IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 34 of 2018

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PRINCIPAL COMMISSIONER OF INCOME TAX 2....Appellant(s)

Versus

MILLENNIUM PARK HOLDINGS PVT LTD....Opponent(s)

==

Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE B.N. KARIA

Date : 12/02/2018

ORAL ORDER
(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. The Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal dated 30.03.2017 raising following questions for our consideration:

> *"[A] Whether the Appellate Tribunal has erred in law and on facts in upholding the order of CIT(A) deleting the additions on account of unaccounted payment of Rs.56,62,497/- in A.Y. 2005-06 for purchase of land ?*
>
> *[B] Whether the order of the Appellate Tribunal is perverse as it has failed to properly appreciate the contents of the documents seized during the course of the Search and seizure ?*
>
> *[C] Whether the Appellate Tribunal has erred in law by not properly appreciating the import of the provisions of section 292C of the Act*

which raises the presumption regarding the correctness of entries in any documents seized and such presumption is not limited to entries in books of account as provided in section 34 of the Evidence Act?

[D] Whether the Appellate Tribunal has erred in law and on facts by not appreciating that the Income Tax assessments proceedings are based on the principle of preponderance of probability and not on the basis of proof beyond doubt?

[E] Whether the Appellate Tribunal has erred in law and on facts by not relying on the primary documents (which were seized during the course of Search and seizure) and wrongfully insisting on further corroborative evidence?"

2. Issue pertains to the additions made by the Assessing Officer on the basis of material found during the search. The Assessing Officer was of the opinion that the land purchased by the assessee was at a cost of Rs.70,000/- per vigha. The assessee having purchased 40.58 vighas of land, the total cost price would be 28.40 lakhs. As against this, the assessee has disclosed price of Rs.3.88 lakhs. The difference of Rs.24.52 lakhs was therefore undisclosed.

3. The Commissioner of Income Tax (Appeals) however noted that the assessee had during the year under consideration, purchased only 7.4 vighas of land. The

undisclosed amount, even going by the Assessing Officer's price estimate of Rs.70,000/vigha, was covered under the total disclosure of Rs.5 lakhs made by the assessee in the return pursuant to search. Such being the position which the Tribunal confirmed, no question of law arises.

4. Tax Appeal is dismissed.

(AKIL KURESHI, J.)

(B.N. KARIA, J.)

ANKIT