firm merely because its name appeared in the Panchanama drawn in the residential premises of the its partner Mr.Syed Akhtar

3. The learned CIT (A) ought to have appreciated that since it was joint warrant in the names of Syed Akhtar and M/s. S.A.Builder and Developers, both the names are required to be mentioned in Column-A of the Panchanama which refers to Warrant in the case of, Syed Akhtar and M/s. S.A.Builder and Developers. The learned CIT(A) misconstrued that merely because both names are mentioned, a survey can be understood as a search.

4. The learned CIT (A) should have appreciated that mere mention of the name in a proforma for drawing of Panchnama does not amount to conduct of actual search in the premises of the firm which is a separate and distinct entity.

5. The learned CIT(A) does not deny that the premises of the appellant- firm was actually covered under survey under section 133A on the face of evidences produced by the appellant.

6. The learned CIT (A) should have appreciated that a survey under section 133A is not a search under section 132 as both operate in their respective fields and it is legally not permissible to equate both the actions as same.

7. The learned CIT(A) should have appreciated that no valuable or books of account belonging to the firm were seized from the residential premises of Syed Akhtar (partner).

8. The learned CIT (A) ought to have appreciated that the prerequisite for initiation of proceeding under section 153A is that a search under section 132 must be actually conducted in the premises of the person and a search is person specific.

9. In the light of the above legal principles since the initiation of proceeding under section 153A is bad in law, the assessment has no leg to stand and the same is required to be quashed.

10. Without prejudice to above legal contention the appellant contends that following additions are liable to be deleted on merits.

(i) Creditors Appearing under Loans & Advances (Asset)		Rs.1,44,86,500
Sl.No.	Name of the Customer	Closing Balance (Rs.)
1	Mirza AjmalBaig	261000
2	Shahira Begum	261000
3	Shail Abdul Qaiyum	261000
4	Shaik Abubakar	261000
5	Shaik Ismail (Heera)	741000
6	Shaik Mubarak Jan (Heera)	12741000
Total		14486500

The learned CIT (A) erred in sustaining the above addition of Rs.1,44,86,500/- despite the undisputed fact that the amounts were credited in the bank account of the appellant firm by way of cheque/ RTGS and the said persons were absconding because of the criminal cases instituted against them. However, the appellant is ready to furnish the confirmation from the above parties.

(ii) Advance from Customers		Rs.94,50,000			
Sl. No.	Name of the Creditor	Date	Amount Received	Amounts Returned	Closing Balance
1	Hidayadullah	14.12.2015	3000000	0	3000000
2	Humera	20.01.2016	1000000	0	1000000
3	Hussain begum	15.03.2016	500000	0	500000
4	Kaleel Uddin	07.01.2016	950000	0	950000
5	Mogal Rizwana	14.12.2015	3000000	0	3000000
6	Shoukatulla	31.10.2015	1000000	0	1000000
Total :			9450000	0	9450000

The learned CIT(A) erred in sustaining the above addition of Rs.94,50,000/- despite the undisputed fact that the amounts were credited in the bank account of the appellant firm by way of cheque/ RTGS and subsequent transactions of amount received and repaid through banking channels only in subsequent years.

11. The appellant craves leave to add/alter/modify the grounds as may be required for adjudication of the case.”

ITA No.295/Hyd/2022 – A.Y 2016-17 (Revenue)

“1. The ld. CIT(Appeals) erred both in law and on facts of the case in granting relief to the assessee.

2. The ld. CIT(Appeals) erred in admitting additional evidences filed by the assessee as the assessee did not provide any sufficient cause for non-submission of the said evidences before AO as per Rule 46(A)(b).

3. The ld. CIT(Appeals) has erred in ignoring the statement recorded on oath u/s 132(4) of Sri Syed Akhtar, Managing Partner and subsequent affidavit filed by him almost 3 months after the conclusion of the search that on money of Rs.2.50 crores was received on sale of plots which was not recorded in the books of account.

4. The ld. CIT(Appeals) has erred in ignoring the statement recorded on oath u/s 132(4) of Sri Syed Afsar, Partner and subsequent affidavit filed by him almost 3 months after the conclusion of the search that Rs.1,83,84,000/- was received towards unaccounted sale consideration of plots.

5. The ld. CIT(Appeals) failed to appreciate the evidentiary value of an affidavit as held by the Hon'ble Supreme Court of India in the case of A.K.K. Nambabir Vs. Union of India & Anr. On 28-10-1969 [Equivalent citations :.1970 AIR 652, 197 SCr (3) 121].

6. The ld. CIT(Appeals) has erred in deleting the addition of Rs.1,31,46,000/- made towards unexplained cash credits, even though the assessee failed to prove the identity, creditworthiness and genuineness of the transaction.

7. The ld. CIT(Appeals) erred in deleting addition of Rs.12,76,50,000/- made towards disallowance u/s. 40(a)(ia) even though the assessee failed to remit the corresponding TDS to Govt. Account.

8. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary.”

3. First, we take up the appeal of the assessee for the A.Y 2016-17. Ground No.1 of the assessee is general in nature and does not require any specific adjudication.

4. Ground Nos.2 to 9 relates to the validity of the assessment orders framed u/s 153A of the I.T. Act, 1961 for want of valid search in case of the assessee. We will deal with this issue raised in Ground Nos.2 to 9 at a later stage.

5. Ground No.10 is the effective ground raised by the assessee against the additions made by the Assessing Officer and sustained by the learned CIT (A). In the first part of Ground No.10, the assessee is challenging the additions sustained by the learned CIT (A) on account of creditors appearing under loans & advances. The Assessing Officer has made the additions on this account in para 2.2 to 2.6 as under:

Creditors appearing under "Loans and advances (Asset)" in Balance Sheet:

2.2 It is seen that the following persons are appearing as credit balances under "Loans and advances (Asset)" in the Balance Sheet.

Sl.	Name of the Customer	Closing Balance (Rs.)
1	Mirza AjmalBaig	221500
2	Shahira Begum	261000
3	Shail Abdul Qaiyum	261000
4	Shaik Abubakar	261000
5	Shaik Ismail (Heera)	741000
6	Shail Mubarak Jan (Heera)	12741000
	Total	14486500

2.3 The above persons had purchased plots from the assessee but their accounts show credit balances as shown above even after the transaction was complete. All these persons belong to Heera group of companies as admitted by the assesseees.

2.4 Vide show cause notice issued on 18/12/2019, the assessee was asked to explain why the sum of Rs.1,44,86,500/- should not be treated as unaccounted sale consideration in view of the fact that in all these cases, the transaction of land is complete, there is no available land for sale and the advances were used by the firm either as overdrawals by partners or towards investments by the firm.

2.5 In its reply filed on 24/12/2019, the assessee contended, inter alia, that it is not possible to visualise as to how non-availability of land could lead to an inference that the advances are bogus and that the department has no case to disbelieve the credits in the books by way of advances. It is also stated in the reply that all the above persons are absconding because of a criminal case instituted against them due to which confirmation letters could not be procured and the lapse in this regard is due to impossibility of performance.

2.6 The assessee's reply is not acceptable. It cannot be assumed that such excess payments may relate to any other plot when no land is available for sale. In fact, no buyer



would give advances for future purchases without being satisfied about the location of the land, rate etc. Moreover, as stated above, such amounts were utilised by the partners as excess drawals and towards advances. Further, considering the statements given by the partners during the search that the lands were sold at amounts over and above the recorded sale consideration, and the fact that this is a regular practice in this line of business, it is evident that the buyers of the land have paid amounts over and above the record sale consideration. Accordingly, the sum of Rs.1,44,86,500/- is added to the total income towards unaccounted sale consideration on sale of plots to the above individuals belonging to Heera group. I am satisfied that penalty proceedings u/s 271(1)(c) of the Act are attracted for concealment of income.

Addition: Rs.1,44,86,500/-

6. On appeal, the learned CIT (A) has confirmed the addition made by the Assessing Officer towards unaccounted sale consideration.

7. Before the Tribunal, the learned AR of the assessee has submitted that all these transactions are duly recorded in the books of account of the assessee and also shown in the balance sheet as credit balance due to advances given by the customers for purchase of the land from the assessee. The learned AR has submitted that at the time of finalizing the assesment proceedings, it was not possible for the assessee to submit the confirmation from these parties as they were not traceable due to some criminal cases registered against them. However, the identity of the parties are not in dispute as these transactions are through proper banking channels and received by the assessee as advances for future sale of the land. The learned AR has further submitted that the Assessing Officer has made this addition in the assesment framed u/s 153A of the Act without any incriminating material to show that this amount shown in the books of account as advances from the client represents sale consideration. He has further submitted that the Assessing Officer has doubted the genuineness of the advances shown in the books of account of the assessee solely on the ground that the assessee was not having stock of land to be sold to these parties and therefore, the question of making the advances by the parties is highly suspicious and unbelievable. He has submitted that in the

subsequent year, the assessee has sold the land to some of these parties from whom these advances were received and therefore, the addition made by the Assessing Officer on the basis of the suspicion is not sustainable in law. The Assessing Officer has not brought any material on record to disbelieve the credits shown in the books of account by way of advances when in the subsequent years, the assessee has sold land to some of the persons appearing in the list of these advances. In support of his contention, he has relied upon the following decisions:

- (i) Dhirajpal Girdhari Lal v. CIT [1954] 26 ITR 726 (SC);
- (ii) Dhakeshwari Cotton Mills Ltd. v. CIT [1954] 26 ITR 775 (SC);
- (iii) Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 (SC);
- (iv) Umacharan Shaw & Bros. v. CIT [1959] 37 ITR 271 (SC);
- (v) Oman Salay Mohd. Sait v. CIT [1939] 237 ITR 151 (SC);
- (vi) CIT v. Rameshwar Singh [1933] 1 ITR 94 (PC);

7.1 The learned AR has further pointed out that for the A.Y 2017-18, the learned CIT (A) has deleted the addition made by the Assessing Officer on account of advances shown in the books of account.

8. On the other hand, the learned DR has submitted that the assessee failed to produce any evidence either before the Assessing Officer or before the learned CIT (A) as to how the advances received was actually converted into land transfer in the

subsequent year. This clearly indicates that the amounts shown as advances continue to be enjoyed by the assessee in the subsequent years. The assessee has not disputed this fact that it was not having sufficient land to transfer to these persons belonging to Heera Group and therefore, when the assessee was not having sufficient land in hand, the contention of the assessee cannot be accepted that they paid huge amount as advances. Moreover, the Assessing Officer has pointed out from the capital accounts of the partners of the assessee firm that the amounts were actually withdrawn by the Partners for their individual purpose. The learned DR has referred to the news report regarding cancellation of the bail by the Hon'ble Supreme Court of Nowhera Shaikh in a financial scam. He has relied upon the orders of the authorities below.

9. We have considered the rival contentions as well as the relevant material available on record. As it is clear from the details reproduced by the Assessing Officer that the assessee has shown the advances of Rs.1.44 crores from six persons as received against the sale of land. The Assessing Officer made the addition by citing the reason that these advances are nothing but the amounts are received as sale consideration from these parties over and above the sale consideration reported in the books of account. Thus, the Assessing Officer made the addition towards unaccounted sale consideration. It is pertinent to note that this is not a case of own money received by the assessee on sale of land

but the assessee has shown these amounts as advances received from these persons through proper banking channels. The assessee has shown the helplessness to produce confirmation from these parties due to the reason that these persons were absconding due to criminal cases pending against them and this fact is not disputed by the Department and rather confirmed by the Department by producing this news material on a criminal case registered against the Managing Director of Heera Gold Exim (P) Ltd. In any case, when there was no material produced or brought on record to show that there was actual sale of land to these parties and the assessee has suppressed the sale consideration to avoid the tax, then the advances received through proper banking channel cannot be treated as unaccounted sale. At the most, if the Assessing Officer was satisfied that these advances are not a genuine transaction, then the addition could have been made u/s 68 of the I.T. Act, 1961 to the extent received during the year. However, the Assessing Officer has not doubted the transfer of money by these parties in favour of the assessee but the reporting of the transactions in the books of account by the assessee under advances from these parties was doubted by the Assessing Officer on the premise that the assessee is receiving the consideration over and above the consideration reported and declared in the books of account and sale deeds. It is pertinent to note that in the case of suppression of consideration, the excess amount is received as own money, not through banking channel. Once the Assessing Officer fails to

co-relate these amounts with specific sale indent between the assessee and these parties, then this cannot be treated as unaccounted sale consideration. The learned CIT (A) has confirmed the addition in para 9.5 as under:

9.5 I have considered the submissions of the AR. It is seen that the closing balance of "Loans and Advances" in the books of appellant for the current year was Rs.1,44,86,500/-. However, the appellant has not submitted any confirmation letter, PAN details, bank account statement of the parties or any other documentary evidence during appellate proceedings to substantiate the "Loans and Advances" of Rs.1,44,86,500/-. Therefore, the appellant has failed to establish the identity, creditworthiness and genuineness of the loans and advances and has not discharged the primary onus on him to prove the genuineness of the transactions. Therefore, the addition made of Rs.1,44,86,500/- on account of unexplained credits in the hands of the appellant is confirmed and accordingly, the appeal on this ground is **DISMISSED**. Accordingly, Ground No.9 of the appellant is **DISMISSED**.

10. Thus, the addition was confirmed by the learned CIT (A) for want of the documentary evidence to substantiate the loan and advances and to establish the identity, creditworthiness and genuineness of the transaction. These conditions as referred by the learned CIT (A) are required to be satisfied in case of cash credit u/s 68 of the I.T. Act, 1961 whereas the Assessing Officer has not doubted the transaction of transfer of the amounts by these persons but doubted the nature of payment. Thus, in the absence of any sale incident, title deed or any other material, the

advances shown by the assessee cannot be treated as sales. Therefore, in the absence of allegation of any own money received, these advances cannot be treated as unaccounted sale. Hence the addition made by the Assessing Officer on this account is deleted.

11. The 2nd addition confirmed by the learned CIT (A) is regarding the advances received from the customers. The Assessing Officer has made the addition u/s 68 of the I.T. Act, 1961 in para 2.1 as under:

Advance from customers:

2.1 During scrutiny it was seen that amounts shown under the head "Advances from customers" did not appear to be advances against any sale of land. Therefore the amounts shown to have been received under this head are loans and required to be considered u/s.68 of the Act. Vide show cause notice dated 18.12.2019 the assessee was asked to furnish confirmation letters from such persons establishing identity and genuineness of the transactions and their creditworthiness. The assessee furnished confirmations from some of the parties. As seen from the confirmation letters, the amounts advanced were not against any sale agreement or for any business purpose and are therefore treated as loan creditors. The assessee did not furnish any confirmations in respect of the following creditors :

Sl. No.	Name of the creditor	Date	Amount received	Amounts returned	Closing balance
1	GVB Infra	05.11.2015	10,00,000	-	10,00,000
2	Hidayadullah	14.12.2015	30,00,000	-	30,00,000
3	Humera	20.01.2016	10,00,000	-	10,00,000
4	Hussain Begum	15.03.2016	5,00,000	-	5,00,000
5	Kaleel Uddin	07.01.2016	9,50,000	-	9,50,000
6	MogalRizwana	14.12.2015	30,00,000	-	30,00,000
7	Mujeeb Ahmed	31.10.2015	20,00,000	-	20,00,000
8	Naimath Ali Baig	24.02.2016	23,46,000	-	23,46,000
9	Shoukatulla	31.10.2015	10,00,000	-	10,00,000
10	Syed Ahah	19.01.2016	11,00,000	-	11,00,000
11	Syed Ahmed	06.11.2015	9,00,000	-	9,00,000
12	Syed Anees	03.11.2015	50,00,000	-	50,00,000
13	Zaki Ahmed Khan	31.10.2015	8,00,000	-	8,00,000

		Total	2,25,96,000		2,25,96,000
--	--	-------	-------------	--	-------------

In the absence of basic information required to be furnished by the assessee the above credits appearing in the books totalling to Rs.2,25,96,000/- is added u/s. 68 to the income of the assessee. I am satisfied that penalty proceedings u/s 271(1)(c) of the Act are attracted for concealment of income.

Addition: Rs.2,25,96,000

12. Thus, the addition was made by the Assessing Officer on the basis of the entries in the books of account and without any incriminating material found or seized during the course of the search & seizure action. The Assessing Officer issued a show cause notice to the assessee to furnish the confirmation from these persons to establish the identity, creditworthiness and genuineness of the transaction. The assessee furnished confirmation from some of the parties; however, the Assessing Officer has treated the advances as unexplained cash credit u/s 68 of the I.T. Act, 1961.

13. On appeal, the assessee furnished the confirmation and other supporting evidences which were sent to the Assessing Officer for verification and submitting of the remand report. After considering the remand report of the Assessing Officer, the learned CIT (A) has deleted the substantial addition made by the Assessing Officer and confirmed the addition to the extent of Rs.94,50,000/-. Thus, both the assessee and the Department have challenged the impugned order of the learned CIT (A). The Department has raised this issue in Ground No.6 of its appeal.

14. Before the Tribunal, the learned AR of the assessee has submitted that at the time of finalizing the assessment, the assessee could not submit the confirmation and other supporting evidence, however, when the Assessing Officer has made these additions for want of confirmation and other supporting evidences, the assessee has produced the same before the learned CIT (A) along with an application under Rule 46A of the Income Tax Rules, 1962. The parties have duly confirmed the advances given to the assessee for purchase of land. Therefore, once the assessee has produced the documentary evidence, there is no question of doubt that the advances represents part of the sale consideration. In some of the cases, despite the best efforts, the assessee could not produce the confirmation due to the reason of criminal cases pending against those persons. The learned AR has submitted that the assessee has produced the ledger copies of these persons appearing in the books of account as well as bank account statement where the amounts received from them through cheques/RTGS are duly reflected and therefore, the genuineness of the transaction cannot be doubted. Once the transactions are duly recorded in the books of account and also reflected in the bank account of the assessee, then the assessee has discharged its primary onus. The Assessing Officer has not brought on record any contrary material to show that these transactions are not genuine.

15. On the other hand, the learned DR has submitted that the Assessing Officer has given a finding that the advances shown by the assessee did not appear to be the advance against any sale of land. The assessee failed to produce or explain any justified reason which prevented him from filing the information before the Assessing Officer. Therefore, filing of the information before the learned CIT (A) is nothing but an afterthought. Even the information furnished before the learned CIT (A) does not establish the creditworthiness of the parties. He has reiterated his contention that in the absence of any land in the hand of the assessee, the claim of advances received by the assessee cannot be accepted. The assessee has shown a huge amount of advances from Heera Group which are found to be involved in the financial scam as referred in the news article reported regarding the cancellation of bail by the Hon'ble Supreme Court in case of Managing Director of Heera Gold Exim (P) Ltd. He has relied upon the order of the Assessing Officer.

16. We have considered the rival contention as well as the relevant material available on record. The Assessing Officer has made the addition for want of the confirmation from these parties. On appeal, when the assessee furnished the confirmation and other record, the same was forwarded to the Assessing Officer for examination and submitting a remand report. After receiving the remand report, the learned CIT (A) has deleted a substantial

addition and confirmed the addition to the extent of Rs.94,50,000/- in para 7.5 to 7.7.3 as under:

7.5 I have carefully considered the submissions of the appellant, the order of the Assessing Officer, as well as the comments of the Assessing Officer thereon. Briefly the facts are, during assessment proceedings it was observed by the AO that the amounts shown under the head "Advances from customers" did not appear to be advances against any sale of land. Therefore, the AO considered the amounts shown under this head as loans and unexplained credits u/s 68 of the IT Act, 1961. The appellant was asked to submit the confirmation letters from the creditors establishing identity and genuineness of the transactions and their creditworthiness. The appellant could not submit confirmation letters and any other supporting evidences in the below cases:

S. No.	Name of the Party	Amount received in Rs.
1	Gvb Infra	10,00,000
2	Hidayadullah	30,00,000
3	Humera	10,00,000
4	Hussain Begum	5,00,000
5	Kaleel Uddin	9,50,000



6	Mogal Rizwana	30,00,000
7	Mujeeb Ahmed	20,00,000
8	Naimath Ali Baig	23,46,000
9	Shoukatulla	10,00,000
10	Syed Ahah	11,00,000
11	Syed Ahmed	9,00,000
12	Syed Anees	50,00,000
13	Zaki Ahmed Khan	8,00,000
	Total	2,25,96,000

Accordingly, the AO made addition of Rs.2,25,96,000/- as unexplained credits u/s 68 of the Act. The appellant is aggrieved and is in appeal.

7.6 During the appellate proceedings, the AR of the appellant submitted that the appellant could not produce evidences during assessment proceedings as various parties were not available and some of the parties were under criminal investigation. The AR has now submitted the evidences/ confirmation letters from the parties as detailed below:

S. No.	Name of the Party	Amount received in Rs.	Remarks
1	Gvb Infra	10,00,000	Confirmation letter enclosed
2	Hidayadullah	30,00,000	Firm attested ledger extract along with the bank account statement duly highlighting amounts
3	Humera	10,00,000	Firm attested ledger extract along with the bank account statement duly highlighting amounts
4	Hussain Begum	5,00,000	Firm attested ledger extract along with the bank account statement duly highlighting amounts
5	Kaleel Uddin	9,50,000	Firm attested ledger extract along with the bank account statement duly highlighting amounts
6	Mogal Rizwana	30,00,000	Firm attested ledger extract along with the bank account statement duly highlighting amounts
7	Mujeeb Ahmed	20,00,000	Confirmation letter enclosed
8	Naimath Ali Baig	23,46,000	Confirmation letter enclosed
9	Shoukatulla	10,00,000	Firm attested ledger extract along with the bank account

			statement duly highlighting amounts
10	Syed Ahah	11,00,000	Advance amount has been adjusted against sale of lot vide Doc No.2428/2016. Copy of sale deed enclosed duly reflecting the transaction.
11	Syed Ahmed	9,00,000	Advance amount has been adjusted against sale of lot vide Doc No.4866/2018. Copy of sale deed enclosed duly reflecting the transaction.
12	Syed Anees	50,00,000	Confirmation letter enclosed
13	Zaki Ahmed Khan	8,00,000	Confirmation letter enclosed
	Total	2,25,96,000	

The AR submitted that the failure to present the above evidences were not willful but for reasons beyond the control of the appellant. Therefore, the AR requested to consider the submissions and delete the addition of Rs.2,25,96,000/-.

7.7.1 I have considered the submissions of the AR and the remand report of the AO. It is seen that the appellant has shown "Advances from customers" of various amounts mentioned in column 3 from various parties mentioned in column 2 of above table during the year. The AR has submitted confirmation letter, PAN and ledger extracts of the parties in firm's books of accounts in the cases of GVB Infra, Mujeeb Ahmed, Naimath Ali Baig, Syed Anees and Zaki Ahmed Khan to substantiate its claim. The evidences submitted by the AR were found in order. Since the appellant has made all the transactions through banking channels, proved the identity of above creditors and genuineness of the transactions, the primary onus to prove the genuineness of the above transactions has been discharged by the appellant and there is no case for treating these amounts as unexplained credits u/s 68. Therefore, the AO is directed to delete the total addition of Rs.1,11,46,000/- made on account of unexplained credits in the above cases.

7.7.2 The AR has submitted ledger extracts in the books of firm along with bank account statements duly highlighting credit amounts in the case of Hidayadullah,

Humera, Hussain Begum, Kaleel Uddin and Shoukatulla to substantiate its claim. However, the appellant has not submitted any confirmation letter and PAN in above cases and therefore the appellant has failed to prove the identity of the creditors. Since the appellant has failed to establish the identity of the above creditors, the genuineness of the transactions with the above parties under question and the appellant could not discharge the primary onus on him to prove the genuineness of the transactions. Therefore, the addition made of Rs.94,50,000/- on account of unexplained credits in the above cases is confirmed.

7.7.3 The AR has submitted copies of sale deed No.2428/2016 and 4866/2018 duly reflecting the transactions of Rs.11,00,000/- and Rs.9,00,000/- with Syed Shah Nemathulla and Syed Ahmed respectively. The AR contended that these amounts were adjusted towards advances received from the customers in its books of accounts for the current year. On verification, the contention of the AR is found to be correct as the appellant firm has received these amounts in the current FY towards advances corresponding to the above sale deeds. Since the appellant has proved the genuineness of the transactions with Syed Shah Nemathulla and Syed Ahmed, there is no case for treating the advances received as unexplained credits and therefore the AO is directed to delete the addition to the extent of Rs.20,00,000/- made on account of unexplained credits in above two cases. In the result addition to the extent of Rs.94,50,000/- is confirmed and the remaining amount of Rs.1,31,46,000/- is directed to be deleted. Accordingly, the appeal on this ground viz., Ground No.10 is **PARTLY ALLOWED**.

17. Thus, it is clear from the record and the evidence submitted by the assessee that the assessee produced ledger account, bank account statement and confirmation of these parties to show that the amounts were received from these parties as an advance through banking channels. The assessee also

furnished the PAN of some of these parties and therefore, the learned CIT (A) has accepted the claim of the assessee in respect of the parties for which the assessee has furnished confirmation, PAN and other supporting evidences. The learned CIT (A) has confirmed the addition to the extent of Rs.94,50,000/- for want of confirmation. It is pertinent to note that the assessee produced the sale deeds to show the actual sale of the land to these parties in subsequent years and the sale consideration was adjusted against the advances received by the assessee. Once the sale deed is registered, then the identity and creditworthiness of the parties cannot be disputed as the amounts were received by the assessee against the sale of land. Only in respect of some of the persons belonging to the Heera Group, the assessee could not submit confirmation due to the reason that criminal cases were registered against those persons and therefore, the assessee was unable to file the confirmation from those persons. Once the identity of these persons are not in dispute and the amounts were received through banking channels, then not filing confirmation in some isolated cases due to a Bonafide reason explained by the assessee would not lead to the conclusion that the transaction of advances are not genuine when the other records prima facie establish the genuineness of the transaction. Accordingly, when the assessee has produced the supporting evidence including the confirmation in majority of the cases, then non-production of the confirmation in 2 or 3 cases cannot change the nature of the transaction. Hence, in the totality of the facts and circumstances,

the additions sustained by the learned CIT (A) merely on the ground of non-furnishing of the confirmation of some of the parties due to unavoidable circumstances for the assessee, the addition is not justified. Hence, the same is deleted. Accordingly, this ground of the assessee is allowed and the ground of the Revenue appeal is dismissed.

18. Ground Nos. 2 to 5 of appeal by the Revenue are regarding the addition made by the Assessing Officer towards unaccounted sale consideration of plots was deleted by the learned CIT (A). The Assessing Officer has made the addition of Rs.1,83,84,000/- in para 1.3 to 1.5 as under:

Non-admission of sales revenue:

1.3 During the course of search, it was found that the assessee had not admitted sales revenue of Rs.1,83,84,000/-. This amount was offered as additional income in the statement recorded from Syed Afsar, Partner on 13/03/2018. A notarized affidavit dated 15.03.2018 was filed in the name of the firm to the effect that they were voluntarily disclosing Rs. 4,33,00,000/- including Rs.1,83,00,000/- declared for the transactions of sale omitted to be considered in its books of accounts for the F.Y.2015-16, to avoid protracted litigation.

1.4 However, the assessee did not offer this income to tax in the return of income filed on 06/07/2019. Vide show cause notice issued on 25/10/2019, the assessee was asked to file objections against the proposal to add this income.

1.5 In the reply submitted on 24/12/2019, the assessee filed a revised computation taking into account the transactions in question. However, the assessee arrived at a loss of Rs.14,08,330/- after reducing Rs.1,25,98,330/- towards land cost and Rs.71,94,000/- towards sales considered in the A.Y.2018-19. The assessee's contention is not acceptable as it had not only admitted the sale consideration as additional income but had also filed a notarised Affidavit confirming the same. The contention raised at this stage is not acceptable. Hence, the additional income of Rs.1,83,84,000/- is brought to tax as unaccounted sale consideration. I am satisfied that penalty proceedings u/s 271(1)(c) of the Act are attracted for concealment of income.

Addition: Rs.1,83,84,000/-

19. On appeal, the learned CIT (A) has deleted the addition by considering the fact that some of the sales are not related to the A.Y under consideration, but pertains to the A.Y 2018-19 and for remaining sales, the assessee has filed the revised computation wherein only the profit or loss element was considered as income of the assessee as against the entire sale consideration.

20. Before us, the learned DR has submitted that the assessee has offered the additional income in the statement recorded on 13/03/2018. Even in the affidavit filed by the assessee, it was voluntarily disclosed income including an amount of Rs.1,83,00,000/- declaring for transaction of sale omitted to be considered in the books of account in the year under consideration. The learned DR has further submitted that the additional evidence furnished by the assessee before the learned CIT (A) is an afterthought and against the admission and surrender made by the assessee during the course of search and survey proceedings as well as in the post search and survey inquiries. He has further submitted that this claim of the assessee that the assessee has incurred loss on these transactions cannot be accepted once the assessee has not only admitted the sale consideration but also filed the affidavit confirming the same. The statements as well as the affidavits filed by the assessee are admissible evidence making the voluntary disclosure. He has relied upon the order of the Assessing Officer.

21. On the other hand, the learned AR has submitted that due to an inadvertent mistake, the assessee has not reported some of the sales, but the amounts were shown as advance against the sale. However, once the assessee realized this mistake, it has filed the revised computation of income and declaring these sales as part of the income of the assessee. However, part of these transactions are not related to the assessment year under consideration but the same are for the A.Y 2018-19 and rest of the transaction has resulted a loss instead of profit. Thus, the learned AR has submitted that non-reporting of these transactions is having no revenue loss as these transactions are finally resulting the loss of Rs.14,08,330/-. The defect in the books of account was rectified immediately and therefore, the learned CIT (A) has rightly deleted the addition by considering the correct facts. He has supported the impugned order of the learned CIT (A).

22. We have considered the rival submission as well as relevant material available on record. The learned CIT (A) has discussed all the relevant facts regarding the addition of Rs.1,83,84,000/- towards unaccounted sales in para 8.3 to 8.5 as under:

8.3 I have carefully considered the submissions of the appellant, the order of the Assessing Officer thereon. Briefly the facts are, during the course of search proceedings, Shri Syed Afsar, Partner of the appellant firm M/s. SA Builders has offered sales revenue of Rs.1,83,84,000/- in the statement recorded u/s 132(4) of the Act on 13.03.2018. The appellant has also filed a notarized affidavit dated 15.03.2018 stating that he is coming voluntarily and disclosing the amount of Rs.1,83,84,000/- for the current year to avoid protracted litigation. However, the appellant has not admitted the additional income of Rs.1,83,84,000/- in the return filed for AY 2016-17 on 06.07.2019. The appellant was asked to provide the reasons why the amount of Rs.1,83,84,000/- should not be added in the income for AY 2016-17. In response the appellant submitted a revised computation taking into account the transactions in questions and arrived at a loss of Rs.14,08,330/- after reducing Rs.1,25,98,330/- towards land cost and Rs.71,94,000/- towards sale consideration. On the other hand, the AO observed that the appellant voluntarily came forward to declare sale consideration as additional income and also had filed a notarized affidavit in this regard and retracting from the statement after one and half years of search is an afterthought and is not acceptable. Accordingly, the AO made addition of Rs.1,83,84,000/- in the income for AY 2016-17. The appellant is aggrieved and is in appeal.

8.4 During the appellate proceedings, the AR of the appellant submitted that the appellant firm at the time of filing the original ITR for the AY 2016-17 failed to offer the sale proceeds aggregating to Rs.1,83,84,000/- relating to the below mentioned sale transactions due to over sight and the same was shown as advances received from customers in the audited books of accounts for the F.Y 2015-16. The defect was rectified immediately by including the said income. Details of sale deeds are as below:

S. No.	Doc. No.	Date of registration	Name of the Customer	Extent of Land Sq.yds	Sale consideration in Rupees
1	3175/2017	31-05-2017	Pride India	218.00	71,94,000
2	24/2016	01-02-2016	Nusrath Fathima	180.00	30,60,000
3	1048/2016	29-02-2016	Amreen Naaz	69.72	11,85,500
4	1049/2016	29-02-2016	Mizra Naimath Ali Baig	69.00	11,73,000
5	6001/2015	23-12-2015	Fareeda Begum	200.00	34,00,000
6	6002/205	23-12-2015	Syed Mohin	139.50	23,71,500
			Total	876.22	1,83,84,000

The sale consideration of Rs.71,94,000/- pertaining to the Doc. No. 3175/2017 which was registered on 31.05.2017, was considered in the revised computation of income for the AY 2018-19 and the remaining sale consideration pertaining to Doc. No. mentioned in Sl. No.2 to 6 of the above table of Rs.1,11,90,000/- was considered in the current year. The cost of land as per the audited books of accounts is of Rs.19,140 per sq. yard,

hence the cost of land sold is coming to Rs.1,25,98,331/- and resulting business loss is Rs.14,08,331/-. The AR further submitted that the AO should not have made addition of whole amount of sale consideration received without deducting the cost of acquisition of land which is an allowable business expenditure u/s 37 of the IT Act. The said addition was made solely based on the sworn statement which was subsequently retracted by not including the said admission in the ITR filed on 06.07.2019. All the above documents were registered before concerned authorities and these transactions form part of the audited books of accounts. Therefore, the AR requested to delete the addition of Rs.1,83,84,000/-.

8.5 I have considered the submissions of the AR. It is seen that Syed Afsar, Partner of the appellant firm has offered Rs.1,83,84,000/- as unaccounted sale consideration for the AY 2016-17 in the statement recorded u/s 132(4) of the Act and also filed a notarized affidavit regarding voluntarily disclosure of Rs.1,83,84,000/-. Later, during the assessment proceedings, the appellant firm retracted from this admission by not including Rs.1,83,84,000/- as income in the ITR filed for AY 2016-17. There is merit in the AR's contention that the statement recorded u/s 132(4) of the Act cannot be the sole basis of assessment. On verification, it is seen that the appellant has included the sale considerations of Rs.1,11,90,000/- and Rs.71,94,000/- in the revised computations of income for the AY 2016-17 and AY 2018-19 respectively. The cost of land sold in the current year is Rs.1,25,98,331/- and after deducting the cost of acquisition from the sale consideration of Rs.1,11,90,000/-, the result comes to business loss of Rs.14,08,331/-. The appellant has shown that even after the sale proceeds were included in sales during the year it would result in a loss of Rs.14,08,331/-. Since the AO made the addition solely on the basis of statement recorded u/s 132(4) of the Act, which was later retracted by the appellant and the relevant sale transactions were included in the revised computation of income resulting in loss, the AO is directed to delete the addition of Rs.1,83,84,000/- made in the hands of the appellant. Accordingly, the appeal of the appellant on this ground viz., Ground Nos.7 & 8 are **ALLOWED**.

23. Thus, it is clear that the assessee has duly admitted in the statement recorded u/s 132(4) of the Act that there was a mistake in reporting the sale and consequently disclosed sales of Rs.1,83,84,000/-. The assessee has filed the details of all the transactions of sales which are reproduced by the learned CIT (A) in para 8.4 of the impugned order reproduced above. Thus, it is clear that out of six transactions, the first transaction of sale was registered on 31/05/2017 does not pertain for the year under consideration but it pertains to the A.Y 2018-19 and the assessee has declared the same for the A.Y 2018-19. For the rest of the transactions, the assessee has given the details and calculations of the income and arrived at a loss of Rs.14,08,330/-. All these details and records were forwarded to the Assessing Officer for examination and remand report. As it is clear from the assessment order that the assessee has filed the revised computation including the transactions in question and also declaring the loss of Rs.14,03,330/-. The Assessing Officer has simply rejected the said factual details filed by the assessee and revised the computation solely on the ground that the assessee has admitted additional income in this regard in the statement and affidavit filed by the assessee. It is pertinent to note that if a statement recorded u/s 132(4) or u/s 131 of the I.T. Act, 1961 as well as statement made in the affidavit is contrary to the actual facts, then the facts which are duly supported by the undisputed evidence in the shape of registered sale deed are required to be considered and not the statement which is found to be incorrect

and contrary to the actual facts. Further, it is not in dispute that this amount of Rs.1,83,84,000/- is shown as advances by the assessee and duly reflected in the balance sheet and since the assessee has not reported this amount as sale, the same was shown as part of the closing stock of the assessee. Therefore, only the profit element could be assessed as income of the assessee from these transactions because the cost of the land was already part of the closing stock. Accordingly, when the facts brought on record as well as undisputed documentary evidence are considered by the learned CIT (A) while deciding this issue, then we do not find any reason to interfere with the findings given by the learned CIT (A) based on correct facts. Hence, the ground of appeal Nos.2 to 5 by the Revenue are dismissed.

23.1 Ground No.6 of the appeal by the Revenue stands disposed off along with Ground No.10 of the appeal by the assessee.

24. Ground No.7 by the Revenue is regarding the addition made by the Assessing Officer towards the disallowance u/s 40(a)(ia) of the Act and the same was deleted by the learned CIT (A).

25. We have heard the learned DR as well as the learned AR and considered the relevant material available on record. The

Assessing Officer has made this addition in para 2.7 to 2.8 as under:

Non-remittance of TDS on purchase of land:

2.7 The assessee has shown TDS payable of Rs.42,55,000/- in the Balance Sheet. This TDS pertains to tax deducted u/s 194IA of the Act on payments made to M/s Neelanchal Roadways Pvt. Ltd. towards purchase of land. Vide show cause notice dated the assessee was asked to explain why the provisions of section 40(a)(ia) of the Act should not be invoked for failure to remit the TDS. The assessee in its reply submitted on 24/12/2019 referred to the first proviso to sub-section (1) of section 201 of the I T Act contending that if the assessee obtained a certificate / confirmation of furnishing a return of income and payment of taxes by the payee, then the payer need not pay TDS. The assessee enclosed a confirmation letter signed by the chartered accountant M/s. Neelanchal Roadways Pvt. Ltd. to the effect that the company had filed its return of income reflecting the said transaction for the A.Y.2016-17 and that taxes had been paid.

2.8 The assessee's reply is not acceptable. The conditional relief granted vide proviso to section 40(a)(ia) of the Act is available in the case of failure to deduct tax at source. This relief is not available in a case where the assessee has deducted tax but has not remitted the same into Government account. The assessee's case is that of failure to remit the amount deducted and is therefore outside the purview of the second proviso to sub-section (1) to section 40(a)(ia) of the Act which is applicable to an assessee who has failed to deduct tax at source. Accordingly, 30% of the expenditure is liable to be disallowed. Since the quantum of TDS in default is Rs.42,55,000/-, the corresponding land cost on which the tax was deducted is Rs.42,55,00,000/-. The amount disallowable u/s 40(a)(ia) of the Act being 30% of Rs.42,55,00,000/- works out to Rs.12,76,50,000/-. I am satisfied that penalty proceedings u/s 271(1)(c) of the Act are attracted for furnishing inaccurate particulars of income.

Disallowance: Rs.12,76,50,000/-

26. Thus, the Assessing Officer noted that the assessee has purchased the land from M/s. Neelanchal Roadways (P) Ltd and also shown as TDS payable of Rs.42,55,000/-. Since the assessee has not deposits this amount in the Govt. Account, the Assessing Officer invoked the provisions of section 40(a)(ia) of the

Act and disallowed 30% of the purchase consideration amounting to Rs.12,76,50,000/-.

27. On appeal, the learned CIT (A) has deleted this addition in para Nos. 10.3 to 10.

10.3 I have carefully considered the submissions of the appellant, the order of the Assessing Officer thereon. Briefly the facts are, the appellant has shown TDS payable i.e. TDS deducted but not remitted to Government account of Rs.42,55,000/- which pertains to tax deducted u/s 194IA of the Act on payments made to M/s. Neelanchal Roadways Pvt. Ltd. towards purchase of land, in the balance sheet for AY 2016-17. The appellant was issued a show cause notice asking why provisions of section 40(a)(ia) of the Act should not be invoked for failure to remit the TDS to the Government account. In response, the appellant enclosed a confirmation letter signed by the Chartered Accountant of M/s. Neelanchal Roadways Pvt. Ltd. to the effect that the company had filed its return of income reflecting the said transaction and that taxes had been paid. The appellant has referred to the first proviso of sub-section (1) of section 201 of the Act contending that if the assessee obtained a certificate/ confirmation of furnishing a return of income and payment of taxes by the payee, then the payer need not pay TDS. However, the AO observed that the conditional relief granted vide second proviso to section 40(a)(ia) of the Act is available in the case of failure to deduct tax at source, and not in a case where the assessee had deducted tax but has not remitted the same into the Government account. The assessee's case is that of failure to remit the TDS deducted and is outside the purview of section 40(a)(ia), therefore the AO concluded that 30% of the expenditure is liable to be disallowed. Since the quantum of TDS in default is Rs.42,55,000/-, the corresponding land cost on which the tax was deducted is Rs.42,55,00,000/-. The amount disallowable u/s 40(a)(ia) of the Act being 30% of Rs.42,55,00,000/- works out to be Rs.12,76,50,000/- and the AO disallowed this amount. The appellant is aggrieved and is in appeal.

10.4 During the appellate proceedings, the AR of the appellant submitted that the assessee will be deemed to be in default within the meaning of Explanation to Section 191 of the Act only if both of the following two conditions are not fulfilled:

- i. The Deductor does not deduct, or after so deducting fails to pay, or does not pay, the whole or any part of the tax, as required by or under this Act and
- ii. where the assessee (i.e Payee) has also failed to pay such tax directly.

And by applying the “Doctrine of Harmonious Construction” to the first proviso to sub-section (1) of section 201 it can be construed that the word ‘fails to deduct’ includes the following three cases:

- a) does not deduct,
- b) or after so deducting fails to pay,
- c) or does not pay.

In the present case, the payee has paid the tax directly and all the four conditions specified in the first proviso to sub-section (1) of section 201 are complied with, therefore the AR requested to delete the disallowance of Rs.12,76,50,000/- under section 40(a)(ia) of the Act.

10.5 The submissions of the AR of the appellant as well as the comments of the Assessing Officer have been considered. It is seen that the appellant firm has deducted tax of Rs.42,55,000/- u/s 194IA of the Act on payments made to M/s. Neelanchal Roadways Pvt. Ltd. towards purchase of land for a consideration of Rs.42,55,00,000/-, but has not deposited the deducted amount in the Government account. The AO has disallowed 30% of the consideration by invoking section 40(a)(ia) of the Act. For ready reference, Section 40(a)(ia) of the Act is reproduced below:

“40. Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head “Profits and gains of business or profession”,—

(a) in the case of any assessee—

(ia) thirty per cent of any sum payable to a resident, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139:

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, thirty per cent of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid :

*Provided further that where an assessee **fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in the said proviso**”.*(emphasis added)

10.6 The second proviso to Section 40(a)(ia) states that where the assessee fails to deduct the tax as per Chapter XVII-B, but is not deemed to be an assessee in default under the first proviso to Section 201(1) then it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return by the payee. The two questions that need to be answered in the light of the facts of the present case

are 1) whether the assessee is deemed to be an assessee in default under the first proviso to Section 201(1) of the Act and 2) whether the words 'fails to deduct' would also include the cases where tax was deducted by the deductor but has not paid to the Government. To answer the first question it is necessary to examine Section 201(1) of the Act. For ready reference Section 201(1) of the Act is reproduced below:

Consequences of failure to deduct or pay

201. "(1) Where any person, including the principal officer of a company,-

- (a) who is required to deduct any sum in accordance with the provisions of this Act; or
- (b) referred to in sub-section (1A) of section 192, being an employer, does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect in such tax:

[Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a payee or on the sum credited to the account of a payee shall not be deemed to be an assessee in default in respect of such tax if such payee—

- (i) has furnished his return of income under section 139;
- (ii) has taken into account such sum for computing income in such return of income; and
- (iii) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed". (Emphasis added)

10.7 As per the first proviso to Section 201(1) a deductor who fails to deduct tax on the sum paid to a payee will not be an assessee in default if the payee furnishes a certificate from an accountant that the payee has paid the tax by taking into account the income and files a return u/s.139 of the Act. There is no dispute that the appellant has furnished a certificate from the accountant of the payee that due taxes were paid on the income by the payee and the payee has furnished its return. However, since this proviso mentions only 'fails to deduct' and not where the deductor deducts but not paid to the government, the assessee is deemed to be an assessee in default as per the first proviso to section 201(1) of the Act.



For S.A. BUILDERS AND DEVELOPERS

10.8 The AR has cited Explanation to Section 191 of the Act to state that as per this Explanation the assessee is not deemed to be an assessee in default within the meaning of Section 201(1) of the Act. To examine this issue, Section 191 of the Act is reproduced below:

Direct payment

"191. (1) In the case of income in respect of which provision is not made under this Chapter for deducting income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of this Chapter, income-tax shall be payable by the assessee direct.

(2) For the purpose of paying income tax directly by the assessee under sub-section(1), if the income of the assessee in any assessment year, beginning on or after the 1st day of April, 2021, includes income of the nature specified in clause (vi) of sub-section (2) of section 17 and such specified security or sweat equity shares referred to in the said clause are allotted or transferred directly or indirectly by the current employer, being an eligible start-up referred to in section 80-IAC, the income-tax on such income shall be payable by the assessee within fourteen days-

- (i) after the expiry of forty-eight months from the end of the relevant assessment year; or*
- (ii) from the date of the sale of such specified security or sweat equity share by the assessee; or*
- (iii) from the date of the assessee ceasing to be the employee of the employer who allotted or transferred him such specified security or sweat equity share, whichever is the earliest].*

"Explanation.—For the removal of doubts, it is hereby declared that if any person, including the principal officer of a company,—

- (a) who is required to deduct any sum in accordance with the provisions of this Act; or*
- (b) referred to in sub-section (1A) of section 192, being an employer,*

does not deduct, or after so deducting fails to pay, or does not pay, the whole or any part of the tax, as required by or under this Act, and where the assessee has also failed to pay such tax directly, then, such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default within the meaning of sub-section (1) of section 201, in respect of such tax". (Emphasis added)

Explanation to Section 191 of the Act states that a person is deemed to be an assessee in default within the meaning of Section 201(1) of the Act when the deductor who is required to deduct any sum as per the provisions of the Act does not deduct or after so deducting fails to pay, or does not pay, the whole or any part of the tax as required by the Act **and** where assessee (payee) has also fails to pay such tax directly. In other words, the assessee is deemed to be in default only when both the conditions are satisfied viz., 1) when the deductor does not deduct or after deducting fails to pay or does not pay **and** 2) the payee has also failed to pay such tax directly. Applying the above Explanation to the facts of the present case, the appellant is covered by the first

A.Y- 2016-17

limb as it has deducted the tax but has not paid to the government. However, the second limb fails since the appellant has produced a certificate from the payee that the taxes have been paid by the payee. Therefore, as per the Explanation to Section 191 of the Act, the assessee is not deemed to be an assessee in default within the meaning of Section 201(1) of the Act. The CBDT in Instruction F.No.275/201/95-IT(B) dated 29-01-1997 has stated that "The Board is of the view that no demand visualized u/s.201(1) of the Income Tax Act should be enforced after the tax deductor has satisfied the officer incharge of TDS, that taxes due have been paid by the deductee assessee. **The ITAT Visakhapatnam in ACIT Circle-6(1) vs Andhra University [2016] [68 taxmann.com 338 (Visakhapatnam-Trib)]** has held that Explanation to Section 191 saves the assessee from not becoming an assessee in default u/s.201(1) if deductee has paid tax directly but does not absolve assessee from payment of interest u/s.201(1A) of the Act. Similar view was adopted by **ITAT Delhi in Punjab National Bank vs ACIT (TDS) (2014) (45 taxmann.com 509) (Delhi)** that where payee has included interest income earned from assessee bank in their total income and paid tax thereon, assessee bank could not be considered to be in default in terms of Section 201(1) of the Act.

10.8.1 This is in contrast with the first proviso to Section 201(1) of the Act where the assessee would be deemed to be an assessee in default as discussed in para 10.7 above. Evidently there is a need for harmonious construction of the provisions of Section 191 & Section 201(1) of the Act as they lead to diametrically opposite results in the case of the assessee. This must be done in a way that the differences are reconciled so as to give effect to both the provisions as much as possible without making any provision otiose. Applying the principle of harmonious construction, it would suffice if the phrase 'fails to deduct' in the first proviso to Section 201(1) of the Act also includes the situation of the assessee where the assessee has deducted the tax but has failed to pay the deducted amount to the Government. This harmonious interpretation would

take care of the situation where the assessee has failed to deduct or after deducting has failed to pay to the Government but produces a tax payment certificate from the payee as in both the situations the net result is that taxes have not been paid to the Government. It is clarified that this construction of the statute is only limited to cases where the payee furnishes a certificate that due taxes on the transaction have been paid and the income was declared in the return filed by him. This is held so to resolve the conflict since the assessee is not an assessee in default by virtue of Explanation to Section 191 of the Act and at the same time is treated as an assessee in default as per the first proviso to Section 201(1) of the Act. As clarified earlier and at the cost of repetition, this interpretation is valid only when the payee furnishes a certificate confirming payment of taxes and files a return. Once such interpretation is adopted and the assessee is not treated as an assessee in default within the meaning of section 201(1) of the Act, the benefits of the second proviso to Section 40(a)(ia) comes into play and the disallowance u/s.40(a)(ia) of the Act is no longer applicable. In view of the above, the AO is directed to delete the addition of Rs.12,76,50,000/- made u/s.40(a)(ia) of the Act. Accordingly, ground No.12 of the appeal is **ALLOWED**.

28. The Revenue has not disputed this fact that the seller of the land M/s. Neelanchal Roadways (P) Ltd has considered the sale consideration as part of its income for the A.Y 2016-17 and paid the tax on the same. The assessee furnished the certificate/information regarding the return of income filed by the seller and therefore, once the recipient of the amount has offered the said amount to tax, then in view of the 2nd proviso to section 40(a)(ia) r.w.s. 1st proviso to section 201(1) of the I.T. Act, 1961, no disallowance is called for u/s 40(a)(ia) of the Act. Even

otherwise, when the assessee has not paid the TDS amount in the govt. account, then the recipient of the amount cannot avail the TDS credit being not reflected in 26AS. Accordingly, we do not find any error or illegality in the impugned order of the learned CIT (A) and the same is upheld. This ground of the Revenue appeal is dismissed.

29. For the A.Y, 2017-18, the assessee and the Revenue have raised the following grounds of appeal:

ITA No.259/Hyd/2022 – A.Y 2017-18 (Assessee)

“1. The learned CIT (A) erred both in law and facts in deciding the appeal.

2. The learned CIT(A) erred in coming to a finding that there was search in the case of appellant-firm merely because its name appeared in the Panchanama drawn in the residential premises of the its partner Mr.Syed Akhtar.

3. The learned CIT (A) ought to have appreciated that since it was joint warrant in the names of Syed Akhtar and S.A.Builder and Developers, both the names are required to be mentioned in Column-A of the Panchanama which refers to Warrant in the case and S.A.Builder and Developers. The learned CIT (A) misconstrued that merely because both names are mentioned, a survey can be understood as a search.

4. The learned CIT (A) should have appreciated that mere mention of names are the name in a proforma for drawing of Panchnama does not amount to conduct of actual search in the premises of the firm which is a separate and distinct entity.

5. The learned CIT(A) does not deny that the premises of the appellant- firm was actually covered under survey under section 133A on the face of evidences produced by the appellant.

6. The learned CIT (A) should have appreciated that a survey under section 133A is not a search under section 132 as both operate in their respective fields and it is legally not permissible to equate both the actions as same.

7. The learned CIT(A) should have appreciated that no valuable or books of account belonging to the firm were seized from the residential premises of Syed Akthar (partner).

8 The learned CIT (A) ought to have appreciated that the prerequisite for initiation of proceeding under section 153A is that a search under section 132 must be actually conducted in the premises of the person and a search is person specific.

9. In the light of the above legal principles since the initiation of proceeding under section 153A is bad in law, the assessment has no leg to stand and the same is required to be quashed.

10. Without prejudice to above legal contention the appellant contends that following additions are liable to be deleted on merits.

(i) Advance from Customers					Rs.4800000
Sl.No.	Name of the Person	Opening Balance	Receipt During the year	Repayment	Closing Balance
1	Mohammed Shiak Hussain	0	4800000	0	4800000
	Total :	0	4800000	0	4800000

The learned CIT (A) erred in sustaining the Rs.48,00,000/- despite the undisputed fact that the amounts were credited in the bank account of the appellant firm through normal banking channels only.

11. The appellant craves leave to add/alter/modify the grounds as may be required for adjudication of the case.”

ITA No.296/Hyd/2022 A.Y 2017-18 (Revenue)

1. *The ld. CIT(Appeals) erred both in law and on facts of the case in granting relief to the assessee.*

2. *The learned CIT(Appeals) erred in admitting additional evidences filed by the assessee as the assessee did not provide any sufficient cause for non-submission of the said evidences before AO as per Rule 46(A)(b).*

3. *The ld. CIT(Appeals) has erred in ignoring the statement recorded on oath u/s 132(4) of Sri Syed Akhtar, Managing Partner and subsequent affidavit filed by him almost 3 months after the conclusion of the search that on money of Rs.2.50 crores was received on sale of plots which was not recorded in the books of account.*

4. *The ld. CIT(Appeals) failed to appreciate the evidentiary value of an affidavit as held by the Hon'ble Supreme Court of India in the case of A.K.K. Nambabir Vs. Union of India & Anr. On 28-10-1969 [Equivalent citations : 1970 AIR 652, 197 SCR (3) 121].*

5. *The ld. CIT(Appeals) has erred in deleting the addition of Rs.23,00,000/- made towards unexplained cash credits, even though the assessee failed to prove the identity, creditworthiness and genuineness of the transaction.*

6. *The ld. CIT(Appeals) erred in deleting addition of Rs.83,35,88,440/- made towards an unaccounted sale proceeds holding that the said amount was refundable excess advance received from customers ignoring the fact that the transaction of sale of land is complete and the partners withdrew the amount for making investments.*

7. *Whether in the facts and circumstances of the case, and in law, the ld.CIT(Appeals) is correct in deleting the addition made towards unaccounted sale considerations to the tune of Rs.83,35,88,400/- holding it as advances when no purchaser would pay more than the agreed sale consideration.*

8. *The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary.”*

30. Ground No.,10 of the assessee's appeal and Ground No.5 of Revenue's appeal are common being part relief granted by

the learned CIT (A) in respect of the addition made by the Assessing Officer towards unexplained cash credit. The Assessing Officer has made the addition towards unexplained credit u/s 68 of the Act for the amount shown by the assessee as advance from the customers in para No.1.6 to 1,7 as under:

Advance from customers:

1.6 During scrutiny it was seen that amounts shown under the head "Advances from customers" did not appear to be advances against any sale of land. Therefore the amounts shown to have been received under this head are loans and required to be considered u/s.68 of the Act. Vide show cause notice dated 18/12/2019 the assessee was asked to furnish confirmation letters from such persons establishing identity and genuineness of the transactions and their creditworthiness. The assessee furnished confirmations from some of the parties. As seen from the confirmation letters, the amounts advanced were not against any sale agreement or for any identified plots and are therefore treated as loan creditors. In the following cases, either no confirmation was furnished or the confirmation furnished did not even satisfy the basic ingredients required to substantiate the genuineness of the credit.

Sl.	NAME OF THE PERSON	OPENING BALANCE	RECEIPT DURING THE YEAR	REPAYMENT	CLOSING BALANCE
1	GAUSIA BEGUM	0	2300000	0	2300000
2	MOHAMMED SHAIK HUSSAIN	0	4800000	0	4800000
	TOTAL	0	71,00,000	0	71,00,000

In the case of Gausia Begum though confirmation letter was filed, the identity has not been established as the letter does not mention her PAN. In the case of Mohammed Shaik Hussain, no confirmation letter was filed.

1.7 In view of the above, the credits totalling to Rs.71,00,000/- are treated as unexplained and added to the income u/s. 68 of the Act.

Addition: Rs.71,00,000/-

Advances from customers:

1.8 It is noticed that the assessee firm received a total amount of Rs.103,22,88,740/- (comprising of opening balance Rs.49,14,58,740 and receipts during the year Rs.54,08,30,000/-) towards advance against sale of land. After making adjustment of the cost of the land sold for Rs.190,87,00,300/- the balance amount of Rs.83,35,88,440/- was remained with the assessee firm as detailed in the statement given below:

(Rs.)

S L	NAME OF THE PERSON	OPENING BALANCE	RECEIPT DURING THE YEAR	ADJUSTED AGAINST LAND	CLOSING BALANCE
1	SHAIK NOWHERA (HEERA)	0	15,58,30,000	14,62,75,000	9555000
2	HEERA RETAIL (HYD) PVT LTD	47,88,05,510	38,10,00,000	3,85,93,500	821212010
3	MOHD SHARRIF	7200000	0	69,65,900	234100
4	ABDUL RAHIM	0	4000000	3400000	600000
5	MOHD MOID	2800000	0	27,65,900.00	34100
6	MIRZA RAFIULLAH BAIG	24,53,230.00	0	6,50,000.00	1803230
7	AMJED ALI	200000	0	50000	150000
	TOTAL	49,14,58,740	54,08,30,000	19,87,00,300	83,35,88,440

In the show cause notice issued on 18/12/2019, the assessee was asked to furnish objections against the action proposed to assess the sum of Rs.83,35,88,440/- as unaccounted sale consideration. The relevant extract from the show cause notice is reproduced below:

"The balance amount of Rs. 83,35,88,440/- is being shown as 'advances from customers'. In respect of Heera group, vide your letter dated 03.12.2019, copies of undated letters from Heera Gold Exim Ltd., Heera Retail (Hyderabad) Pvt. Ltd. and HeeraFoodex Private Limited

were filed wherein in each letter, a general confirmation has been given that the amounts were given for purchase of land and construction of building advance as on 31/03/2017 without furnishing any specific details of the lands. Since the transaction of sale of land is complete in the above cases and the balance amounts were used by the firm either as withdrawals by the partners or investments in loans and advances (asset), it is clear that the surplus amounts received are the monies received over and above the recorded sale consideration. In fact, there was no land available with the firm for sale. Therefore, it is proposed to assess the sum of Rs.83,35,88,440/- as unaccounted sale consideration and add the same to your income for the A.Y.2017-18."

31. The Assessing Officer has made the addition of Rs.71,00,000/- towards the advances shown from the customers on the ground that these advances are not shown against any sale agreement for any identified plots of land.

32. On appeal, the learned CIT (A) has deleted the addition made in respect of one of the parties and confirmed the addition in respect of the other party. The learned AR has submitted that the said advances were accepted through proper banking channels and the assessee has submitted confirmation letter from Smt. Gausia Begum and PAN of Shri Mohammed Shaik Hussain during the course of assesment proceedings. The learned AR has submitted that before the learned CIT (A) the assessee has also furnished the confirmation from Shri Mohammed Shaikh and of Smt. Gausia Begum Aadhar to prove the identity and genuineness of a transaction. These amounts were received towards advance for sale of land, then the same cannot be treated as income of the assessee u/s 68 of the I.T. Act, 1961. The learned AR has submitted that once the assessee has furnished the confirmation as well as PAN No. of Shri Mohammed Shaik Hussain, then the addition confirmed by the learned CIT (A) is unjustified and highly arbitrary. The learned CIT (A) has not considered the PAN submitted by the assessee before the Assessing Officer and also the bank account details showing the receipt of the amount by the assessee through proper banking channels.

33. On the other hand, the learned DR has submitted that the additional evidence furnished by the assessee before the learned CIT (A) is an afterthought and against the admission and surrender made by the assessee during the course of search and survey proceedings as well as in the post search and survey inquiries. He has further submitted that the Assessing Officer failed to discharge its onus of proving the identity, creditworthiness of the creditors as well as the genuineness of the transaction. He has relied upon the order of the Assessing Officer.

34. We have considered the rival submission as well as relevant material available on record. The Assessing Officer has not disputed the fact that the assessee has filed the confirmation from Smt. Gausia Begum without mentioning PAN and in case of Shri Mohd. Shaik Hussain, the confirmation was not filed by the assessee. The assessee has stated in the submission before the learned CIT (A) that the assessee filed PAN of Shri Mohd. Shaik Hussain during the course of assessment proceedings, however, the confirmation was filed before the learned CIT (A) which was also forwarded to the Assessing Officer for examination and remand report. In the remand report, the Assessing Officer has stated that the assessee has submitted confirmation letter along with ledger account as additional evidence. The only objection reiterated by the Assessing Officer was that the assessee could not produce any sale/purchase document/agreement to substantiate the claim that this amount was received as advance

against the same. The learned CIT (A) has considered this issue in para 7.5 to 7.7.2 as under:

7.5 I have carefully considered the submissions of the appellant, the order of the Assessing Officer, as well as the comments of the Assessing Officer thereon. Briefly the facts are, during scrutiny proceedings it was observed that the amounts shown under the head "Advances from customers" did not appear to be advances against any sale of land. Therefore, the amounts shown under this head were considered as loans and unexplained credits u/s.68 of the Income Tax Act, 1961. The appellant was asked to submit the confirmation letters from the creditors establishing identity and genuineness of the transactions and their creditworthiness. The appellant could not submit evidences in the case of Gausia Begum and Mohammed Shaik Hussain to whom the appellant has advanced loans of Rs.23,00,000/- and Rs.48,00,000/- respectively. In the case of Gausia Begum though the confirmation letter was filed, the identity has been established as the letter does not mention her PAN. In the case of Mohammed Shaik Hussain, no confirmation letter was filed. Accordingly, the AO made addition of Rs.71,00,000/- as unexplained credits u/s 68 of the Act. The appellant is aggrieved and is in appeal.

7.6 During the appellate proceedings, the AR of the appellant submitted that the advances of Rs.71,00,000/- were accepted through proper banking channel and the appellant firm had submitted confirmation letter from Gausia Begum and PAN of Mohammed Shaik Hussain during the course of assessment proceedings. However, the appellant firm was unable to submit the balance information as requested by the AO due to reasons beyond its control. Therefore, the appellant has submitted the confirmation letter from Mohammed Shaik Hussain and PAN, Aadhar card of Gausia Begum during the appellate proceedings as additional evidence to prove the genuineness and creditworthiness of the parties and requested to delete the addition of Rs.71,00,000/- made u/s 68 of the Act.

7.7.1 I have considered the submissions of the AR. It is seen that the appellant has taken loans of Rs.23,00,000/- and Rs.48,00,000/- from Gausia Begum and Mohammed Shaik Hussain respectively during the year. The AR has submitted the confirmation letter from Gausia Begum, PAN details, Aadhar details of Gausia Begum, ledger extracts in the books of the appellant and bank account statements duly highlighting the receipts of the loan amounts from Gausia Begum to prove the genuineness of the transaction. Since all the payments in the case of Gausia Begum were made by way of RTGS/ cheques and duly reflected in the books of the appellant and the identity of the creditor i.e. Gausia Begum was proved by the appellant, the primary onus to prove the genuineness of the transaction with Gausia Begum has been discharged by the appellant. Since the genuineness of the transaction with Gausia Begum has been established by the appellant, the AO is directed to delete the addition of Rs.23,00,000/- made on account of unexplained credits u/s.68 of the Act.

7.7.2 However, the appellant has not submitted any confirmation letter, PAN details and bank account statement of Mohammed Shaik Hussain during appellate proceedings. The appellant has failed to establish the identity, creditworthiness and genuineness of the transaction with Mohammed Shaik Hussain, therefore the appellant has not discharged the primary onus on him to prove the genuineness of the transaction. Therefore, the addition made of Rs.48,00,000/- on account of unexplained credits in the hands of the appellant is confirmed and accordingly, the appeal on this ground is **PARTLY ALLOWED**.

35. Thus, the addition made in respect of Smt. Gausia Begum was deleted by the learned CIT (A) by considering the confirmation and Aadhar details, whereas the addition in respect of Shri Mohd. Shaik Hussain was confirmed on the ground that

the assessee failed to establish the identity, creditworthiness and genuineness of the transaction with the said person. Once the identical documents were submitted by the assessee in respect of both these persons, then the additions sustained by the learned CIT (A) is contrary to the record. The learned CIT (A) has stated that the assessee has not submitted any confirmation letter, PAN details and bank account statement of Shri Mohd. Shaik Hussain whereas the learned CIT (A) has recorded the submissions of the assessee in para 7.2 of the impugned order as under:

While finalizing the assessment proceedings for the AY 2017-18, the learned assessing officer has made an addition of Rs. 71,00,000/- u/s 68 of the Income Tax Act, 1961 by quoting the following reasons.

"In the case of Gausia Begum though confirmation letter was filed, the identity has not been established as the letter does not mention her PAN. In the case of Mohamed Shaik Hussain, no confirmation letter was filed."

The said advances were accepted through proper banking channel and the appellant firm had submitted confirmation letter from Gausia Begum and PAN number of Mohamed Shaik Hussain during the course of assessment proceedings. The appellant firm was unable to submit the balance information requested by the learned assessing officer due to reasons beyond its control. Now the appellant has taken the confirmation letter from Mohamed Shaik Hussain and Aadhar number of Gausia Begum and enclosing the same to a separate application made under Rule 46A of Income Tax Rules, 1962 to prove the genuineness and creditworthiness of the two parties. Hence the appellant firm hereby requesting your goodself to kindly consider the application made under Rule 46A and allow the ground number 5.3 based on the facts and merits of the case".

36. Thus, the PAN of Shri Mohammad Shaik Hussain was submitted by the assessee during the course of assessment proceedings and thereafter, the assessee has taken confirmation letter from Shri Mohd. Shaik Hussain and Aadhar No. of Smt.

Gausia Begum which were annexed to the application made under Rule 46A of the I.T. Rules, 1962 which were forwarded to the Assessing Officer for remand report, then this statement of the learned CIT (A) while confirming the addition is found to be contrary to the record. Accordingly, the addition sustained by the learned CIT (A) of Rs.48,00,000/- is deleted. It is pertinent to note that this addition was made by the Assessing Officer based on the transaction recorded in the books of account and not on the basis of any incriminating material. Hence, ground No.10 of the assessee's appeal is allowed and Ground No.2 of the Revenue's appeal is dismissed.

37. Ground Nos. 3 & 4 of the Revenue's appeal is regarding addition of Rs.2.5 crores surrendered in the statement made u/s 132(4) of the Act. The learned DR has submitted that during the search & seizure operation, the Managing Partner of the assessee has admitted various deficiencies and unaccounted income and accordingly, surrendered a sum of Rs.2.50 crore in the hand of the assessee firm. This was a voluntary disclosure made by the Managing Partner and also confirmed by subsequent affidavit. Therefore, not offering the said income to the tax in the return of income has resulted the addition made by the Assessing Officer based on the voluntary disclosure of the assessee. The learned CIT (A) has deleted this addition by ignoring the statement of the Managing Partner recorded u/s 132(4) as well as the

affidavit filed subsequently. He has relied upon the order of the Assessing Officer.

38. On the other hand, the learned AR has submitted that it was an induced confession and not a voluntary disclosure. Further, when there was no incriminating material of any undisclosed income in the hand of the assessee, then the addition made by the Assessing Officer is not sustainable and liable to be deleted. In support of his contention, he has relied upon the judgment of the Hon'ble Supreme Court in the case of Pullangode Rubber Produce Co. Ltd vs. State of Kerala (1973) 91 ITR 18 (S.C) and submitted that though an admission is a good piece of evidence, but it cannot be said to be conclusive and the maker can show that it was incorrect. When there is no incriminating evidence found either during the search or survey relating to the admission of Rs.2.5 crores, then the said disclosure itself is incorrect. The learned AR has relied upon the CBDT Circular dated 10/03/2023 and 18/12/2014 and submitted that the CBDT has time and again has issued the instructions and directions that the Department Officer shall refrain from undue emphasis on admission either during the survey or search rather focus on collecting the sustainable evidence to make the assessment. In support of his contention, he has relied upon the decision of the Delhi Benches of the Tribunal in the case of DCIT vs. Bansal Credits Ltd (2016) 74 taxmann.com 225 (Del.). Thus, the addition cannot be made merely on the basis of the statement

in the absence of any incriminating material. He has relied upon the decision of the Hon'ble Delhi High Court in the case of CIT vs. Shri Raj Pal Bhatia in ITA No.276 of 2009, dated 29.11.2010 as well as in case of Harjeev Aggarwal (24 Taxmann 199). He has supported the impugned order of the learned CIT (A).

39. We have considered the rival submission as well as relevant material available on record. There is no dispute that in the statement recorded u/s 132(4) of the Act, the Managing Partner of the assessee has offered the total income of Rs.25 crores which was subsequently modified to Rs.22.18 crores included a sum of Rs.2.5 crores in the hand of the assessee firm. We have gone through all the statement recorded u/s 132(4) and 131 of the I.T. Act, 1961 wherein except one or two questions, there was nothing either confronted or asked or a statement made by the Partner of the assessee firm regarding the activities of the assessee firm or any transaction of the assessee firm. The entire statement was only in respect of the transactions and activities of the partners of the assessee firm. We further note that the partners have also approached the Settlement Commission to settle all the disputes by filing declaration u/s 245D. There is an order of the Settlement Commission u/s 245D(4) of the Act dated 24/07/2023. Thus, except some vague reference of the assessee firm, the entire proceedings u/s 132 and the statement recorded u/s 132(4) of the Act were restricted to the business activities and transactions of the partners as well as undisclosed income of the

partners and not of the assessee firm. The learned CIT (A) has considered this issue in para 6.5 of his order as under:

“6.5 I have considered the submissions of the AR. It is seen that the appellant has offered Rs.2.5 crores as unaccounted sale consideration for sale of plots for the A.Y 2017-18 in the statements recorded u/s 132(4) of the Act during search proceedings and also filed a notarized affidavit regarding voluntary disclosure of Rs.2.5 crores. Later, during the assessment proceedings, the appellant retracted from this admission by not including Rs.2.5 crores as income in the ITR filed for AY 2017-18. There is merit in the AR'S Contention that the statement recorded u/s 132(4) of the Act cannot become the sole basis of assessment and the addition cannot be made in absence of incriminating material related to the admission of Rs.2.5 crores. It is observed that no incriminating evidence having a bearing on the computation of undisclosed income of the appellant firm with relation to the amount of Rs.2.5 crores was found in the course of survey/search proceedings. The AO made the addition solely based on the admission of the appellant, which was later retracted during the assessment proceedings and has not conducted any further enquiry to verify the correctness of the admission. In the case of Pullangode Rubber Produce Co. Ltd. Vs. State of Kerala [1973] 91 ITR 18 (SC) it was held by the Hon'ble Supreme Court that "Although the admission is a valuable piece of evidence, however the same is not conclusive". Also, in the case of CIT v. Shri Ramdas Motor Transport[1999] 238 ITR 177(AP) it was held that mere confessional statement, in the absence of any documentary proof, shall not be used in evidence against the person who has made the statement. The CBDT in its Circular in F.No.286/2/2003-1 T dated 10-03-2003 has directed the departmental officers that undue emphasis should not be placed on admission either during search or survey. Since the Assessing Officer made the addition solely on the basis of statement recorded u/s 132(4) of the Act, which was later retracted by the appellant and no incriminating material pertaining to the addition was found during survey/search proceedings and no further enquiry was conducted to verify the correctness of the admission, mere admission of income to buy peace of mind cannot sustain the addition. Therefore, the AO is directed to delete the addition of Rs.2.5 crores made in the hands of the appellant.

Accordingly, the appeal of the appellant on this ground i.e., Ground Nos.6 & 7 are ALLOWED.”

40. The learned CIT (A) has deleted the addition while considering the fact that there was no incriminating material to show any undisclosed income in the hand of the assessee resulting the disclosure of Rs.2.5 crores as income as well as relying upon the various judgments and CBDT Circular dated 10/03/2003. When the Department has failed to refer any incriminating material to corroborate the amount surrendered by the Partner of the assessee firm, then the addition made solely on the basis of the statement of the partner without any description of the nature of the undisclosed income or any transaction resulting any undisclosed income is not sustainable in law. Accordingly, we do not find any error or illegality in the impugned order of the learned CIT (A). Thus, ground No.3 of the Revenue's appeal is dismissed.

41. Ground Nos.6 & 7 are regarding the addition made by the Assessing Officer on account of unaccounted sale which was deleted by the learned CIT (A). The Assessing Officer has made the addition towards unaccounted sales in para No.1.8 to 2.1 as under:

1.8 It is noticed that the assessee firm received a total amount of Rs.103,22,88,740/- (comprising of opening balance Rs.49,14,58,740 and receipts during the year Rs.54,08,30,000/-) towards advance against sale of land. After making adjustment of the cost of the land sold for Rs.190,87,00,300/- the balance amount of Rs.83,35,88,440/- was remained with the assessee firm as detailed in the statement given below:

(Rs.)

S L	NAME OF THE PERSON	OPENING BALANCE	RECEIPT DURING THE YEAR	ADJUSTED AGAINST LAND	CLOSING BALANCE
1	SHAIK NOWHERA (HEERA)	0	15,58,30,000	14,62,75,000	9555000
2	HEERA RETAIL (HYD) PVT LTD	47,88,05,510	38,10,00,000	3,85,93,500	821212010
3	MOHD SHARRIF	7200000	0	69,65,900	234100
4	ABDUL RAHIM	0	4000000	3400000	600000
5	MOHD MOID	2800000	0	27,65,900.00	34100
6	MIRZA RAFIULLAH BAIG	24,53,230.00	0	6,50,000.00	1803230
7	AMJED ALI	200000	0	50000	150000
	TOTAL	49,14,58,740	54,08,30,000	19,87,00,300	83,35,88,440

In the show cause notice issued on 18/12/2019, the assessee was asked to furnish objections against the action proposed to assess the sum of Rs.83,35,88,440/- as unaccounted sale consideration. The relevant extract from the show cause notice is reproduced below:

"The balance amount of Rs. 83,35,88,440/- is being shown as 'advances from customers'. In respect of Heera group, vide your letter dated 03.12.2019, copies of undated letters from Heera Gold Exim Ltd., Heera Retail (Hyderabad) Pvt. Ltd. and HeeraFoodex Private Limited

were filed wherein in each letter, a general confirmation has been given that the amounts were given for purchase of land and construction of building advance as on 31/03/2017 without furnishing any specific details of the lands. Since the transaction of sale of land is complete in the above cases and the balance amounts were used by the firm either as withdrawals by the partners or investments in loans and advances (asset), it is clear that the surplus amounts received are the monies received over and above the recorded sale consideration. In fact, there was no land available with the firm for sale. Therefore, it is proposed to assess the sum of Rs.83,35,88,440/- as unaccounted sale consideration and add the same to your income for the A.Y.2017-18."

1.9 The assessee objected to the proposal vide letter submitted on 24/12/2019. The relevant extract from the reply is reproduced below:

“Thus on facts the department has no case to disbelieve the credits in the books by way of advances. This view is strengthened by the fact that in subsequent years, the firm has sold land to some persons who have given advances. The firm has also returned advances in some cases as would appear from the enclosed table. Since these sales cannot be taken as untrue as the same are registered and refunds cannot be disbelieved as these were returned by account payee cheques and RTGS the question of doubting receipt of advance and treating the same as unexplained does not arise. “

2.0 In respect of M/s HeeraRetail (Hyd) Pvt Ltd. and Shaik Nowhera, it was stated that the latter was lodged in jail for alleged criminal activity, however confirmation letters have been filed and there was some adjustment during the year towards sale of land to them which shows the bonafide of the transaction.

2.1 The assessee's contentions are not acceptable. With regard to the contention that land was transferred against advances to some persons and balance was returned, it can be seen that in all the seven cases above, though land was transferred, amounts remained in the assessee's books as advances. Normally a purchaser would not pay more than the agreed sale consideration of the property purchased. Hence, the monies paid by the above purchasers which are shown as outstanding are part of the agreed sale consideration for land already registered. Apparently, the SRO's value was less than the agreed sale value, hence the difference amount paid was shown as advances (closing balances) in the books of the assessee. This view is further supported by the fact that the outstanding advances were utilised for overdrawing of capital by partners and for investments. The confirmation letters in the case of Heera group are undated and vaguely worded making a mention of the amount paid for "purchase of land and construction of building" without mentioning any other particulars despite such huge amounts claimed to have been paid as advances. Therefore, it is evident that the purchasers have paid amounts over and above the sale consideration recorded in the sale deeds and these monies are shown as advances. Hence, the amounts totalling to Rs.83,35,88,440/- shown as advances outstanding in the above cases are brought to tax towards unrecorded sale consideration.

Addition:Rs.83,35,88,440/-

42. On appeal, the learned CIT (A) has deleted the said addition by considering the details of opening balance of the

advances as well as the actual sale transaction of land against which the adjustment of the sale consideration was made.

42.1 We have heard the learned DR as well as the learned AR and considered the relevant material on record. This issue is identical to the issue involved for the A.Y 2016-17. The learned DR as well as the learned AR have reiterated their respective contention as advanced on this issue for the A.Y 2016-17. The learned CIT (A) has considered this issue in para 8.3 to 8.5 as under:

8.3 I have carefully considered the submissions of the appellant, the order of the Assessing Officer thereon. Briefly the facts are, during the assessment proceedings it was noticed that the assessee firm received a total amount of Rs.103,22,88,740/- (comprising of opening balance of Rs.49,14,58,740/- and receipts during the year Rs.54,08,30,000/-) towards advance against the sale of land. After making adjustment of the cost of the land sold for Rs.19,87,00,30/-, the balance amount of Rs.83,35,88,440/- was remained with the assessee firm as detailed below:

Sl. No.	Name of the Person	Opening balance in Rs.	Receipt during the Year	Adjusted against Land	Closing balance in Rs.
1	Shaik Nowhera (HEERA)	0	15,58,30,000	14,62,75,000	95,55,000
2	Heera Retail (Hyd) Pvt Ltd	47,88,05,510	38,10,00,000	3,85,93,500	82,12,12,010
3	Mohd Sharrif	72,00,000	0	69,65,900	2,34,100
4	Abdul Rahim	0	40,00,000	34,00,000	6,00,000
5	Mohd Moid	28,00,000	0	27,65,900	34,100
6	Mirza Rafiullah Baig	24,53,230	0	6,50,000	18,03,230
7	Amjed Ali	2,00,000	0	50,000	1,50,000
	Total	49,14,58,740	54,08,30,000	19,87,00,300	83,35,88,440

A show cause notice was issued to the appellant stating that in the above cases the transaction of sale of land is complete and the balance amounts were used by the firm either as withdrawals by the partners or investments in loans and advances. The AO observed that there was no land available with the firm for sale and therefore questioned as to why the amount of Rs.83,35,88,440/- should not be considered as unaccounted sale consideration. In response, the appellant firm submitted that it has sold land to some persons who have given advances and refunded the balance advances in some cases. The sales cannot be taken as untrue as the same are registered and refunds cannot be disbelieved as these were returned by account payee cheques and RTGS. However, the AO observed that in all the above cases, though land was transferred, amounts remained in the assessee's books as advances and the monies paid by the above purchasers which are shown as outstanding, are part of the agreed sale consideration for the land already registered. Also, the confirmation letters in the case of Heera group are undated and vaguely worded making a mention of the amount paid for "purchase of land and construction of building" without mentioning any other particulars. Accordingly, the AO considered this amount of Rs.83,35,88,440/- as unaccounted sale consideration and made the addition in the total income for AY 2017-18. The appellant is aggrieved and is in appeal.

8.4.1 During the appellate proceedings, the AR of the appellant submitted that Advance is a recognized mode of payment, built on trust and faith between the person advancing money and person receiving the same. The creditors had faith in the firm and they advanced the monies to the firm. Moreover, the partners have acquired the expertise in the field and have set up the firm to utilize the same. Such being the situation, merely because the land was not available and there was no sale, could not be reason to suspect that the transaction is not genuine. Also, in subsequent years the firm

has sold land to some persons who have given advances and returned advances in some cases. Since these sales cannot be taken as untrue as the same are registered and refunds cannot be disbelieved as these were returned by account payee cheques and RTGS, the question of doubting receipt of advance and treating the same as unexplained does not arise. Further the AR submitted that one of the creditors Mrs. Shaik Nowhera is lodged in jail for some alleged criminal activity and it is difficult to have access to her. However, confirmation letters have been filed in respect of Mrs. Shaik Nowhera and M/s. Heera Retail (Hyd) Pvt. Ltd. Further, it may be seen that, out of the receipts during the year, there has been adjustment towards sale of land to them. This shows bonafide of the transaction. Further the receipt from the above two persons was by way of RTGS and credited to the firm's accounts, hence no adverse inference may be drawn.

8.4.2 The AR also submitted that the view of the AO is merely based on suspiciousness about the transactions and no incriminating evidence was available to prove that the closing advance amounts are on-money receipts. The AO has considered the opening balance of Rs.49,14,58,740/- as on 01.04.2016, the receipts of Rs.54,08,30,000/- during the year and adjustments against sale of land amounting to Rs.19,87,00,300/- as bonafied business transactions, however has not considered the closing balance of Rs.83,35,88,440/- as pending advances from the customers. The closing balances include all the three transactions i.e. opening balances, advances received and balances adjusted during the year on account of sale. The AR contended that the addition made by the AO is against the facts of the case and is purely based on mere suspicion and requested to delete the addition.

8.5 I have considered the submissions of the AR. It is seen that the appellant firm had opening balance of advances as Rs.49,14,58,740/- and receipts of Rs.54,08,30,000/- during the year towards advance against the sale of land. After

making the adjustment of Rs.19,87,00,30/- towards the cost of land sold, the closing balance for the year was Rs.83,35,88,440/-. The appellant firm sold land to the parties who have given advances and refunded the balance advances in subsequent years in some cases through banking channels. The appellant firm has submitted documentary evidences to prove the identity and creditworthiness of the creditors. Also, no incriminating material was found during the search to form the basis of addition as unaccounted sale proceeds and the addition was made merely on suspicion and conjecture. There is merit in the AR's contention that since the AO has considered the opening balance of Rs.49,14,58,740/-, the receipts during the year of Rs.54,08,30,000/- and adjustments against sale of land during the year amounting to Rs.19,87,00,300/- as bonafied business transactions, the AO should have also considered the closing balance of Rs.83,35,88,440/- as pending advances from the customers as the closing balances include all the three transactions i.e. opening balances, advances received and balances adjusted during the year on account of sale. Since the opening balance of advances, advances received during the year and adjustment made in the advances were accepted by the AO, the closing balance of the advances cannot be denied. The AO has not relied on any incriminating material found during search to conclude that the closing balances is on account of unaccounted sales. Besides, the confirmation letters of the creditors have been filed and all the transactions are through banking channels which cannot be ignored. As stated earlier, there was no reference to any seized material or incriminating material to make an adverse inference credit to treat the closing balance as unaccounted sales. Therefore, the AO is directed to delete the addition of Rs.83,35,88,440/- made on unaccounted sale proceeds and accordingly, the appeal of the appellant on this ground is **ALLOWED**.

43. As it is apparent from the details of the transaction itself that the Assessing Officer has made the addition of this

amount without excluding the opening balance of the advances. We have considered an identical issue for the A.Y 2016-17 in para Nos. 9 & 10 of this order. Therefore, in view of our findings on this issue for the A.Y 2016-17, we do not find any error or illegality in the impugned order of the learned CIT (A).

44. In the result, Ground Nos.6 & 7 of Revenue's appeal stands dismissed. Since we have decided the cross appeals on merits, therefore, we do not propose to take up the legal issues raised by the assessee in Ground Nos. 1 to 9 in appeals for the A.Y 2016-17 and 2017-18 being academic in nature.

45. In the result, both the appeals filed by the assessee are allowed and both the appeals of the Revenue are dismissed.

Order pronounced in the Open Court on 15th May, 2025.

Sd/-

Sd/-

(MANJUNATHA, G) ACCOUNTANT MEMBER	(VIJAY PAL RAO) VICE-PRESIDENT
--	---

Hyderabad, dated 15th May, 2025

Vinodan/sps

Copy to:

S.No	Addresses
1	M/s. SA Builders & Developers, H.No.9-4-77/2/1 Yousuf Tekdi Tollichowk, Hyderabad 500008
2	ACIT Central Circle 2(1) Room No.612, 6 th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad 500004
3	Pr. CIT – Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order