

**(2016) 02 GUJ CK 0165**  
**In the Gujarat High Court**  
**Case No : Tax Appeal No. 149 of 2000**

Ambica Realities Pvt. Ltd.

APPELLANT

Vs

The Dy. C.I.T.

RESPONDENT

**Date of Decision : 22-02-2016**

**Acts Referred:**

Income Tax Act, 1961 — Section 132

**Citation : (2016) 02 GUJ CK 0165**

**Hon'ble Judges : Akil Abdul Hamid Kureshi and Z.K. Saiyed, JJ.**

**Bench : Division Bench**

**Advocate : S.N. Soparkar, Advocate, for the Appellant; Pranav G. Desai, Advocate, for the Respondent**

**Final Decision : Dismissed**

## **Judgement**

Akil Abdul Hamid Kureshi, J.—1. Assessee has filed this tax appeal in which following substantial question of law came to be framed:

"1. "Whether, in the facts and circumstances of the case, the ITAT was right in law in holding that a sum of Rs. 40,28,613 was required to be confirmed "being the suppression of cost of construction" when it had already given a finding that an amount of Rs. 39,20,400 was invested by the appellant outside its books?"

2. Brief facts are as under.

2.1 Appellant, assessee is a company registered under the Companies Act and is engaged in the business of building construction. The assessee was subjected to search under Section 132 of the Income Tax Act, 1961 ("the Act", for short) in December, 1996. During such search, Shri D.V. Jethani, one of the Directors of the company gave a statement on 9.1.1997 and admitted unaccounted receipt of Rs. 39.20 lacs (rounded off). During the course of block assessment proceedings, the Assessing Officer added the entire sum of Rs. 39.20 lacs by way of income of the assessee. The Assessing Officer also was, prima-facie, of the opinion that cost of construction indicated by the assessee in the books of accounts was not

correct. He, therefore, referred the matter to the Department Valuation Officer for his opinion. On the basis of such opinion and other materials on record, Assessing Officer concluded that in the cost of construction, there was under valuation of Rs. 40.28 lacs (rounded off).

3. The assessee carried the matter in appeal and raised the questions of addition of Rs. 39.20 lacs as also the further addition of Rs. 40.28 lacs. The Tribunal confirmed the decision of the Assessing Officer on both counts. Thereupon, the assessee has filed this appeal in which, as noted above, only question framed for our consideration is regarding the further addition of Rs. 40.28 lacs when a sum of Rs. 39.20 lacs was already added forming the part of the assessee's disclosure during search. The case of the assessee is simple, viz. that the Assessing Officer having made such additions under the head of investment outside the books, it was thereafter, not possible for the Assessing Officer to estimate the cost of construction and to make further net addition of Rs. 40.28 lacs. Both additions cannot be simultaneously made which in view of the assessee would amount to double additions.

4. Since there is no dispute in this appeal regarding addition of Rs. 39.20 lacs, we may not refer to the discussion of the Assessing Officer and the Tribunal in this respect. However, we may briefly record that it was during the statement recorded on 9.1.1997 of Shri D.V. Jethani, one of the directors of the Company that he had made the disclosure of having received sum of Rs. 39.20 lacs which was not accounted for. Such a statement was never retracted all throughout during the assessment proceedings. It was on this basis therefore the Assessing Officer made addition of Rs. 39.20 lacs which the Tribunal upheld.

5. Having made such addition, the Assessing Officer was still not satisfied about the correct cost of construction having been reflected by the assessee in the books, he, therefore, called for the DVO's report. In the order of assessment, he estimated the cost of construction at Rs. 2.32 crores (rounded off). He compared such fair value of construction that the assessee's book disclosure for the period under consideration which came to Rs. 191.85 lacs (rounded off) inclusive of addition of Rs. 39.20 lacs disclosed by the assessee during the search. This difference, therefore, in the opinion of the Assessing Officer was the assessee's additional income. He, therefore, in addition to said sum of Rs. 39.20 lacs made further addition of Rs. 40.28 lacs.

6. From the perusal of the order of Assessing Officer as well as of the Appellate Tribunal, it clearly emerges that the disclosed cost of construction of Rs. 191.85 lacs was inclusive of Rs. 39.20 lacs of disclosure made by the assessee during the search. The Assessing Officer as well as the Tribunal at multiple places have referred to this figure inclusive of the disclosure by the Director of the assessee-Company. That being the position the Assessing Officer compared the fair value of construction cost, the expenditure disclosed by the assessee in the books of accounts which was added by a sum of Rs. 39.20 lacs admitted and disclosed by assessee during search. If this be so, the difference between two figures,

namely, Rs. 40.28 lacs was justifiably added by the Assessing Officer by way of undisclosed income. Had the said figure of Rs. 191.85 lacs of cost of construction not accounted for the disclosed sum of Rs. 39.20 lacs during search, the counsel for assessee would have been justified in arguing that further addition of Rs. 40.28 lacs by way of estimation of cost of construction would amount to double taxation. That is not the case here.

7. Counsel for the appellant, however, raised an additional contention that the Assessing Officer could not have referred the cost of construction for his valuation. However, in the present appeal, we are not concerned with this controversy. The only question framed by the Court is with respect to addition of sum of Rs. 40.28 lacs when there is already a finding (in other words corresponding addition) of a sum of Rs. 39.20 lacs by way of investment by the assessee outside the books.

8. The question is, therefore, answered against the appellant, assessee.

9. Tax Appeal is dismissed.