

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT)**

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

I.T.A. No. 3339/Ahd/2015
(Assessment Year: 2011-12)

ITO Ward-3(3)(8), Ahmedabad	Vs.	M/s. Atmiya Infrastructure 3 rd Floor, Sanidhya, Opp. Anand Nagar, 100ft. Road, Satellite, Ahmedabad-380015
PAN No. AAFRA9848H		
(Appellant)	..	(Respondent)

Appellant by :	None
Respondent by :	Shri Mehul K. Patel, AR

Date of Hearing	03.03.2021
Date of Pronouncement	30.04.2021

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the Revenue is directed against the order dated 24.09.2015 passed by the Commissioner of Income Tax (Appeals) –4, Ahmedabad arising out of the order dated 27.03.2014 passed by the ITO, Ward-9(2), Ahmedabad under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) for Assessment Year 2011-12.

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2. The deletion of addition of Rs. 3,50,00,000/- made on account of unexplained investment under Section 69 of the Act has been challenged before us.

3. The appellant is engaged in the business of real estate development. On 31.12.2009 an agreement was entered into by and between one Shri Deepakkumar Vadilal Patel and M/s. Vadilal Maganlal & Co. with a company namely Tripada Infrastructure Pvt. Ltd. (TIPL) through its Director Keyur Babulal Modi for selling of two plots of land lying and situated at Survey Nos. 1712 & 1713 admeasuring about 6186 sq. mtrs. and 708 sq. mtrs. respectively at Bavla for a total consideration of Rs. 1,14,82,000/- whereupon the said Tripada Infrastructure Pvt. Ltd. Company paid a cash of Rs. 1 lakh to the sellers and further an amount of Rs. 3 lakhs to the sellers between 09.06.2010 to 31.07.2010.

4. Subsequently, the said company conveyed the sellers it's unwillingness to purchase the said lands and then the appellant came into the picture as the intending purchaser of the said properties. As a result, a new tripartite agreement being Banakhat dated 07.09.2010 was entered into and executed between the said sellers namely Shri Deepakkumar Vadilal Patel and M/s. Vadilal Maganlal & Co. and the appellant M/s. Atmiya Infrastructure as the purchaser. Tripada Infrastructure Pvt. Ltd. has been made a confirming party to the said tripartite banakhat dated 07.09.2010 with the condition that the said confirming party would be paid Rs. 3,50,00,000/- for waiving its right on the said lands in terms of the original Banakhat dated 31.12.2009 and the original sellers would get

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Rs. 1,37,55,466/- . It is relevant to mention that on 12.10.2010 the original banakhat dated 31.12.2009 executed between the sellers and the Tripada Infrastructure Pvt. Ltd.(TIPL) was cancelled and resultantly the purchaser i.e. the appellant herein paid a total sum of Rs. 3,54,00,000/- to the said Tripada Infrastructure Pvt. Ltd.(TIPL) through banking channel by cheques. Relevant to note that the cancellation deed specifically mentioned of Rs. 4 lakhs paid by the TIPL to the sellers as advance at the time of entering into the original Banakhat dated 31.12.2009. In fact, the total consideration was Rs. 4,38,06,069/- and Rs. 49,49,397/- as per the sale deed dated 01.11.2010 and dated 25.10.2010 respectively for both the plots aggregating to Rs. 4,87,55,466/- out of which 3,50,00,000/- was paid to TIPL with the consent of the sellers for waiving their rights acquired by virtue of Banakhat dated 31.12.2009 as return on their investment and profit on the same.

5. During the assessment proceeding since the confirming party namely Tripada Infrastructure Pvt. Ltd. (TIPL) did not remain present in terms of the summons issued by the Ld. AO, the amount paid to the said company has been added to the total income of the assessee under Section 69 of the Act as unexplained investment. It is relevant to mention that the summons could not be served upon the said parties as their office was found closed. In appeal the addition was deleted by the Ld. CIT(A). Hence, the instant appeal before us by Revenue.

6. At the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee submitted before us that the impugned

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addition was made entirely on surmise and conjecture and without proper consideration and appreciation of the facts of the case duly supported by comprehensive evidences furnished as available on record. In fact, during the assessment proceeding the entire set of documents namely the Banakhat dated 31.12.2009 entered into between the sellers and the Tripada Infrastructure Pvt. Ltd. through its Director Keyur Babulal Modi, the tripartite banakhat dated 07.09.2010 entered into by and between the sellers, the purchaser i.e. the appellant and TIPL as the confirming party, the cancellation Deed dated 31.12.2009, the register Sale Deed of both the lands lying and situated at Survey No. 1712 & 1713 at Bavla, the ledger account of lands purchased from the books of accounts of the firm, the details of books of accounts of the appellant duly reflecting the payments of the confirming party i.e. TIPL, the ledger accounts of the said TIPL from their books of accounts and the contra account duly confirmed by the said party were duly submitted by the appellant. The declaration given by the TIPL in regard to receive of the amount of 3.50 crores, the audited balance sheet of the TIPL for the year in question A.Y. 2011-12 was also made available before the Ld. AO as also submitted by the Ld. AR. It was further submitted that the seller made the statement categorically confirming that in no uncertain terms the appellant herein had paid 3,54,00,000/- to Tripada. In that view of the matter there was no iota of evidence to disprove the genuineness of the purchase of land by the appellant and the payments made towards the same. Though, the assessee could not produce the confirming party i.e. TIPL the assessee filed a declaration made by the director of the said

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company TIPL declared on 28.02.2014 along with the forwarding letter dated 19.03.2014 which clarifies the entire facts of the matters as already discussed above. Taking into consideration the entire fact of the matter the Ld. CIT(A) deleted the addition denying the applicability of the Section 69 of the Act merely on the basis of suspicion in the absence of any evidence on record. The Ld. AR, therefore, relied upon the order passed by the First Appellate Authority.

7. The Ld. DR relied upon the order passed by the Ld. AO.

Further that he has questioned the genuineness of the transaction of the assessee with the said TIPL which remained unverified in the absence of the said party before the Ld. AO.

8. We have heard the respective parties and we have also perused the relevant materials available on record.

The Ld. First Appellate Authority while deleting the addition observed as follows:-

“...In as much as genuineness of the payment of Rs.3.50 crores to Tripada Infrastructure Pvt. Ltd., the confirming party is concerned, I agree with the argument of the Ld. A.R. that keeping in view the evidences available on record, there is little scope for doubting the genuineness of the payment made especially in absence of any contrary evidence brought on record by the AO. It is seen that the evidences in form of ledger account of Tripada Infrastructure Pvt. Ltd. and ledger account of lands purchased from the books of account of the firm along with copy of bank accounts of the appellant firm which duly reflects the payments made to the sellers and the confirming party viz. Tripada Infrastructure Pvt. Ltd., which fact has not been disproved by the AO coupled with the declaration given by Tripada Infrastructure Pvt. Ltd. confirming the amount of Rs.3.50 crores received by them from the appellant firm alongwith their return of income and audited Balance Sheet for the year

in question are in my view sufficient and adequate evidences to justify the genuineness of the payment. That apart, as admitted by the AO himself in the order that the sellers in their statement recorded during the course of assessment proceedings have categorically confirmed such payment made by the appellant to Tripada Infrastructure further substantiates the genuineness of the payment made. Thus, there appears to be no reason to doubt the genuineness of the payment in absence of even an iota of, contrary evidence brought on record. I also find that the source of payment of Rs.3.50 crores to Tripada Infrastructure Pvt. Ltd. is not doubted by the AO, the same having been made by account payee cheque and duly reflected in the books of the appellant but the addition appears to have been made merely because the said party did not attend in response to the summons issued. Mere non-attendance on part of the confirming party viz. Tripada Infrastructure Pvt. Ltd. does not warrant any adverse inference in case of the appellant, more particularly, in view of the comprehensive evidences furnished and more particularly when the receiving party has confirmed such receipt by their declaration filed before the AO wherein interalia it is also stated that the company is regularly assessed to tax and the amount received is duly reflected in their books of account. It is also not the case of the AO that the declaration filed by the confirming party viz. Tripada infrastructure Pvt. Ltd. is false in as much as the averments made therein. In the given facts and circumstances, the onus had shifted to the AO who has not been able to discharge the same by bringing on record any material evidences in support of his suspicion about the genuineness of the payment made to the confirming party.

Coming to legal aspect of the issue, I agree with the A.R. that since the investment in question for which the said part payment of Rs.3.50 crores has been made to the confirming party having been duly reflected in the books of account, the provisions of Section 69 of the Act are not applicable as such since the primary condition for invoking the said section is that the investment made is not recorded in the books of account, which at the outset is not the case in case of the appellant The ratio of jurisdictional High Court's decision in the case of CIT Vs. M.B. Patel 221 Taxmann 143 (Guj.) is clearly applicable.

Further, the appellant has offered the explanation regarding the source of investment, which in fact has not been doubted by the AO. On perusal of the assessment order, I find that there is no observation of the AO that the explanation offered by the assessee was not satisfactory. Thus, the argument of the Id. A.R. that the AO has merely doubted part of the consideration paid for purchase of lands i.e. payment of Rs.3.50 crores made to the confirming party out of total payment of Rs.4,87,55,466/- as per sale deeds and has accepted the other part of the sale deed by accepting the payment made to the seller is wholly illogical and contrary to each other, has sufficient force since

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the sale deed is duly registered and the veracity of the same has not been questioned as a whole by the AO at any stage. Further, on perusal of the assessment order, I find that the AO has not suspected or questioned the transaction with the confirming party on the ground of adequacy/inadequacy of consideration but has merely doubted the genuineness of the payment made solely on the ground of non-attendance of the said party in response to summons issued. It is by now settled law that mere suspicion without any evidence on record could not be the basis for making an addition to income u/s.69 of the Act, 1961. Thus, considering the facts in totality and respectfully following the ratio laid down in various case laws (supra) the addition of Rs. 3,50,00,000/- made by the AO is hereby deleted.”

Upon perusal of the entire set of documents as made available before us it is ascertained that payment were made to TIPL through banking channel. The Ld. AO has failed to disprove such facts. The statement of TIPL confirming the payment of Rs. 3.50 crores made by the appellant supported by corroborating evidence being the return of income and the balance sheet of the year under consideration keeps no scope of questioning the genuineness of the payment made by the appellant. The source of payment made by the appellant has neither been doubted by the Ld. AO. Therefore, under the circumstances the provisions of Section 69 of the Act are not applicable in the absence of primary condition for invoking the said section that the investment made is not recorded in the books of accounts. The ratio laid by the jurisdictional High Court in the case of CIT vs. M.B. Patel 221 taxmann 143(Guj.) is rightly applicable to the instant case; the investment made by the assessee were duly shown; the source of investment as made from the assessee's account has neither been doubted by the Ld. AO. The plea of the Ld. AO of not being able to verify the genuineness of the transaction with TIPL in their absence cannot be said to be justified when

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all other evidences speak otherwise. The appellant company and the confirming parties as well regularly assessed to tax and the amount received is duly reflected in their books of accounts. Neither it is the case of the revenue that the declaration made by the confirming party through its director is false and, therefore, considering entire aspect of the matter the addition on account of unexplained investment is not sustainable in the eye of law fact of which has rightly been taken care of by the Ld. CIT(A) while deleting addition as it reflects from the order impugned without any ambiguity so as to warrant interference and hence appeal preferred by the Revenue is found to be devoid of any merit and thus dismissed.

9. In the result, Revenue's appeal is dismissed.

This Order pronounced in Open Court on	30/04/2021
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Sd/-
(WASEEM AHMED)

ACCOUNTANT MEMBER

Ahmedabad; Dated 30/04/2021

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd/-

(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad