

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD**

(Convened through Virtual Court)

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

MISCELLANEOUS APPLICATION No. 76/Ahd/2020

WITH

आयकर अपील सं./I.T.A. No. 2376/Ahd/2018

(निर्धारण वर्ष / Assessment Year : 2012-13)

Assistant Commissioner of Income-tax/D.C.I.T. Central Circle - 1(2), Ahmedabad Room No. 305, 3 rd Floor, Aaykar Bhawan, Ashram Road, Ahmedabad	बनाम/ Vs.	Shri Ashit Harilal Vora 5-B, Vasupujya Society, P. T. College Road, Paldi, Ahmedabad – 380007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACJPV1280C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

&

आयकर अपील (एसएस) सं./I.T(SS).A. No. 266/Ahd/2018

WITH

CROSS OBJECTION No. 46/Ahd/2020

(निर्धारण वर्ष / Assessment Year : 2012-13)

DCIT/ACIT Central Circle - 1(2), Ahmedabad	बनाम/ Vs.	Shri Ashit Harilal Vora 5-B, Vasupujya Society, P. T. College Road, Paldi, Ahmedabad – 380007
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स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACJPV1280C		
(Appellant / Respondent)	..	(Respondent / Cross Objector)

अपीलार्थी ओर से /Appellant by :	Shri Ketan H. Shah with Shri Aman K. Shah, A.Rs.
प्रत्यर्थी की ओर से / Respondent by :	Shri O. P. Sharma, CIT.DR & Shri L. P. Jain, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	19/08/2020 & 15/12/2020
घोषणा की तारीख /Date of Pronouncement	15/12/2020

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned Miscellaneous application, appeal and cross objection directed at the instance of Revenue and assessee arise from the respective orders of the Commissioner of Income Tax (Appeals) ('CIT(A)') against different assessment years as tabulated below:

ITA Nos.	Name of assessee	AY	CIT(A)'s order dated	AO's order dated	AO's order under Section
M.A. No. 76/Ahd/20 with 2376/Ahd/18	Shri Ashit Harilal Vora	2012-13	17.07.2018	29.12.2016	143(3) r.w.s. 153A(1)(b) of the Income Tax Act, 1961 (in short 'the Act')
IT(SS)A No. 266/Ahd/18 A/w. CO No. 46/Ahd/20	-Do-	2012-13	-Do-	-Do-	-Do-

2. The Revenue has filed Miscellaneous Petition No. 76/Ahd/2020 arising in ITA No.2376/Ahd/2018 dated 14.08.2019 concerning AY 2012-13 in case of the captioned assessee. As per the Miscellaneous Petition, it was submitted on behalf of the

Revenue that assessment order under s.143(3) r.w.s. 153A of the Act was passed on 29.12.2016 in case of assessee for AY 2012-13 by making following additions:

- * unexplained cash credit u/s. 68 Rs.2,60,00,000/-
- * unexplained money (on protective basis) Rs.36,36,760/-

3. Thereafter, first appellate order dated 17.07.2018 was received by the AO wherein additions of Rs.2,60,00,000/- stood deleted. However, another addition of Rs.36,36,760/- remained to be disposed off in the said appellate order of the CIT(A). The tax effect on deletion of additions of Rs.2,60,00,000/- was Rs.80,34,000/-. Therefore, the department filed second appeal before the Tribunal on 01.10.2018 vide IT(SS)A No. 266/Ahd/2018 against the aforesaid order of the CIT(A). Thereafter, a rectification order under s.154 of the Act dated 11.09.2018 came to be passed by the CIT(A) in the case of assessee for AY 2012-13 adjudicating another ground of appeal which had remained to be disposed in CIT(A)'s earlier order dated 17.07.2018. The CIT(A) vide rectification order dated 11.09.2018 has also deleted the addition of Rs.36,36,760/- made by the AO. The tax effect was Rs.11,56,489/-. The Revenue filed appeal before ITAT for this second limb of additions/disallowances vide ITA No.2376/Ahd/2018. The ITAT vide order dated 14.08.2019 has dismissed the appeal filed by the department in ITA No. 2376/Ahd/2018 vide order dated 05.12.2018 due to low tax effect involved in the said appeal having regard to Circular No. 3 of 2018 issued by CBDT. However, considering the overall tax effect which was Rs.91,90,489/-, the department filed appeal before the ITAT on 05.12.2018 in the case of the assessee for AY 2012-13 vide ITA No. 2376/Ahd/2018 before the ITAT.

4. In this factual background, it is the case of the Revenue that both departmental appeals in IT(SS)A No.266/Ahd/2018 and ITA No.2376/Ahd/2018 relates to one assessee for the one assessment order arising from the same assessment order under s.143(3) r.w.s. 153A of the Act dated 29.12.2016. Therefore, appeal filed on 05.12.2018 in ITA No.2376/Ahd/2018 is urged to be recalled and merged with the original departmental appeal filed on 01.10.2018 vide IT(SS)A No.266/Ahd/2018 for AY 2012-13 under consideration. It was thus prayed that ITA No.2376/Ahd/2018 as well as IT(SS)A No.266/Ahd/2018 for AY 2012-13 dealing with two different points arising from the same assessment year be heard be adjudicated on merit as the Circular No.3 of 2018 would not apply in these peculiar facts.

5. There was no serious opposition from the assessee for recalling the appeal in ITA No.2376/Ahd/2018 and clubbing the same with IT(SS)A No.266/Ahd/2018 as pointed out on behalf of the Revenue on the grounds of inapplicability of CBDT Circular.

6. In the light of the facts narrated on behalf of the Revenue as noted in preceding para, we find that Circular No.3 of 2018 should not apply where combined tax effect from the same assessment order exceeds the prescribed limit with which there is no quarrel from the assessee. Resultantly, the Miscellaneous Petition No.76/Ahd/2020 is allowed and ITA No. 2376/Ahd/2018 is recalled and re-fixed for hearing today with the consent of the parties together with the main appeal in IT(SS)A No. 266/Ahd/2018 listed for hearing today.

7. In the result, M.A. of the Revenue is allowed.

8. We shall now dispose of both the captioned appeals arising from the same assessment order herewith.

IT(SS)A No. 266/Ahd/2018-A.Y. 2012-13

9. As per the ground of appeal, the Revenue has assailed the action of the CIT(A) in deleting the additions of Rs.2,60,00,000/- on account of unexplained credit under s.68 of the Act.

10. Briefly stated, the assessee filed return of income under s.139 of the Act on 08.07.2012 declaring total income at Rs.7,13,357/-. After filing of return, a search and seizure action was conducted in the case of the assessee under s.132 of the Act on 04.12.2014. A notice under s.153A of the Act was issued and the assessee filed return of income declaring his income at Rs.6,09,660/- in compliance of the aforesaid notice. The AO completed the assessment under s.153A of the Act assessing total income at Rs. 3,38,83,177/-. The additions made towards unexplained cash credit by invoking provisions of Section 68 of the Act amounting to Rs.2,60,00,000/- is in challenge in the captioned appeal.

11. In the course of the assessment proceedings, the AO noted that the assessee has received unsecured loan of Rs.2,60,00,000/- from one Anusthan Buildcon Pvt. Ltd. (lender). The AO asked the assessee to prove identity, capacity and genuineness of the transaction. In reply, the assessee submitted ledger copy of unsecured loan and confirmation. However, the AO observed that the confirmation is not signed by the lender concerned. The AO further noted that funds received in the lender's account have to be treated as non-genuine and therefore funds received by the assessee in the form of unsecured loan from the lender are also treated as

non-genuine since creditworthiness of the lender is not proved. It was thus show caused to the assessee that in the absence of proper evidence and explanation towards unsecured loans obtained by the assessee which are treated as non-genuine, interest paid on such loan should also be disallowed. The assessee *inter alia* submitted copy of ledger account of lender in the books of the assessee, bank statement of the assessee reflecting RTGS credits received through banking channel from the lender and pointed out that the lender is also assessed in the same charge and by the same AO and further enquiry may be carried out. It was further pointed out that in the event of unsatisfactory explanation of source of the lender, the addition may be carried out, if any, in the hands of the lender and not in the hands of the assessee as the assessee has discharged his obligations by providing necessary details with regard to the creditworthiness of the loan party. The AO, however, did not pay heed to the various explanation offered on behalf of the assessee and made an addition of Rs.2,60,00,000/- to the total income declared by the assessee with the aid of Section 68 of the Act after taking note of certain seized documents.

12. Aggrieved by the aforesaid action, the assessee preferred appeal before the CIT(A).

13. The CIT(A) took note of the detailed written submissions and the evidences filed in support of the bonafides of the loans. Several judicial pronouncements were quoted on behalf of the assessee as also reproduced in the order of the CIT(A). Legal submissions were also made before the CIT(A) that in the absence of any incriminating document evidence found in the course of search, it was not open to the AO to make re-assessment of concluded assessment in the garb of invoking the provisions of Section 153A

of the Act as such action will defeat other relevant provisions of the Act and also the rights of the assessee accrued by virtue of a completed assessment. The decision of the Hon'ble Gujarat High Court in the case of *Pr.CIT vs. Saumya Construction Pvt. Ltd.* 387 ITR 529 (Guj.) was relied upon. After taking cognizance of the various submissions made by the assessee, the CIT(A) found a conceivable case in the justification led by the assessee and deleted the additions made on merits.

14. It will be pertinent to reproduce relevant operative para of the decision making process of the CIT(A) for easy reference:

*"7. Submission of the appellant assessment order, report of the AO and rejoinder d by the appellant have been carefully considered. The **First** ground of appeal is general in nature, hence, does not require adjudication. Therefore, it is **dismissed**. Facts of the case in brief are that the appellant filed return of income for AY 2012-13 on 08.07.2012 showing total income of Rs.7,13,357/. A search u/s. 132 of the Act was conducted upon the appellant alongwith other group persons/concerns on 4.12.2014. Notice dated 22.7.2015 was issued on 22.7.2015 u/s. 153A of the Act and served upon the appellant. The appellant vide letter dated 9.9.2015 requested to the AO that the return filed originally on 30.9.2009 may be treated as return filed in response to notice issued u/s. 153A of the Act. Notice u/s. 143(2) dated 16.12.2015 was issued & served upon the appellant. The appellant, thereafter, filed revised return of income, during the course of assessment proceedings before the AO on 15.11.2016 showing total income of Rs.6,09,660/-. During the course of appellate proceedings, the appellant filed additional evidences under Rule 46A and requested that the same may be admitted keeping in view the fact that the AR of the appellant withdrew from the assessment proceedings in between. The additional evidences submitted by the appellant were forwarded to the AO for his comments. The AO submitted report vide letter dated 05.03.2018, received through Jt.CIT, Central Range-1, Ahmedabad's letter dated 07.03.2018. The AO objected against the admission of additional evidences stating that the appellant had sufficient time to file the evidences before withdrawing authority by the AR of the appellant, therefore, the appellant case is not covered by any exception given under Rule 46A. The AO also submitted report on merit of the case alongwith his legal objections. Facts of the case have been considered in totality. The AO made the additions considering loan of Rs.2,60,00,000/- from Anusthan buildcon Pvt. Ltd. as unexplained credits stating that the appellant could file only confirmation from the creditors and copy of ITR acknowledgement receipts, therefore, the appellant did not discharge onus. During the course of appellate proceedings, the appellant filed details of PAN in respect of the*

creditor, confirmation and copy of ITR. The appellant also submitted that all the creditors are group concerns/persons & all have been covered under search action alongwith the appellant. Assessment of all this concerns/persons has been made by the AO himself. Therefore, all the details about the creditors is available with the AO while making the assessment. Looking to the facts that all the creditors have been assessed by the AO of the appellant objection against admission of additional evidence is not found justified. Keeping in view this fact, the objections raised by the AO as not found justified, hence, rejected. The issues are decided on merit in the coming paras.

Second ground of appeal is against the additions of Rs.2,60,00,000/- made by the AO u/s 68 of the Act considering the credits as Unexplained. The AO stated that during the year, the appellant obtained loan of Rs.2,60,00,000/- from Anushthan Buildcon Pvt. Ltd. To substantiate the genuineness of these credits, the appellant submitted confirmations from creditors, copy of acknowledgement of ITR and bank account by highlighting the transactions. The appellant further stated that the creditors are assessed with the AO himself and these are also covered under search action with the appellant. So all the details of the creditors are available with the AO. The AO stated in the assessment order & reiterated in remand report that the persons/concerns of this group have been found indulged in trading in share market, manipulation of share prices, giving & taking accommodation entries and investing unaccounted income in real estate & other business activities. Therefore, the AO considered that the loan obtained by the appellant remained unexplained. The appellant contended that to prove the genuineness of credit in the books of accounts, the following three things are to be proved :- i) identity of the creditor ii) genuineness of the transaction and iii) creditworthiness of the creditor The appellant contended that all the creditors were covered under search action u/s. 132 of the Act by the department alongwith the appellant and have been assessed by the same AO. Therefore, identity of the creditor is proved beyond doubt. To prove the genuineness of the transactions, the appellant contended that the loan was taken through regular banking channel. It has been reflected in the bank account of both the parties. The creditor has filed confirmation from the creditor in this regard. Therefore, the transaction is genuine one. To prove creditworthiness of the creditor, the appellant contended that the loan was received through regular banking channel and there was no immediate cash deposits in the account of the creditor. The appellant also contended that the creditor is assessed by the AO who is AO of the appellant and huge additions have been made by the AO in the hands of the creditor. These facts prove the creditworthiness of the creditor. With these contentions, the appellant stated that he had discharged her onus to prove the genuineness of the credits, hence, additions made by the AO are not found justified.

8.1 Facts of the case, submission of the appellant, assessment order, remand report & rejoinder have been considered carefully. During the year, the appellant had taken loan of Rs.2,60,00,000/- from Anushthan Buildcon Pvt. Ltd. These loan was taken through regular banking channels and reflected in the regular books of accounts. The appellant filed confirmations from the creditor during the assessment and appellate proceedings. In the bank account of Anusthan Buildcon Pvt

Ltd, the creditor, there is no cash deposits immediately prior to giving loan to the appellant. All these facts clearly prove that the appellant had discharged onus cast upon him to substantiate the genuineness of the credits. The creditor is assessed with the AO of the appellant after conducting search by the department, proves his identity. The appellant filed confirmation, transaction is through regular banking channels & reflected in the books of accounts of both the parties, prove the genuineness of the transactions. The creditors have been assessed by the same AO and huge income has been determined in the hands of the creditor. This fact coupled with the fact that there is no cash deposit in the bank account of the creditor immediate before giving loan to the appellant, prove creditworthiness of the creditor. This fact shows that all the ingredients to prove the genuineness of credits have been complied with. Keeping in view the discussion above, the additions of Rs.2,60,00,000/- made by the AO u/s. 68 of the Act is not found justified. Moreover, the case of the appellant has been found covered by the following binding judgments of Hon'ble High Court of Gujarat, Ahmedabad.

*DCIT v/s Rohini Builders — 256 ITR 360 (Guj)
CIT v/s, Ranchhod Jivabhai Nakhava — 208 Taxman 35 (Guj)
CIT v/s. Apex Therm Packaging P Ltd — 42 Taxman.com 473
(Guj)
CIT v/s. Dharmdev Finance — (2014) 43 Taxman.com 395 (Guj)
CIT v/s. Shailesh Kumar Rasiklal Mehta (2014) 41 Taxman.com
550/224 (Guj)*

*Looking to the facts of the case, as narrated above and binding judgments, the additions made by the AO u/s. 68 amounting to Rs.2,60,00,000/- are not found justified, hence, **deleted**. This ground of appeal is **allowed**.”*

15. Aggrieved by the reversal of additions under s.68 of the Act by first appellate authority, the Revenue has filed an appeal before the Tribunal to assail the action of the CIT(A).

15.1 The learned DR for the Revenue strongly relied upon the contents of assessment order. In furtherance, the learned DR submitted that the genuineness of loans in question is backbone of the entire controversy. Making reference to discussions in the assessment order, it was pointed out that one ‘Jupiter Business Ltd.’ (JBL) has transferred money to ‘Anusthan Buildcon Pvt. Ltd.’ (ABPL) which was, in turn, transferred to the assessee by way loan. The whole action of routing money from one entity to other and then

to assessee smacks of a design. It was pointed out with reference to para 4.3 of the assessment order that certain cash was given to JBL on account of Anusthan entity as per the seized document and similar amount has been given by JBL to ABPL. It was thus submitted that when read in conjunction with the seized paper, the loan that ultimately landed in the books of assessee is *prima facie* non-genuine and a mere confirmation thereof by the lender would not be sufficient in these peculiar circumstances. The learned DR submitted that the AO has demonstrated the transfer of money from one entity to other with reference to the seized documents. It was contended that the observation of the CIT(A) is in total disregard of this glaring facts where the *modus operandi* has been properly established and the onus was shifted on the assessee. The learned DR relied upon the decision of the Hon'ble Delhi High Court in the case of *CIT vs. N R Portfolio 263 CTR 456 (Delhi)* to contend that payment made through banking channel by lender in itself is not sufficient to prove the genuineness of the loan transactions and the onus which lay upon the assessee under s.68 of the Act remains undischarged. The learned DR accordingly contended that the action of the CIT(A) requires to be reversed and action of the AO requires to be restored.

15.2 The learned AR, on the other hand, relied upon the order of the CIT(A) and various submissions made before him. The learned AR pointed out that the assessee had discharged its onus by filing confirmation and bank statement etc. The lender has shown the act of lending to the assessee in its books and both the assessee and the lender were assessed by the same AO. The source of lending, in turn, by the lender is also on record of the AO which is not cash but a banking channel transaction. It was pointed out that the seized papers relied upon by the AO are dumb documents which do not

make any affirmative revelation nor has been signed by the assessee. It was further pointed out that there is no link between JBL from whom the money was sourced by lender and assessee. It was contended that the act of Revenue to cast doubt on genuineness of loan is based on conjectures and surmises. The learned AR thus submitted that CIT(A) has rightly decided the issue in the light of the binding decisions of the jurisdictional High Court listed in the first appellate order and no interference therefore with the order of the CIT(A) is called for.

16. We have carefully considered the rival submissions. The additions under s.68 of the Act amounting to Rs.2,60,00,000/- on loan received by assessee from a group company ABPL is in controversy. The identity and capacity of the lender has not been challenged on behalf of the Revenue. The genuineness of transaction however has been challenged. The AO proceeded on the footing that the documentary evidences towards confirmation, bank statement of the lender is not available and the seized documents reveal that ABPL has received money from JBL which has been transferred to the assessee. It is the case of the AO that some instances of cash deposited in JBL has come to the notice of the department which gives an inference that unaccounted cash of assessee as provided to JBL has come back in the form of loan entry in the hands of the assessee.

16.1 The CIT(A) in the first appeal collected the confirmation, bank statement etc. from the assessee. It was further noted that the lender is also assessed with the same AO as that of assessee and the relevant documents were available with the AO assessing both the entities. The CIT(A) has taken note of various decisions rendered by Hon'ble High Court as well as other non-jurisdictional High

Courts in its order and found that where the amount received by the assessee from the lender is through banking channel and the transactions are reflected in the bank account of assessee as well as the lender, the assessee can be deemed to have sufficiently discharged its burden which lay upon it to explain nature and source of credit entry appearing in its account. The suspicion cast on source of money received by lender of the lender is of no consequence insofar as the assessee herein concerned. The assessee has established the source from which the money has been received and admittedly found recorded in the books of the lender. The source of money received by lender is also not in challenge. The aspersions have been cast on the source of source of lender which would mean source of source of source of lending in the hands of assessee is the basis for invoking Section 68 of the Act. The genuineness of loan received has been doubted by Revenue on such ground. The action of Revenue seeking to cast aspersions on genuineness on such remote and unsupported basis is in the realm of conjectures and surmises as canvassed on behalf of assessee.

16.2 Noticeably, there is nothing on record to show any outcome of enquiry, if any, from the lender of lender for source of his money.

16.3 In the circumstances noted above, the genuineness of the transaction has to be read in the context of all attendant facts cumulatively and cannot be seen in isolation. The burden on the assessee under s.68 of the Act is limited to proving the nature and source of the credit entry. The burden does not extend to establish the quality of source of money in the hands of source of source *per se*. In the instant case, the lender as well as the lender of the lender are both limited company and are tax assessee in the record of department. In absence of any evidence against the assessee *qua* the

lender of the lender, the onus on the assessee to establish genuineness and creditworthiness of lender, in our view, stands discharged. We see no error in the process of reasoning adopted by the CIT(A) while concluding the issue in favour of the assessee. We thus decline to interfere.

17. In the result, appeal of the Revenue is dismissed.

Cross Objection No. 46/Ahd/2020

18. The grounds of appeal raised by assessee in CO read hereunder:

- “1. The C.I.T.(Appeals) erred in not appreciating the facts that, there is no application of mind by joint CIT while giving approval u/s 153d vide no.17/2013 dated 29-12-2016 as mentioned by Assessing Officer in his order dated 29-12-2016 para 7 and therefore, the whole proceedings under sec. 153A(1)(b) is itself bad in law and void and liable to be quashed.*
- 2. That, it is respectfully prayed that, this cross objection is going to the root of the matter regarding jurisdiction of the authority of sec.153D and it is came to our knowledge only when our new counsel has guided us recently while going through the brief of the case and therefore, this cross objection may please be decided on merits.*

19. At the time of hearing, the learned AR for the assessee clearly submitted that in order to avoid protracted litigation, he does not want to press the issue. The Cross Objection is also noticed to be belated by 575 days. The CO of the assessee is accordingly dismissed as withdrawn.

I.T.A. No. 2376/Ahd/2018

20. In its appeal, the Revenue has challenged the relief granted by the CIT(A) towards additions of Rs.36,36,760/- made on account of unexplained investment as capital of the assessee.

21. The AO made additions of Rs.32,88,000/- (2% of Rs.16,44,00,000/-) towards purchase of land at Althan by Shah Hiralal LLP and since the assessee's share in the said firm is 2%. The AO further made additions of Rs.2,48,760/- on account of unaccounted expenses being 2% of total expenses (2% of total expenses Rs.1,24,38,000/- incurred by Shah Hiralal Buildcon LLP). The AO alleged that assessee has failed to convey with evidence that he has not made any cash contribution of Rs.32,88,000/- towards his share as presumed.

22. The CIT(A) in the appellate order dated 17.07.2018 has failed to adjudicate the issue inadvertently. Accordingly, the rectification application was moved by the assessee for disposal of the grievance. The CIT(A) vide rectification order passed under s.154 of the Act for AY 2012-13 dated 11 September, 2018 accepted the mistake apparent from record and disposed off the issue in favour of assessee by a brief discussions as under:

"Ground No.3 : The ld. AO has gravely erred in presuming that the appellant having made investment as Capital in shah Hiralal Buildcon LLP of Rs.3636760/- on protective basis. The same is prayed for deletion.

2. As this is a mistake apparent from record, hence, this ground of appeal is decided now by passing this order u/s. 154 of the Act. This ground of appeal is against the additions of Rs.3636760/- made by the AO on protective basis considering that the appellant has invested Rs.3288000/- as investment in land purchased and Rs.248760/- as expenditure totaling to Rs.3636760/- and the same remains unexplained. As substantive additions have been made in the case of Shah Hiralal Buildcon LLP, the AO made the protective additions.

3. The appellant contended that no investment was made by him in purchasing the land and incurred expenditure which remains unexplained as stated by the AO. The payment for purchase of land in cash was made from the booking amount received on booking of units of the projects and same is evident from 'the seized material. These seized documents were relied upon by the AO to make additions in the hands of Hiralal Buildcon LLP on substantive basis.

*4. The facts of the case have been considered carefully. The AO made additions on substantive basis in the hands of Hiralal Buildcon LLP for unexplained investment made in purchase of land but the same has been deleted by my order dated 13.08.2018 while deciding the appeal of Hiraial Buildcon LLP for A.Y. 2012-13. in the said appeal order, the seized material has been analysed in detail and it has been adjudicated that the cash payment for purchase of land was paid out of amount received against booking of units in the projects. Therefore, additions of Rs.3288000/- made by the AO considering the unexplained investment by the AO is not found justified and hence, **deleted**. Regarding the additions of Rs.2487607-considering as unexplained expenditure, it has been considered in the appellate order passed for Hiralal Buildcon LLP for A.Y. 2012-13 that the finding of the AO are factually incorrect as the seized material have been analysed wrongly. Therefore, the substantive addition was deleted in the hands of Hiraial Buildcon LLP and it is hereby **deleted** also. This ground of appeal is **allowed**.”*

23. Aggrieved by the relief granted by the CIT(A), the Revenue has preferred appeal before the Tribunal.

23.1 The learned DR for the Revenue mainly relied upon the findings given by the AO.

23.2 The learned AR, on the other hand, defended the action of the CIT(A) and also pointed out that papers seized by the department which forms basis for presumption of contribution by the assessee in proportion to the partnership share is a wild surmise and is devoid of any legally sound basis. The papers seized relates to the partnership firm shah Hiralal Buildcon LLP and not to the assessee herein. It was further pointed out that substantive additions were made in the hands of the partnership firm.

24. We have carefully considered the rival submissions. The additions towards presumptive cash contribution amounting to Rs.32,88,000/- in proportion to the partnership share appears *prima facie* inexplicable. The onus is on the Revenue to bring some cogent evidences on record to establish that alleged unaccounted cash contribution has been actually made by the assessee partner indeed. Similarly, the alleged unaccounted expenses for

construction project carried out by the partnership firm has been attributed to the partner in proportion to the partner share as a figment of imagination without any legally sustainable basis. The impugned action of AO is apparently driven by misplaced suspicion and a mere *ipse-dixit* which is not objectively justifiable. It is well settled that suspicion, howsoever strong, cannot take the place of proof. In our view, the CIT(A) has analyzed the facts in its natural perspective and has rightly reversed the action of AO. We do not see any perceptible merit in the appeal of the Revenue and thus decline to interfere.

25. In the result, appeal of the Revenue is dismissed.

26. In the combined result, Miscellaneous Application filed by Revenue is allowed and both appeals of the Revenue are dismissed whereas assessee's CO is dismissed as withdrawn.

This Order pronounced on 15/12/2020

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Ahmedabad: Dated 15/12/2020

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

TRUE COPY

S. K. SINHA

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

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।