

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.662/SRT/2024**

**Assessment Year: (2013-14)**

**(Physical Hearing)**

Amit Rasiklal Sangani, B-13, Jamnanagar Society, Ghod Dod Road, Surat-395007	<b>Vs.</b>	The ITO, Ward - 1(3)(1), Surat
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AWMPS7068J</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri Nitin Gheewala, CA
<b>Respondent by</b>	Shri Mukesh Jain, Sr. DR
<b>Date of Hearing</b>	13/03/2025
<b>Date of Pronouncement</b>	28/05/2025

**आदेश / ORDER**

**PER BIJAYANANDA PRUSETH, AM:**

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 23.05.2024 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'CIT(A)'] for the Assessment Year (AY) 2013-14.

2. Grounds of appeal raised by the assessee are as under:

*"1. In the facts & circumstances of the case as well as law, learned Commissioner of Income tax (appeals) should have deleted protective addition of Rs.2,61,63,564/-.*

*2. In the facts & circumstances of the case in law, appellant reserves its right to add, alter, modify, edit and/or delete any of the grounds of appeal."*

3. Facts of the case in brief are that assessee filed his return of income declaring total income of Rs.3,99,790/-. The case was scrutinized under CASS

and notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee. During the year, assessee had earned income from business and from other sources. The assessee is a partner of M/s Shakti Corporation. On-going through the ITS details in FY.2012-13, the AO found that assessee had maintained a bank account in Mehsana Urban Co-operative Bank Ltd. However, on verification of balance-sheet for the AY 2013-14, it was found that the same was not shown by the assessee. A notice u/s 133(6) of the Act was issued and details were called for from Mehsana Urban Co-operative Bank Ltd. The said bank furnished details of another bank account maintained by assessee. The said bank account was not disclosed in his books for AY.2013-14 (where there was total credit of Rs.1,76,49,170/-). The AO issued show-cause notice as to why credits reflected in his bank accounts No. CA00663 and CA 01010 should not be considered as his undisclosed income and added to his total income for the AY.2013-14. The assessee contended that though these accounts are in his name but the transaction in these accounts belonged to the firm M/s Shanti Construction, where he is a partner. He submitted two affidavits, i.e., one in his individual capacity and the other as partner of the said firm. The AO forwarded the information to the jurisdictional AO of M/s Shanti Construction. However, to protect the interest of revenue, credits of Rs.2,61,63,564/- reflected in the said bank accounts (No.CA0063 Rs.1,76,49,170/- and CA01010 of Rs.85,14,394) of the assessee held with Mehsana Urban Co-operative Bank Ltd. were added to the income of assessee on protective basis. The AO also initiated penalty

proceeding u/s 271(1)(c) and 271F of the Act. Aggrieved by the addition made by AO, assessee preferred appeal before CIT(A).

3. Before CIT(A), assessee filed written submission which are at pages 2 to 4 of the appellate order. The appellant submitted that M/s Shanti Construction is assessed to tax and it had owned up and accepted that the above accounts are operated by it. The said bank accounts are reflected in the books of account of M/s Shanti Construction. The M/s Shanti Construction had filed an application before the Settlement Commission, which was admitted by it. The Settlement Commission pronounced the order u/s 245D(4) on 27.01.2021, but the final order could not be passed due to amendment brought in by the Finance Bill, 2021 on 01.02.2021. Subsequently, the appellant approached Hon'ble Gujarat High Court which directed the Settlement Commission to pass necessary order u/s 245D(4) of the Act. However, the CIT(A) dismissed the appeal because the Interim Board of Settlement, successor to the Settlement Commission, had not passed final order. Hence, order of AO was confirmed and appeal was dismissed.

4. Further aggrieved by the order of the CIT(A), the assessee has filed present appeal before the Tribunal. The Ld. AR of the assessee filed paper book enclosing therein copy of order of Interim Board of Settlement in case of M/s Shanti Construction, copy of relevant portion of petition of M/s Shanti Construction, report u/s 245D(3) of the Act, application of M/s Shanti Construction for settlement, comment of the applicant on report of the PCIT

u/s 245D(2B) of the Act. The Id. AR submitted that the Settlement Commission has accepted the application and passed the order by making further addition of Rs.1,14,00,000/- over and above the additional income of Rs.8,33,000/- offered by the appellant in SOF. The total income as settled by the Interim Board of Settlement was Rs.10,89,30,250/-. He, therefore, submitted that the protective addition made by AO does not survive and the appeal of the assessee may be allowed.

5. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of lower authorities. He submitted that only A/c No.CA00663 has been offered before the Settlement Commission and not the A/c No.CA01010 held with Mehsana Urban Co-op. Bank Ltd. Hence, he requested to uphold the order of CIT(A).

6. We have heard both the parties and perused the materials available on record. We have also gone through the application filed by the assessee before ITSC and order u/s 245D(4) passed by the Interim Board of Settlement. The Id. AR submitted that the said amount of Rs.2,61,63,564/- deposited in the bank accounts was part of unaccounted receipts of booking of M/s Shanti Construction. The appellant was a partner in the said M/s Shanti Construction. The Income-tax Department carried out a survey u/s 133A of the Act on 16.03.2013 on M/s Shanti Construction. The said firm filed petition before the Settlement Commission on 27.12.2018. It disclosed various accounts including the impugned bank accounts, being A/c Nos.CA01010 and CA00663 with

Mehsana Urban Co-op. Bank Ltd. It was submitted that these two bank accounts were used and operated by the firm to deposit on-money receipts of booking by way of crossed cheques. From such deposits, it was making payments for various expenses for developing row houses etc. The amount of Rs.2,61,63,564/- was part of on-money against the booking of new houses by the firm. The Settlement Commission pronounced the order u/s 245D(4) on 20.08.2024, determining the income by estimating net profit @ 18% of the gross receipt of the project, including the impugned amount of Rs.2,61,63,560/-. The appellant has submitted various documents, which are part of the records of the Department as well as Settlement Commission. This has already been discussed in the submission of the Id. AR and hence not repeated. We find that the PCIT in Rule 2(B) has reported that unaccounted receipt of Rs.5,86,45,000/- is inclusive of Rs.2,61,63,564/- for AY.2013-14. After considering the facts discussed above, we find that the above two accounts in the name of the appellant were accepted by the Department as well as the Settlement Commission/Interim Board of Settlement as owned and operated by M/s Shanti Construction and deposit of Rs.2,61,63,564/- was considered as on-money booking receipt of M/s Shanti Construction. The Settlement Commission / Interim Board of Settlement has estimated profit @ 18% on such receipt in its order passed u/s 245D(4) of the Act on 20.08.2024. Hence, making separate addition on protective basis would amount to double addition of the same amount in the hands of M/s Shanti Construction as well as the appellant,

which is not permissible. Since the order of Interim Board of Settlement has been accepted by the Department, the protective addition in case of the appellant is deleted and the ground is allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced under proviso to Rule 34 of ITAT, Rules, 1963 on 28/05/2025 in the open court.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat

दिनांक/ Date: 28/05/2024

SAMANTA

**Copy of the Order forwarded to:**

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

**// TRUE COPY //**

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat