ITAT Bar Association, Ahmedabad

Digest of useful judgments

Volume 4

1st December, 2025

Index

ITAT Bar Association, Ahmedabad

Catch note of some useful judgments

Volume 4: 01st December, 2025

Compiled by: Mehul K. Patel, Parimalsinh Parmar, Jimi Patel, Sulabh Padshah, Vivek Chavda, Jayraj Dhakan, Rushin Patel, Kushal Fofaria

1. **S.54F** – Non-deposit of sale consideration in Capital Gains Account Scheme before the due-date of filing return of income under section 139(1) of the Act is not fatal so as to deny deduction u/s 54F. If the statutory requirement of utilization of funds for purchase/construction of 'new asset' within the prescribed time is fulfilled, deduction u/s 54F is allowable.

   [Shri Avanasiyappan Eswaran vs. ITO - ITA No. 1666/CHNY/2026 - Date: 08.09.2025 - Chennai ITAT]

2. **S.56(2)(x)** – Assessee purchased 'agricultural land' for a consideration higher than prevalent 'jantri rate' for 'agricultural land'. AO made addition u/s 56(2)(x) by treating such 'agricultural land' as 'non-agricultural land' and by applying rates applicable to 'non-agricultural land' based on 'draft AUDA scheme'. ITAT held that charging of higher stamp duty by Sub-Registrar's office based on a draft AUDA scheme would not alter 'inherent nature' of land. Further, 'stamp duty valuation' or 'classification for fiscal purposes' does not determine the 'character' of property under the Income-tax Act. The fact that assessee has paid consideration higher than jantri rate applicable to agricultural land further proved that there was no underreporting of value or benefit derived by the assessee that could warrant the application of S.56(2)(x). Accordingly, the addition made u/s 56(2)(x) was deleted.

   [Ishwarbhai Gordhanbhai Prajapati vs. ITO – ITA 1344/Ahd/2025 – Date: 04.11.2025 – Ahmedabad ITAT]

3. **S.69A** – AO made addition u/s 69A of the Act in respect of 'cash deposits' in bank account and such addition was confirmed by CIT(A). ITAT found that assessee's brother, an NRI, had gifted money to the assessee by cash as well as by cheque. Cash deposits in question were sourced from such gift. Documentary evidences such as notarized gift deed, donor's passport, donor's bank statement as well as assessee's bank statement were part of record. ITAT further found that revenue had no objection to the gift deed. Under such circumstances, ITAT held that having accepted the gift deed and amounts received by the assessee, revenue could not have objected to the cash deposits at a later date. Accordingly, addition u/s 69A of the Act was deleted.

   [Ajaykumar Mahadevbhai Patel vs. ITO – ITA 1197/Ahd/2025 – Date: 25.08.2025 – Ahmedabad ITAT]

4. **S.69C** – 'Entire purchases' cannot be disallowed merely based on statement of an entry operator especially when corresponding sales have been accepted and no enquiry has been made to find out cash trail of such purchase transactions. Absence of documents evidencing transportation of underlying goods merely implies that such purchases were made from unverified sources and profit derived in such transactions will be higher than GP. Under such circumstances, 'only profit element' embedded in the disputed purchases is liable to be taxed. Accordingly, ITAT restricted the addition to 5% of underlying purchases.

   [Indian Ion Exchange & Chemicals Ltd. vs. ITO – ITA 1420/Ahd/2025 – Date: 16.10.2025 - Ahmedabad-ITAT]

5. **S.127** – During the course of search in the case of Managing Director ('searched party') of the assessee-company, certain transactions pertaining to Managing Director were found from the premises of the assessee-company. Based on this, PCIT transferred assessee's case u/s 127 from Ahmedabad to Bengaluru for 'coordinated investigation', invoking CBDT Circular dated 24.05.2023. Admittedly, no incriminating material was found during search linking the 'assessee-company' with 'searched party', and even in the assessment order of 'searched party', no addition was made indicating any

transaction with the 'assessee-company'. Hon'ble High Court held that in absence of any material establishing such nexus, transfer of case of the assessee-company to Bengaluru under the guise of 'coordinated investigation' was unjustified. It was further held that CBDT's Circular dated 24.05.2023 was inapplicable in such circumstances. Therefore, order u/s 127 was quashed.

[Chartered Capital and Investment Limited vs. PCIT – SCA 18886 of 2023 – Date: 07.10.2025 – Gujarat High Court]

6. **S.153C** - In case of a person other than the person searched, 'date of search' is the 'date' on which 'AO of such person receives the seized material'. In this case, seized material was received by AO of the assessee (person other than the person searched) on '21.10.2021' and hence, '21.10.2021' shall be treated as the 'date of search' in case of the 'assessee'. By virtue of S.153C(3) of the Act (applicable w.e.f. 01.04.2021), no proceedings under the erstwhile S.153C could have been initiated for search action deemed to have been initiated on or after 01.04.2021. Hence, assessment framed u/s 153C was quashed by the ITAT.

[ACIT vs. Shailesh K Mistry – ITA 42 & 43/Ahd/2025 – Date: 29.09.2025 – Ahmedabad ITAT]

7. **S.251** – Though CIT(A) has power to set aside the matter to AO in view of 'proviso' to 'S.251(1)(a)' where assessment has been framed u/s 144, CIT(A) is duty bound to adjudicate 'legal ground' raised by the assessee. Here, assessee had raised a legal ground before CIT(A) to the effect that assessment order passed by 'ACIT-1(1), Raipur' was illegal since no order u/s 127 was passed for transferring assessee's case from 'ACIT-4(1), Raipur' to 'ACIT-1(1), Raipur'. However, the said legal ground was not adjudicated by CIT(A) while restoring the matter to AO for fresh adjudication on merits. Under such circumstances, ITAT restored the matter to CIT(A) for the limited purpose of deciding the 'legal ground' raised by the assessee.

[Ashta Vinayak Estate vs. ACIT – ITA 16 & 17/Rpr/2025 – Date: 04.02.2025 – Raipur ITAT]

8. **S.263** – While deciding appeal against revision order u/s 263, ITAT found that though the PCIT firmly believed that 'cash payments' in question were made by a 'firm' wherein 'assessee' was a partner, alleged cash payment was fastened to the 'assessee' in his 'individual capacity' and thus, the revision order suffered from infirmities. ITAT further found that AO had made proper enquiries, verified the evidences, called for supporting documents and thereafter, AO took a plausible view. AO had also recorded statement of the person searched who denied linking of noting on the seized material to the assessee. Neither could the revenue point out any specific enquiry that remained to be conducted, nor could the revenue place on record any incriminating material from search directly implicating the assessee. Under such facts and circumstances, revision order u/s 263 was quashed by the ITAT.

[Malay Multani vs. PCIT - ITA 1095/Ahd/2025 – Date: 14.11.2025 – Ahmedabad ITAT]

9. **S.263** – The ITAT, while deciding appeal against revision order u/s 263, found that PCIT's decision to invoke S.263 was largely influenced by the existence of an 'audit objection'. ITAT held that 'audit objection', being only an expression of opinion by the audit wing, cannot confer jurisdiction for revision u/s 263. ITAT further found that the underlying issue (alleged bogus capital gain on sale of penny stock) was threadbare examined by AO and after conducting due enquiries, AO took a plausible view as to not making any addition in respect of the same. ITAT held that for valid invocation of S.263, order passed by AO must be both, 'erroneous' as well as 'prejudicial to the interest of the revenue'. If AO adopts one of the permissible views, such order cannot be revised. Accordingly, order u/s 263 was quashed by the ITAT.

[Smt. Neetu Hurkat vs. PCIT – ITA 957/Ahd/2024 – Date: 14.11.2025 – Ahmedabad ITAT]

10. **S.270A** – AO levied penalty u/s 270A for 'under-reporting' of income in relation to an addition made u/s 56(2)(x) in respect of 'difference' between 'stamp duty value' and 'purchase price'. ITAT held that any addition made u/s 56(2)(x) of the Act on the basis of 'difference' between 'stamp duty value' and

'purchase price' cannot be considered as 'under-reporting' of income so as to invoke provisions of S.270A of the Act.

[Narayanbhai Shivabhai Patel vs. ITO – ITA 1357/Ahd/2025 – Date: 18.09.2025 – Ahmedabad ITAT]

11. **S.271(1)(c)** – Penalty u/s 271(1)(c) of the Act cannot be levied on an addition made/sustained in respect of 'estimated' gross profit on alleged unaccounted business income from sale of silver ornament when such addition is purely based on uncorroborated presumptions, without there being any positive evidence in support of the same.

[Manish Dhirajlal Mehta L/H of Late Dhirajlal C. Mehta vs. ACIT – Tax Appeal 833 to 836 of 2005 – Date: 05.11.2014 – Gujarat High Court]

12. **S.89 of DTVSV Scheme 2024** – Assessee filed appeal before the CIT(A) on 18.04.2024 against assessment order passed u/s 144 r.w.s. 147 dated 31.01.2022, which was pending as on the 'specified date' under the DTVSV, 2024. Assessee filed declaration under DTVSV, 2024. Later, CIT(A) refused to condone delay in filing the appeal and held it to be 'non-maintainable'. Based on this, declaration filed under DTVSV, 2024 was rejected on the ground that an invalid appeal cannot be considered as pending on the 'specified date'. Hon'ble High Court held that even if delay in filing the appeal was not condoned by CIT(A), appeal would still be regarded as 'pending', and therefore, 'designated authority' was not justified in rejecting the declaration as inadmissible. Hence, the PCIT was directed to process the declaration.

[Narendrabhai Parsottambhai Chauhan vs PCIT – SCA 13124 of 2025 – Date: 07.10.2025 – Gujarat High Court]

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आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 1666/CHNY/2025**

निर्धारण वर्ष/Assessment Year: 2016-17

Shri Avanasiyappan Eswaran, No.2/88, Chettipalayam, Angeripalayam (PO), Tiruppur – 641 603.	Vs.	**The Income Tax Officer,** Ward 1(2), Coimbatore.
PAN: ACAPE 4493R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Ramachandran, CA
प्रत्यर्थी की ओर से/Respondent by : Ms. Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing : 04.09.2025
घोषणा की तारीख/Date of Pronouncement : 08.09.2025

आदेश/ O R D E R

PER GEORGE GEORGE K, VICE PRESIDENT:

This appeal filed by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 19.05.2025, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2016-17.

2. The solitary issue raised is regarding the disallowance of claim of deduction u/s.54F of the Act.

3. Brief facts of the case are as follows:

The assessee is an individual deriving agricultural income and income from other sources. For the assessment year 2016-17, the return of income was filed on 15.09.2017 declaring income of Rs.1,84,120/- and agricultural income of Rs.50,000/-. The assessment was selected for scrutiny and notice u/s.143(2) of the Act was issued on 11.08.2018. The assessee had sold an agricultural land and disclosed capital gains thereon in the return filed for the assessment year 2016-17. The assessee had also claimed deduction u/s.54F from the Long-Term Capital Gains arising from sale of land for the construction of new asset i.e., residential building. The claim of deduction u/s.54F of the Act was denied by the AO in the assessment concluded u/s.143(3) of the Act (order dated 28.12.2018) and the AO added Long Term Capital Gains to the returned income. The relevant finding of the AO reads as follows:-

> *3. The assessee has not submitted any evidences for the construction of residential house viz. Copy of construction approval from the competent authority, period of construction of house, date of completion of house construction and valuation report from an approved valuer. Therefore, the claim of deduction u/s 54F is denied.*

4. Further, the assessee has explained that the source for the cash deposits made in the bank account during demonetisation period (08.11.2016 to 31.12.2016) was from the sale of lands and for the same land the deduction u/s 54F was claimed. The amount received from sale of lands during the A.Y.2016-17 was explained as source for the cash deposits during demonetisation period i.e A.Y.2017-18. Therefore, it is evident that the net consideration from the sale of lands was not utilised for the construction of new asset before filing of return of income u/s 139(1) i.e 31.07.2016.

5. After examining the AIR information and the details filed by the assessee, it is clear that the assessee is not eligible to claim deduction u/s 54F. Accordingly, the assessment is completed as under.

Returned income : Rs.1,84,120 + 50,000(Agri)
Add: Long Term Capital Gain : Rs.91,47,514
Assessed Income : Rs.1,84,120 + 91,47,514 (LTCG) + 50,000(Agri)

3. Aggrieved, assessee filed appeal before the First Appellate Authority. Before the First Appellate Authority (FAA), the assessee admitted that the sale proceeds of the agricultural land was not deposited in a separate capital gains account scheme ('CGAS') as required u/s.54F(4) of the Act. However, it was contended that the investment in the new house was eventually completed and the sale proceeds of the agricultural land was utilized in the construction of new house within the stipulated time (i.e., 3 years from date of sale of original asset). The FAA however rejected the contention of the assessee. The FAA held that the assessee ought to have deposited the unspent capital gains in the CGAS account before the due date of filing the return u/s.139(1) of the Act. In support of his conclusion, the FAA relied

on judicial pronouncements which he extracted at para 6.3.4 of the impugned order. As regards assessee's contention that deduction u/s.54F of the Act should be determined on the actual consideration received and not on the deemed consideration u/s.50C of the Act was not adjudicated by the FAA since the entire claim of deduction u/s.54F of the Act was denied for the reason that sale proceeds of the agricultural land sold was not deposited in the capital account scheme. The relevant finding of the CIT(A) regarding denial of deduction u/s.54F of the Act reads as follows:-

6.3.3. Examination of Facts and Appellant's Contention:

- *The appellant has admitted that they did not deposit the unspent capital gains in a CGAS account before the due date for filing the return under Section 139(1).*

• Instead, the appellant claims to have directly utilized the funds for house construction, which is argued to be substantive compliance.

• However, substantive compliance cannot override a specific statutory requirement. The law mandates CGAS compliance, and failure to adhere to this requirement disqualifies the appellant from claiming the exemption. • The appellant's reliance on the concept of "substantial compliance" is misplaced, as the Supreme Court in CIT v. Hemsons Industries [(2001) 251 ITR 693 (SC)] has held that procedural requirements cannot be ignored even if the ultimate objective is achieved.

6.3.4. Judicial Precedents Supporting Mandatory CGAS Compliance:

- *CIT v. Ms. Jagriti Aggarwal [(2011) 339 ITR 610 (P&H HC)]: The court emphasized that deposit in CGAS is a statutory requirement for claiming exemption under Section 54F.*

• Bharati C. Kothari v. ITO [(2016) 69 taxmann.com 69 (Mumbai Trib.)]: It was held that failure to deposit unutilized capital gains in

CGAS disentitles the assessee from exemption, regardless of actual construction.

• CIT v. Sugamchand C. Shah [(2012) 211 Taxman 19 (Guj HC)]: The court reiterated that non-compliance with CGAS provisions is fatal to the exemption claim.

6.3.5. Conclusion and Decision on Issue 3:

- *The appellant has failed to comply with the mandatory requirement of depositing unspent capital gains in CGAS before the due date under Section 139(1).*

• The argument of "substantial compliance" cannot override the clear statutory requirement of Section 54F(4).

• Accordingly, the AO has rightly disallowed the claim of exemption under Section 54F.

4. Aggrieved by the order of the FAA, assessee has filed the present appeal before the Tribunal raising the following grounds:-

1) The Order of the Ld. CIT(A), NFAC is unsustainable, both on law and on the facts of the case.

2) The Ld. CIT(A) failed to appreciate that the Assessee has constructed a house within the time period of 3years and has complied with the substantive provisions of Sec.54F.

3) The Ld. CIT(A) erred in not understanding that the deposit into the Capital Gains Account Scheme (CGAS) is only a Directory provision and not a Mandatory provision.

4) The Ld. CIT(A) failed to notice that are plethora of case laws, including the decisions of the H'ble Jurisdictional Madras High Court, cited before him, in favour of the assessee's claim for deduction u/s 54F.

5) The Ld. CIT(A) has made the following observation (para 6.4.4 Analysis and Conclusion – page 23 of 24) without giving a clear adjudication on a ground of appeal:

> "While the appellant's contention that section 54F should be calculated on actual consideration has legal merit, this becomes irrelevant because the exemption itself has been denied due to CGAS non-compliance"

For these and other grounds that may be adduced at the time of hearing, it is humbly prayed that H'ble ITAT may be pleased to direct the Ld. ITO to allow the deduction u/s 54F claimed by the Assessee.

5. The Ld.AR reiterated the submissions that since assessee had utilized the sale proceeds of agricultural land for construction of new house within the stipulated period, non-deposit of sale proceeds in CGAS is not fatal and is entitled to deduction u/s.54F of the Act. In support of his contention, the Ld.AR relied on the following judicial pronouncements:-

i. *Hon'ble Madras High Court in the case of CIT vs. Venkat Dilip Kumar reported in [2021] 124 taxmann.com 198 (Madras) Dt.15.10.2020*
ii. *Hon'ble Madras High Court in the case of CIT vs. Umayal Annamalai reported in [2020] 118 taxmann.com 80 (Madras) Dt.22.07.2020*
iii. *Hon'ble Madras High Court in the case of CIT vs. Sardarmal Kothari reported in [2008] 302 ITR 286 (Mad) Dt.17.06.2008*
iv. *Hon'ble Karnataka High Court in the case of CIT vs. K. Ramachandra Rao reported in [2015] 56 taxmann.com 163 (Madras) Dt.14.07.2014*
v. *ITAT, Chennai Bench in the case of Seetha Subramaniam vs. ITO reported in [1996] 59 ITD 94 (Mad) dt. 25.04.1996*
vi. *ITAT, Kolkata Bench in the case of Sunayana Devi vs. ITO reported in [2017] 86 taxmann.com 72 (Kol) dt. 13.09.2017*

6. As regards the claim of deduction u/s.54 of the Act should be calculated on the actual consideration and not on the deemed consideration u/s.50C of the Act, the Ld.AR relied on the Jaipur Bench order of the Tribunal in the case of ITO vs. Shri Raj Kumar Parashar in ITA No.11/JP/2016 (order dated 28.09.2017).

7. The Ld.DR on the other hand submitted that the impugned order is legally sustainable. The Learned Commissioner of Income Tax (Appeals) [Ld. CIT(A)] has undertaken a detailed examination

of the facts, submissions, and applicable legal provisions and rendering a reasoned finding that non-compliance with the mandatory requirement under Section 54F(4) of the Act, relating to deposit in the Capital Gains Account Scheme (CGAS), is fatal to the assessee's claim. It was contended by Ld.DR that the assessee has unequivocally admitted non-deposit of the unutilized capital gains in the CGAS within the stipulated period, though a plea of substantive compliance was raised on the ground of subsequent investment in construction. However, Section 54F(4) mandates that the unutilized portion of the capital gains must be deposited in the notified scheme before the due date of filing the return under Section 139(1), in order to avail the benefit of exemption. The Ld.DR submitted that the assessee's cash deposits made during the period of demonetization further corroborate the fact that the funds remained unutilized as on 31.07.2016. Consequently, the Ld. CIT(A) was correct in upholding the denial of exemption, applying the principle of strict interpretation of exemption provisions as enunciated by the Hon'ble Supreme Court in *Commissioner of Customs v. Dilip Kumar & Co.* [2018 SCC Online SC 747], wherein it was categorically held that exemption notifications are to be construed strictly.

8. We have heard rival submissions and perused the material on record. Before we adjudicate the issues raised, it is necessary to bring on record the relevant dates, consideration received, deemed sale value u/s.50C of the Act, etc., as detailed below:-

Date of sale of the Agricultural Land	:	*16.06.2015*
Due date for filing the ITR u/s 139(1)	:	*31.07.2016*
Due Date for filing the ITR u/s.139(4)	:	*31.03.2018*
Date of filing of the ITR (within 139(4)	:	*15.09.2017*
Due date for completion of the house - (3 yrs from the date of Original Transfer)	:	*15.06.2018*
Period of construction (within the time)	:	*11.09.2016 to 31.03.2018*
House-warming ceremony	:	*22.01.2018*
Cost of construction	:	*Rs.62,50,000*
Actual Sale consideration of asset sold	:	*Rs.60,00,000*
Deemed Sale value u/s 50C	:	*Rs.96,13,000*
LTCG (before 54F) Returned & Accepted	:	*Rs.91,47,514*
Deduction claimed u/s 54F (not allowed)	:	*Rs.91,47,514*

9. The assessee's claim of deduction u/s.54F of the Act was denied by the assessee solely for the reason that the details of construction of new asset were not furnished during the course of assessment proceedings. The FAA on the other hand denied the benefit of deduction u/s.54F of the Act only for the reason the assessee did not deposit the sale consideration of the old asset namely, the agricultural land into the bank account under CGAS scheme. The assessee has produced cost of construction of new asset certified from an approved valuer and also proof that the construction of the new house has been completed well within the

stipulated time namely three years from the date of sale of original asset. The Hon'ble Jurisdictional High Court in the case of Venkata Dilip Kumar vs. CIT reported in (2019) 419 ITR 298 (Madras) had held at para 17 of the judgment as under:-

> *17. The claim of the assessee for deduction of the disputed sum towards the additional construction cost was rejected only on the ground that the said sum was not deposited in the capital gain account. In view of my findings rendered supra, the Revenue is not justified in making such objection. On the other hand, it has to verify as to whether the said sum was utilised by the petitioner within the time stipulated under Section 54(1) for the purpose of construction. If it is found that such utilisation was made within such time, the Revenue is bound to grant deduction. Therefore, this Court is of the view that the matter needs to go back to the first respondent for considering the issue as to whether the disputed amount, claimed by the assessee as deduction, has been utilised by the petitioner towards the additional construction within the time limit prescribing under Section 54(1) and thereafter, to pass fresh order accordingly in the light of the findings and observations rendered supra. Accordingly, the writ petition is allowed and the matter is remitted back to the first respondent to pass a fresh order accordingly. Such exercise shall be done by the first respondent within a period of eight weeks. No costs.*

10. The above judgment of the Hon'ble Madras High Court was taken up in Writ Appeal by the Revenue and the same was dismissed by the Division Bench in the case reported in 437 ITR 137. Similar view was held by the Hon'ble Madras High Court in the case of CIT vs. Smt.Umayal Annamalai and CIT vs. Sardarmal Kothari *(supra)*. In light of the above judicial pronouncements of the Hon'ble Jurisdictional High Court, we hold that non-deposit of

sale consideration before filing of return u/s.139(1) of the Act in the capital gains account scheme is not fatal and deduction u/s.54F of the Act cannot be denied solely for the said reason.

11. In the present case the AO had denied claim of deduction u/s.54F of the Act solely for the reason that assessee has not produced the proof of incurring expenses for construction of new asset. Therefore, we deem it appropriate to restore the issue to the files of the AO. The AO shall examine the evidence placed on record by the assessee as regards the construction of new asset for claiming deduction u/s.54F of the Act. If the expenses have been incurred / utilized within the stipulated period prescribed u/s.54F(1) of the Act, then assessee would be entitled to deduction u/s.54F of the Act in respect of such expenses incurred.

12. The FAA in the impugned order at para 6.3.4 had relied on certain judicial pronouncements in support of his conclusion that it is mandatory for the assessee to deposit the sale proceeds in CAGS for getting the benefit of deduction u/s.54F of the Act. In this regard, it is to be mentioned that the first case law relied on by the FAA namely CIT vs. Ms. Jagriti Aggarwal (*supra),* is actually in favour of assessee. The other two case laws namely

Bharati C. Kothari vs. ITO and CIT vs. Sugamchand C. Shah (*supra)* is not on the subject of capital gains and claiming deduction u/s.54F of the Act. Therefore, the FAA's reliance on the aforementioned judgments are misplaced. Moreover, the case laws relied on by assessee before the FAA has not referred too in the impugned order.

13. Further, the assessee contended that the deduction u/s.54 of the Act should be calculated on actual consideration and not on the deemed consideration u/s.50C of the Act. In support of his contention, the Ld.AR had relied on the Jaipur Bench of the Tribunal's order in the case of ITO vs. Raj Kumar Parashar (*supra)*. Since the issue has been remanded back to the files of the AO to examine the cost of construction of the new asset, this aspect of the matter is also restored to the files of the AO.

14. Before concluding it is to be mentioned that the Ld.DR had relied on the judgment of the Hon'ble Bombay High Court in the case of Humayun Suleman Merchant vs. CCIT reported in (2016) 387 ITR 421. The judgment of the Hon'ble Bombay High Court had stated if the capital gains has not been utilized for the purpose of construction of new house nor if unutilized amounts

deposited in the bank account in terms of section 54F(4) of the Act before filing of return of income, the assessee is not entitled to deduction of unspent amount u/s.54F of the Act. In the present case, assessee had filed belated return u/s.139(4) of the Act on 15.09.2017 (within the due date for filing Return of income u/s.139(4) of the Act). Before 15.09.2017, assessee claims that he has utilized the sale proceeds of original asset in the construction of the new asset. The AO is directed to examine the claim of assessee and shall follow the dictum laid down by the Hon'ble Jurisdictional High Court judgment in the cases cited supra. It is ordered accordingly.

15. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 8th September, 2025 at Chennai.

Sd/-	*Sd/-*
(एस.आर. रघुनाथा)	(जॉर्ज जॉर्ज के)
(S.R. RAGHUNATHA)	**(GEORGE GEORGE K)**
लेखा सदस्य/ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 8th September, 2025

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Coimbatore
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "SMC", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" SMC " BENCH, AHMEDABAD

BEFORE DR. BRR KUMAR, VICE PRESIDENT
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

आयकर अपील सं/**ITA No.1344/Ahd/2025**
निर्धारण वर्ष /**Assessment Year : 2018-19**

Ishwarbhai Gordhanbhai Prajapati 43, Killol Co-op. Housing Society Nr. Prajapati Society Odhav Road Ahmedabad – 382 415	**बनाम/ v/s.**	The Income Tax Officer Ward-3(3)(5) Ahmedabad – 380 015
स्थायी लेखा सं./**PAN: ABJPPB 8281 C**		

(**अपीलार्थी/** Appellant)		(**प्रत्यर्थी/** Respondent)

Assessee by :	Shri Sulabh Padshah, AR
Revenue by :	Shri C Dharani Nath, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **15/09/2025**
घोषणा की तारीख /**Date of Pronouncement:** **04/11/2025**

आदेश/O R D E R

PER SIDDHARTHA NAUTIYAL, JM:

The present appeal has been preferred by the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'CIT(A)'] dated 21/05/2025 passed u/s.250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the Assessment Year (AY) 2018-2019.

2. The assessee has raised the following grounds of appeal:

"Your appellant being aggrieved by the order passed by the learned Ld. Commissioner of Income-tax (Appeals) [hereinafter referred to as 'Ld. CIT

(Appeals)'], Income tax Department, National Faceless Appeal Centre (NFAC) presents this appeal against the same on the following amongst other grounds:

1. The Ld. CIT (Appeals) has erred in facts and on law in confirming the action of AO making addition of Rs 18,10,640/- invoking the provisions of Section 56(2)(x) of the Act. On facts and circumstances of the case, the provisions of Section 56(2)(x) are just not attracted in case of Appellant and entire addition made being incorrect and illegal is ought to have been deleted. The same be held now.

2. The Ld. CIT (Appeals) has erred in confirming the addition made of Rs 18,10,640/- without appreciating the fact that the consideration paid by Appellant is higher. than prevailing jantri rate applicable to agriculture land at that time. It is submitted that the land purchased by Appellant is an agriculture land only and additional Jantri collected merely because of Proposed Draft TP Scheme announced by AUDA. On facts and circumstances of the case, the entire addition made wrongly interpreting provisions of Section 56(2)(x) of the Act and being completely illegal and unjustifiable be deleted in the interest of justice. The same be held accordingly.

3. The Ld. CIT (Appeals) has erred in not appreciating the fact that the land purchased by the appellant was an agriculture land on the date of purchase and not at all N.A. Land at that time. On facts and circumstances of the case, by no stretch of imagination, the provisions of Section 56(2)(x) be applied in this case considering land purchased as N.A. Land and the addition made being totally wrong and baseless be deleted accordingly.

4. The lower authorities has failed in appreciating the fact that the consideration paid by Appellant to the seller party has been duly accepted by income tax authorities in case of seller and there is no addition on this count in case of seller invoking provisions of Section 50C or any other provisions of the Income tax Act. It is therefore submitted that once consideration paid has been accepted in case of seller, the same is ought to have been accepted in case of buyer applying principal of natural justice. Thus, the addition made applying Section 56(2)(x) being unwarranted and unjust be deleted accordingly.

5. Your appellant craves leave to add, alter and/or to amend all or any of the grounds before the final hearing."

2.1. The assessee has raising the following additional grounds of appeal:

"1 The Ld. Assessing Officer has erred on facts and in law in invoking the provisions of section 56(2)(x) of the Income-tax Act, 1961 by mechanically adopting the stamp duty valuation (SDV) of the property in question without referring the matter to the Departmental Valuation Officer (DVO) despite the assessee's specific objection.

2 The Ld. AO has failed in appreciating the provisions of Section 56(2)(x) read with section 50C(2) of the Act mandates him that once the assessee disputes the correctness of the stamp duty valuation, it is obligatory on the part of the AO to refer the valuation of the property to the DVO. In view of this, the entire addition made of Rs 18,10,640/- without referring matter to DVO for valuation property is unsustainable and bad in law and the same be deleted in the interest of justice."

3. The brief facts of the case are that the assessee, **Shri Ishwarbhai Gordhanbhai Prajapati**, filed his return of income for Assessment Year 2018–19 declaring a total income of **Rs. 11,66,770**. The assessee derived income from his proprietary business, **M/s. Shree Bootbhavani Construction Co.**, as well as income under the heads "House Property," "Capital Gains," and "Other Sources." During the course of assessment, the Assessing Officer ("AO") noted that the assessee had jointly purchased agricultural land for a total consideration of **Rs. 22,30,320**, while the **stamp duty valuation** of the same property was **Rs. 40,40,960**. The AO observed that there was a difference of **Rs. 18,10,640** between the purchase price and the value adopted for stamp duty purposes. The Assessing Officer invoked the provisions of **section 56(2)(x)** of the Act and treated this difference as income from other sources, **holding that the assessee had received property for consideration less than its fair market value**. Consequently, the AO made an addition of **Rs. 18,10,640** to the returned income, and computed the total income at **Rs. 29,77,410**. Being aggrieved by the said addition, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)].

4. Before the CIT(A), the assessee submitted that the land purchased was **agricultural land** and not **non-agricultural (N.A.) land**, as erroneously assumed by the AO. The assessee submitted that the land fell under a **proposed draft Town Planning (T.P.) Scheme** of the Ahmedabad Urban

Development Authority (AUDA), which was **not yet finalized**. Due to the draft scheme, the **Sub-Registrar's Office** had charged **higher stamp duty** treating the land as N.A. land, although, in reality, **the land continued to retain its agricultural character**. The assessee further contended that the land was purchased at a rate **higher than the prevailing jantri rate applicable for agricultural land**, and therefore, no addition under section 56(2)(x) of the Act was justified. The assessee also pointed out that the AO had wrongly assumed a **40% deduction** for acquisition by AUDA, whereas no such acquisition had actually taken place, and the purchase deed clearly mentioned ownership of the entire plot. To support his claim, the assessee filed copies of the **purchase deed**, **jantri rate certificate**, **ledger account of the seller (Jayantibhai Kalubhai)** showing payments made since **July 2013**, and other supporting documents. The assessee submitted that the transaction was genuine and the consideration paid was in accordance with the fair market value of the agricultural land at the time of purchase.

4.1. The CIT(A) examined the facts, written submissions, and case records. The CIT(Appeals) observed that although the assessee had described the property as agricultural land, the very fact that it was covered under a **proposed AUDA scheme** and that **stamp duty was charged at rates applicable to urban land** indicated that the land had **lost its agricultural character**. The CIT(A) noted that the assessee did not provide any evidence regarding the distance of the land from the municipal limits, which could have established its agricultural status. According to the CIT(A), when land is covered by an urban development scheme and the stamp value is determined on the basis of N.A. land rates, it cannot be treated as purely agricultural for the purpose of income-tax assessment. In view of these

observations, the CIT(A) held that the AO was justified in invoking the provisions of **section 56(2)(x)** and making the addition of **Rs. 18,10,640** towards the difference in value. The CIT(A) accordingly **confirmed the addition** made by the AO and dismissed the appeal of the assessee.

5. The assessee is in appeal before us against the order passed by CIT(Appeals) dismissing the appeal of the assessee.

6. We have heard the rival contentions and perused the material on record. The Counsel for the assessee submitted that the land documents clearly establish that the property purchased is **agricultural land**, and this fact has been consistently mentioned in the registered sale deed and other land records. It was contended that merely because the **stamp duty authority levied duty treating the land as non-agricultural (N.A.)**, owing to the proposed draft T.P. Scheme by the Ahmedabad Urban Development Authority (AUDA), it would not change the actual **land use or character of the property**. The Counsel pointed out that the **assessee had paid a price higher than the prevailing jantri rate applicable for agricultural land**, and therefore, there was no reason or justification for invoking **section 56(2)(x)** of the Act. The Counsel further submitted that the land in question is **registered within the "Agricultural Taluka" records**, which itself confirms its agricultural nature. He also drew our attention to **page 52 of the Paper Book**, being an **Extract of the Rural Land Record (Form No. 7) dated 19.07.2023**, which shows that even after purchase, the land **continues to be classified as agricultural land**. The Counsel submitted that **no conversion proceedings** have been initiated or completed to convert the land into non-agricultural use

even till date. Hence, the land retains its agricultural character in law and in fact.

7. After considering the submissions of both sides and examining the documents on record, we find force in the contentions advanced by the learned Counsel for the assessee. The sale deed and the Form No. 7 extract demonstrate that the land purchased is **agricultural** and not non-agricultural. The **charging of higher stamp duty** by the Sub-Registrar's Office based on a **draft AUDA scheme** would not, in our view, alter the inherent nature of the land. It is a settled legal position that **stamp duty valuation or classification for fiscal purposes does not determine the character of the property under the Income-tax Act**. The fact that the assessee has **paid consideration higher than the jantri rate** applicable to agricultural land further supports that there was **no underreporting of value** or benefit derived by the assessee that could warrant the application of section 56(2)(x) of the Act. We also note that the Assessing Officer's assumption that 40% of the land was acquired by AUDA is factually incorrect, as no such acquisition has taken place and the **draft T.P. Scheme remains unapproved**. Therefore, the **addition made by the AO under section 56(2)(x) of the Act** by treating the property as non-agricultural and applying non-agricultural rates is not sustainable in law or on facts. Considering the totality of circumstances, including the nature of the land, the evidence produced, and the fact that the assessee has paid more than the jantri value, we hold that **the addition of Rs. 18,10,640/- made under section 56(2)(x) of the Act is unwarranted and unjustified**.

7.1. Accordingly, we **set aside** the order of the learned CIT(A) and **direct the Assessing Officer to delete the addition of Rs. 18,10,640/-** made under section 56(2)(x) of the Act.

8. In the result, the **appeal of the assessee is allowed**.

Order pronounced in the Open Court on 04 /11/2025 at Ahmedabad.

Sd/-	**Sd/-**
(DR. BRR KUMAR)	**(SIDDHARTHA NAUTIYAL)**
VICE PRESIDENT	**JUDICIAL MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 04/11/2025

टी. सी. नायर, व. नि. स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/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)- (NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजोकट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No.1197/Ahd/2025
(Assessment Year:2017-18

Ajaykumar Mahadevbhai Patel, B-198, Shrenik Park, Productivity Road, Akota, Vadodara-390020. [PAN :AEPPP2801 M]	Vs.	The Income Tax Officer, Ward 1(2)(1), (Previously Ward-1(2)(4), Vadodara.)
(**Appellant**)	..	(**Respondent**)

Appellant by :	Shri PB Parmar, AR
Respondent by:	Shri Prateek Sharma, CIT. DR

Date of Hearing	05.08.2025
Date of Pronouncement	25.08.2025

O R D E R

PER DR. B.R.R. KUMAR, VICE-PRESIDENT:-

This appeal is filed by the Assessee against the appellate order dated 21.04.2025 passed by the Commissioner of Income Tax (Appeals) /National Faceless Appeal Centre, Delhi, relating to the Assessment Year 2017-18.

2. The assessee has raised the following grounds of appeal:

1. *The Ld.CIT(A) has erred, both in law and on facts, in confirming the addition of Rs.27,07,000/- under section 69A of the Act in respect of alleged unexplained cash deposits in the bank account.*

2. *Both, AO & CIT(A), have erred in passing the impugned orders without properly appreciating facts of the case, submissions of the assessee and documentary evidences available on record in the correct perspective. Such an act is in gross violation of the principles of natural justice and hence, the impugned order deserves to be quashed.*

3. *The Ld.CIT(A) has erred in law and on facts of the case in confirming levy of interest u/s.234A/B/C/D of the Act.*

4. *The Ld.CIT(A) has erred in law and on facts of the case in confirming initiation of penalty proceedings under section271AAC(1) of the Act.*
5. *The appellant craves leave to add, amend, alter, edit delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

3. The assessee filed his return of income on 22.07.2017 declaring total income of ₹2,86,290/-. The case was selected for complete scrutiny under CASS on account of high cash receipts and abnormal increase in cash deposits during the year, including during the demonetisation period. During the assessment proceedings, the assessee explained that the cash deposits were sourced from a gift of ₹47,00,000/- received from her brother, an NRI, comprising ₹26,00,000/- in cash and ₹21,00,000/- through cheques. Documentary evidences such as notarised gift deed, donor's passport, donor's bank statement, and assessee's bank statement were furnished. The Assessing Officer, however, disbelieved the cash gift during demonetisation period and made an addition of ₹27,07,000/- u/s 69A of the Act. Aggrieved by the assessment order, the assessee filed appeal before the Ld. CIT(A) who confirmed the addition made by the Assessing Officer.

4. Aggrieved by the order of the Ld. CIT(A), the assessee is now in appeal before the Tribunal.

5. We have gone through the entire material before us. The donor has gifted Rs.47 lakhs on 06.09.2016, 07.09.2016 & 08.09.2016; out of which Rs.21 lakhs by cheques and Rs.26 lakhs by cash from his brother Shri Purnesh Patel, the bank statements of Shri Purnesh Patel are on

record reflecting the transactions and the Revenue had no objection on the Gift Deeds. Having accepted the Gift Deeds and the amounts received, the Revenue cannot object to the cash deposits at a later date.

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

The order is pronounced in the open Court on 25.08.2025.

Sd/-	**Sd/-**
(SIDDHARTHA NAUTIYAL)	**(DR. B.R.R. KUMAR)**
JUDICIAL MEMBER	**VICE-PRESIDENT**

(True Copy)

Ahmedabad; Dated 25.08.2025

MV

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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.

आदेशानुसार / BY ORDER,

सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH, AHMEDABAD

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

ITA No.1420/Ahd/2025
Assessment Year: 2014-15

Indian Ion Exchange & Chemicals Limited, D-64, Diamond Park, GIDC – Naroda, Naroda, Ahmedabad – 382 330. (Gujarat). **[PAN – AACCI 2242 R]**	Vs.	Income Tax Officer, Ward – 2(1)(1) Previously Ward – 2(1)(3), Aayakar Bhawan (Vejalpur), Nr. Sachin Tower, 100 Foot Road, Anandnagar-Prahladnagar Road, Ahmedabad – 380 015. (Gujarat).
(Appellant)		(Respondent)

Assessee by	Shri Biren Shah, AR
Revenue by	Shri B.P. Srivastava, Sr. DR
Date of Hearing	16.09.2025
Date of Pronouncement	16.10.2025

O R D E R

PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi (in short "the CIT(A)") dated 30.06.2025 for the Assessment Year (A.Y.) 2014-15 in the proceeding under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The brief facts of the case are that the assessee had filed its return of income for the A.Y. 2014-15 on 29.11.2014 declaring total income of Rs.25,93,822/-. Subsequently, the case of the assessee was reopened on the basis of information received that the assessee had made transactions with an accommodation entry provider in respect of purchases of Rs.92,20,100/-. Accordingly, a notice under Section 148 of the Act was issued on 22.03.2019. In the course of assessment, the Assessing Officer made addition of Rs.92,20,100/- on account of purchases made from M/s. Siddh Syndicate which were held as bogus. The assessment was completed under Section 143(3) read with Section 147 of the Act on 16.12.2019 at a total income of Rs.1,18,31,330/-.

3. Aggrieved with the order of the Assessing Officer, the assessee had filed an appeal before the First Appellate Authority which was decided by the Ld. CIT(A) vide the impugned order and the appeal of the assessee was dismissed.

4. The assessee is now in second appeal before us. The following grounds have been taken in this appeal: -

> *"1. In law and in the facts and circumstances of the case, the Ld. AO has erred in reopening the case of the appellant u/s.148 of 1.T. Act, 1961.*
>
> *2. In Law and in the facts and circumstances of the case, the Ld. CIT(A) has erred in confirming the addition made by the Ld. AO by treating the purchase made by appellant from Siddh Syndicate as Bogus Purchase and thereby erred in confirming addition of Rs 92,20,100/-.*
>
> *3. The appellant craves leave to add to, alter, amend and or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal."*

5. The first ground pertains to reopening of the case under Section 148 of the Act. In the course of hearing, the Ld. AR of the assessee did not press this ground. Hence, this ground is dismissed.

6. The next ground pertains to addition of Rs.92,20,100/- on account of bogus purchase from M/s. Siddh Syndicate. Shri Biren Shah, Ld. AR of the assessee, explained that the assessee company is engaged in the business of trading of Water Treatment Plant. The case of the assessee was reopened on the basis of statement of one Shri Mahendra Shantilal Patel who had given statement that he was engaged in the activities of providing accommodational entries. The Ld. AR submitted that the assessee was not provided with the statement of Shri Mahendra Shantilal Patel and no opportunity to cross examine him was provided in spite of specific request. On the other hand, the assessee had furnished all the relevant evidences in the form of purchase bills, copy of ledger account, bank statement etc. to establish that the purchase of Rs.92,20,100/- made by the assessee from M/s. Siddh Syndicate was genuine. The Ld. AR further submitted that the assessee had also co-related the purchases made from the said party with corresponding sales and reconciliation statement of purchase and sales was also filed. Under the circumstances, there were no basis to treat the purchases of the assessee as bogus. The Ld. AR further submitted that the Gross Profit (GP) disclosed by the assessee in the current year was 12.63% which was much higher than the GP of 9.29% in the preceding year. Considering this fact, as well as the evidences as brought on record by the assessee, the addition as made by the Assessing Officer was not called for. In this regard, the Ld. AR also relied upon the following decisions: -

1) *CIT vs. Premkumar B. Rathi, 59 taxmaznn.com 203 (Guj.)*
2) *CIT vs. Simit P. Sheth, 38 taxmann.com 385 (Guj)*
3) *CIT vs. Bholanath Poly Fab P. Ltd., 40 taxmann.com 494 (Guj,)*
4) *CIT vs Odeon Builders Ltd., 110 taxmann.com 64 (SC)*

7. Per contra, Shri B.P. Srivastava, Ld. Sr. DR submitted that a search operation was conducted in the case of one Shri Mahendra Shantilal Patel and in the course of search it was found that he was operating under four different names with different date of birth, with four PANs and multiple bogus concerns were utilized for providing accommodation entries through bogus bills. In the course of statement recorded during the search under Section 132(4) of the Act, Shri Mahendra Shantilal Paltel had admitted that he did not supply the materials, that he was issuing only bogus bills and that he had no supporting documents in respect of transportation to parties, labour charges paid etc. The Ld. Sr. DR submitted that there was no dispute to the fact that M/s. Siddh Syndicate, from whom the assessee had made purchases of Rs.92,20,100/- during the year, was operated by Shri Mahendra Shantilal Patel and this concern was providing entries in the nature of accommodation entry only. The Ld. Sr. DR further submitted that the assessee was unable to produce delivery documents such as delivery challans, vehicle numbers, weighing slips, bilty for transportation of goods etc. in respect of the purchases made from M/s. Siddh Syndicate; which substantiated the statement of Shri Mahendra Shantilal Paltel that the purchases made by the assessee from this party was bogus. The Ld. Sr. DR, therefore, strongly supported the order of the lower authorities.

8. We have considered the rival submissions. It transpired that the entire case of the Revenue is based on the statement of Shri Mahendra Shantilal Patel, the accommodation entry operator. The fact that the assessee had made purchase of Rs.92,20,100/- from M/s. Siddh Syndicate, which was operated by the said accommodation entry provider, has not been disputed. In the case of purchase from accommodation entry provider, the purchase bills and payment through bank statement will certainly be there. Therefore, the authenticity of the purchases cannot be confirmed only on the basis of the purchase bills and the payment details. The assessee has been unable to bring on record any evidence for transportation of goods purchased from M/s. Siddh Syndicate. No evidence for transportation of the goods including delivery challan, vehicle number etc. was brought on record. At the same time, no enquiry was made by the Assessing Officer to find out the cash trail of these purchase transactions. As admitted by Shri Mahendra Shantilal Patel, he was giving back cash against cheque/RTGS received from the persons availing bogus purchase entries. In view of this admission of the entry provider, the Assessing Officer should have examined the bank account of M/s. Siddh Syndicate, the entry provider, to find out the cash trail and establish that cash was immediately withdrawn after the payments made by the assessee through cheque/RTGS. The Assessing Officer had made addition of Rs.92,20,100/- based only on third party information and the transaction of the assessee was not subjected to any further scrutiny. The Assessing Officer also did not provide the copy of the statement of the accommodation entry provider to the assessee.

8.1 The assessee had co-related the purchases made from M/s. Siddh Syndicate with sales and reconciliation chart in this respect was brought on record in the paper-book filed by the assessee. The Revenue has neither disputed the sales shown by the assessee nor contradicted the reconciliation of purchases from M/s. Siddh Syndicate with corresponding sales. Considering the fact that the sales of the assessee has not been doubted, one can only conclude that the assessee had made purchases from different parties but the bills were obtained from the accommodation entry provider. The assessee had disclosed GP of 12.63% during the current year, as against the GP of 9.2% only in the preceding year. Considering the higher GP during the current year, the purchases made by the assessee cannot be held as bogus without disputing the sale figures. Therefore, no disallowance for the entire purchase of Rs.92,20,100/- made from M/s. Siddh Syndicate was called for. Apart from the statement of the entry provider, the Revenue has been unable to bring on record any evidence that the purchase of the assessee was bogus. At the same time, since the assessee has been unable to produce evidence for transportation of the goods purchased from M/s. Siddh Syndicate, it will be reasonable to conclude that the purchases were made not from M/s. Siddh Syndicate but from third parties and the profit derived in such transactions will be certainly higher than the GP rate as disclosed by the assessee.

8.2 In the case of *Premkumar B. Rathi (supra),* Hon'ble Gujarat High Court had upheld the disallowance of 10% of bogus purchases as confirmed by the Tribunal. Similarly, in the case of *Simit P. Sheth (supra),* the Hon'ble Gujarat High Court had held that only profit element embedded in purchases made from accommodation entry providers could

be added and upheld the addition of 12.5% sustained by the Tribunal. In the case of *Bholanath Poly Fab P. Ltd. (supra)* also, the Hon'ble Gujarat High Court had reiterated that only profit margin embedded in bogus purchases could be subjected to tax and not the entire purchases. Similarly, Hon'ble Gujarat High Court in the case of *Kesari Exports, (174 taxmann.com 162)* had upheld the addition of 6% of bogus purchases made from accommodation entry provider.

8.3 Considering the consistent view of the Hon'ble Jurisdictional High Court that only profit margin embedded in the bogus purchases are required to be taxed, it will be reasonable to restrict the addition in respect of purchases made from M/s. Siddh Syndicate, @ 5% higher than the GP disclosed by the assessee in the current year. Accordingly, the Assessing Officer is directed to estimate the profit out of the purchase of Rs. Rs.92,20,100/- made from M/s. Siddh Syndicate at the rate of 17.63%. Since, the assessee had already disclosed GP of 12.63% in respect of these purchases in its accounts, the addition made by the AO is restricted to 5% Rs.92,20,100/-. The ground taken by the assessee is partly allowed.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on this 16th October, 2025.

Sd/-	*Sd/-*
(SANJAY GARG)	**(NARENDRA PRASAD SINHA)**
Judicial Member	Accountant Member

Ahmedabad, the 16th October, 2025

PBN/*

Copies to: (1) The appellant
(2) The respondent
(3) The PCIT
(4) The CIT(A)
(5) Departmental Representative
(6) Guard File

By order

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Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18886 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

==========

Approved for Reporting	Yes	No

==========

CHARTERED CAPITAL AND INVESTMENT LIMITED
Versus
PRINCIPLE COMMISSIONER OF INCOME TAX - 1, AHMEDABAD & ANR.

==========

Appearance:
MR B S SOPARKAR(6851) for the Petitioner(s) No. 1
MR.VARUN K.PATEL(3802) for the Respondent(s) No. 1,2

==========

CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 07/10/2025

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

[1] Heard learned advocate Mr. B.S.Soparkar for the petitioner and learned Senior Standing Counsel Mr. Varun K. Patel for the respondents.

[2] Having regard to the controversy

involved which is in narrow compass, with the consent of the learned advocates for the respective parties, the matter is taken up for hearing.

[3] Rule returnable forthwith. Learned Senior Standing Counsel Mr. Varun Patel waives service of notice of rule for the respondents.

[4] By this petition, under Article 226 of the Constitution of India, the petitioner has prayed for quashing and setting aside the order dated 29.09.2023 issued by the respondent under Section 127 of the Income Tax Act, 1961 (for short 'the Act').

[5] Brief facts of the present case are as under:

[5.1] The petitioner is a Public Limited Company, listed on Stock Exchange. A search operation was conducted under Section 132 of the Act in case of M/s Ravindu Motors Private

Limited, Mrs. Meena Kirloskar, Mr. Mohib N. Khericha (who is Managing Director of the petitioner – Company), Mrs. Janki Kirloskar and Mrs. Rukmani Kirloskar on 15.12.2022.

[5.2] The respondent – Principal Commissioner of Income Tax-1, Ahmedabad issued a notice on 11.04.2023 calling upon the petitioner as to why the PAN of the petitioner should not be centralized with ACIT/DCIT, CC 2(4), Bengaluru , while exercising jurisdiction under Section 127 of the Act.

[5.3] The petitioner filed objections by letter dated 19.04.2023 contending that no search was carried out in the case of the petitioner – Company and petitioner has no concern whatsoever with M/s Ravindu Motors Private Limited, Mrs. Meena Kirloskar, Mrs. Janki Kirloskar and Mrs. Rukmani Kirloskar. It was contended that Mr. Mohib Kericha who happens to be one of the Directors, but beyond that, even in the search in

his case, no incriminating material was found pertaining to or relating to the petitioner – Company.

[5.4] Thereafter, the respondent No.1 issued one more notice on 22.08.2023 informing that objections were supplied to DDIT (Inv), Unit-1(2), Bengaluru and the response was received and therefore, the reply of the petitioner was sought on the comments made by the DDIT.

[5.5] Though the notice dated 22.08.2023 referred to the comments dated 01.05.2023 of the DDIT, Bengaluru but the same was not provided to the petitioner. However, the copy of such comments was provided later on and therefore, the petitioner could file the objections by letter dated 29.08.2023 along with necessary documents, contending that CBDT Circular does not apply to the petitioner - Company as no search was carried out in case of the Company and reiterated the earlier objection.

[5.6] Respondent No.1 thereafter passed the impugned order dated 29.09.2023 disposing the objections and ordered to centralize the case of the petitioner under Section 127 of the Act by transferring to ACIT/DCIT, CC 2(4), Bengaluru.

[6] Being aggrieved, the petitioner has preferred this petition.

[7] This Court passed the following order on 06.11.2023:

> *"1. Draft amendment is allowed. To be carried out forthwith.*
>
> *2. Heard learned Senior Counsel Mr.S.N.Soparkar for the petitioner.*
>
> *3. Learned Senior Counsel Mr.S.N.Soparkar would assail the order dated 29.09.2023 on the ground that the only ground on which transfer of assessment is sought to be made in case of the petitioners is for the purposes of co-ordinating the investigation. He would submit that recording the reasons would indicate that merely because the search operation under section 132 of the Income Tax Act was conducted in the case of M/s.Ravindu Motors Private Limited wherein the petitioners had acted in their professional capacity and rendered advice, transfer of asseessment is sought to be done. Reliance is placed on several decisions, which are as under:*

(i) Kamal Varandmal Galani Vs. Principal Commissioner of Income-Tax reported in [2023]152 taxmann.com 340 (Bombay)

(ii) Farooq Ali Khan Vs. Principal Commissioner of Income-Tax, Bengaluru reported in [2015]59 taxmann.com 74 (Karnataka)

4. Karnataka High Court in the case of Farooq Ali Khan (supra) has considered the decision of Hon'ble Supreme Court in Para-11 and 12, which read as under:

"11. Hon'ble Apex Court in the case of Ajantha Industries v CBDT [1976] 102 ITR 281 has held that while making an order of transfer under Section 127 of the Act requirements of recording reasons is mandatory and non communication of same to the assessee would not save such order by showing that reasons existed in file although not communicated to assessee. It has been held by the Hon'ble Apex Court in the said judgment to the following effect:

"The reasons for recording of reasons in the order and making these reasons known to the assessee is to enable an opportunity to the assessee to approach the High Court under its writ jurisdiction under article 226 of the Constitution or even this court under article 136 of the Constitution in an appropriate case for challenging the order, inter alia, either on the ground or special leave mala fide or arbitrary or that it is based on irrelevant and extraneous considerations. Whether such a writ or special leave application ultimately fails is not relevant for a decision of the question.

We are clearly of opinion that the requirement of recording reasons under section 127(1) is a mandatory direction

under the law and non communication thereof is not saved by showing that the reasons exist in the file although not communicated to the assessee."

"When law requires reasons to be recorded in a particular order affecting prejudicially the interests of any person, who can challenge the order in court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to communicate the reasons is not expiated."

12. Now turning my attention back to the facts on hand when impugned order is perused it would indicate that there are no reasons forthcoming from the impugned order as to why the assessment proceedings of the petitioner pending before the jurisdictional Assessing Officer at Bengaluru is being transferred to Assessing Officer at Mumbai, except indicating that "transfer is being effected to facilitate effective and coordinate the investigations in the connected case of petitioner", in which search and seizure operations under Section 132 of the Act was conducted on 24.02.2014 by the Director of Investigations, Mumbai. This would not satisfy the criteria of reasons as indicated under Section 127 of the Act or the dicta laid down by this Court as well as by the Hon'ble Apex Court in the cases referred to hereinabove. In that view of the matter, I am of the considered view that it would suffice and meet the ends of justice if the impugned order is set aside and matter is remitted back to the Principal Commissioner of Income Tax, Bengaluru-560 006 to redo the matter after affording opportunity to petitioner. If further objections, if any, is filed to proposed transfer same shall also be considered. It is also made clear that no fresh notice for

personal hearing shall be issued to petitioner by first respondent and petitioner shall appear before the Principal Commissioner of Income Tax, Bengaluru - 560 006 (first respondent herein) on 11.05.2015 at 11.00 a.m. and after hearing petitioner or his authorized representative first respondent shall proceed to pass orders on merits and in accordance with law. No opinion is expressed with regard to merits of the case."

5. Issue Notice to the respondents, returnable on 28.11.2023. Assessment shall continue, however, no final assessment order shall be passed without the permission of the court. Direct service is permitted."

[8] Learned advocate Mr. B.S.Soparkar for the petitioner submitted that shifting of the PAN of the petitioner- Company is not justified as there are no financial transactions in connection with M/s Ravindu Motors Private Limited. It was submitted that the reliance placed in the impugned order on the CBDT Circular dated 24.05.2023 would not apply to the facts of the case in view of the following four reasons:

i. Circular relates to "compulsory selection of returns for complete scrutiny during FY 2023-24" and it is not issued for "centralisation

of search cases". It was pointed out that search was conducted on 15.12.2022, whereas Circular for that period i.e. for FY 2022-23 issued by CBDT Circular dated 11.05.2022, which provides that the jurisdiction of the appropriate assessee be transferred to the "Central Charge" and not with the jurisdiction be transferred to the very same Assessing Officer holding charge of the Searched Person.

ii. It was further submitted that at no place in the Show Cause Notice dated 11.04.2023 or in the comments dated 01.05.2023 of DCIT, Bengaluru, the Circular is referred and the transfer is proposed only for "coordinated investigation" which is not in consequence to the Circular. It was further submitted that as no search took place in case of the petitioner and no incriminating material relating to the

petitioner was found wherein no Notice under Section 143(2) or 142(1) is also issued in case of the petitioner either by the Ahmedabad or Bangalore Office, the impugned order passed under Section 127 of the Act is not tenable relying upon the Circular dated 24.05.2023.

[8.1] Learned advocate Mr. B.S. Soparkar, submitted that the expressions "coordinate investigation" / "facility of investigation" are vague and does not justify the centralization as there are no valid reasons of transfer of the assessee. It was submitted that by merely stating the need for coordinated investigation, it cannot be said to be valid reason for transfering the PAN of the petitioner from Ahmedabad to Bengaluru as the petitioner had no transaction whatsoever when the Company is managed and operated by the Kiloskar family. It was submitted that it is not even the case of the respondent that there is any

incriminating material found in search connecting the petitioner with the searched parties.

[8.2] In support of his submissions, learned advocate Mr. Soparkar, referred to and relied upon the following decisions:

I. Hindustan M-I Swaco Ltd. V. Principal Commissioner of Income-tax, Vadodara-3 reported in [2016] 72 taxmann.com 14 (Gujarat);

II. Anuben Lalabhai Bharwad V. Principal Commissioner of Income-tax-3 reported in [2016] 72 taxmann.com 178 (Gujarat);

III. Pegasus Assets reconstruction Private Limited Vs. Principal Commissioner of Income Tax, Mumbai-3, & Ors. rendered in Writ Petition No.1067 of 2022, decided by the Hon'ble Bombay High Court, judgment and order dated 05th February, 2024;

IV. Kamal Varandmal Galani V. Principal Commissioner of Income-tax reported in [2023] 152 taxmann.com 340 (Bombay);

V. Farooq Ali Khan V. Principal Commissioner of Income-tax, Bengaluru reported in [2015] 59 taxmann.com 74 (Karnataka);

[8.3] Learned advocate Mr. Soparkar also referred to and relied upon the Assessment orders which are passed subsequent to the filing of this

petition in case of Meena Kirloskar for Assessment Year 2022-23, Assessment order dated 07.03.2024, Assessment order dated 25.03.2025 in case of Vijay Kirloskar for Assessment Year 2023-24 and Assessment order dated 07.03.2024 in case of M/s Ravindu Motors for Assessment Year 2022-23, to demonstrate that there is no addition made on account of any transaction with the petitioner – Company in case of those searched persons. It was, therefore, submitted that the impugned order passed under Section 127 of the Act is liable to be quashed and set aside.

[8.4] It was also pointed out that only because Mr. Mohib N. Khericha is one of the Directors of M/s Ravindu Motors Private Limited and is also the Managing Director of the petitioner – Company, the PAN of the petitioner – Company could not have been transferred to Bengaluru in the guise of coordinated investigation, in absence of any material made

available which may be relevant for the purpose of exercising the jurisdiction under Section 127 of the Act.

[8.5] Learned advocate Mr. Soparkar has also relied upon the Additional Affidavit filed on behalf of the petitioner placing on record the composition of Board of Directors, shareholdings, or detailed financial statements for the Financial Years 2021-22 to 2023-24 and company master data and the Assessment orders passed in case of searched persons referred to hereinabove, to submit that there is no connection between the petitioner – Company and the searched persons.

[9] *Per contra,* learned Senior Standing Counsel Mr. Varun K. Patel, submitted that in case of the petitioner, several incriminating documents were found and seized from the residential and business premises of Mr. Mohib N. Khericha who was the Managing Director of the petitioner – Company. Reliance was placed on the CBDT Circular

dated 24.05.2023 providing the guidelines issued in case of search and seizure cases under Section 132 and 132A of the Act which required centralization with central charge as per the provisions of Section 127 of the Act.

[9.1] Reliance was placed by the learned Senior Standing Counsel for the respondent in the case of **Kamlesh Rajnikant Shah V. Principal Commissioner of Income-tax** reported in **[2022] 138 taxmann.com 59 (Gujarat)**, but it would not be applicable in the facts of the present case.

[9.2] The learned Senior Standing Counsel Mr. Varun Patel, referred to and relied upon the following averments made in the affidavit in reply filed on behalf of the respondent:

> *"Accordingly, after considering the aforesaid facts of the case, the case of the petitioner is proposed for centralization from Ahmedabad to Central charge at Bengaluru and after affording an opportunity of hearing to the petitioner contemplated under Section 127(2)(a), impugned order u/s. 127(2) is passed disposing of the objections of the petitioner against the proposed centralization of case.*

It is therefore submitted that in view of above, the impugned order is just, proper and legal and there is no illegality or irregularity while passing the impugned order.

4.With reference to para 1, it is submitted that the contents of this para being general in nature do not call for any specific reply. The respondent, however, denies each and every allegation, averment and contention raised therein.

5. With reference to para 2.1 to 2.8, it is submitted that the contents of these paras being matter of fact and record does not call for any specific reply. The respondent, however, denies each and every allegation, averment and contention raised therein.

6. With reference to para 3.1, the respondent denies each and every allegation, averment and contention raised therein. It is submitted that there is no infringement of fundamental rights enshrined by Articles 14 and 19(1)(g) of the Constitution of India while passing the impugned order.

7. With reference to para 3.2 to 3.5, the respondent denies each and every allegation, averment and contention raised therein. It is submitted that as stated hereinabove, a search operation u/s 132 of the Act was conducted on 15-12-2022 in the case of Mr. Mohib N. Khericha, director of Chartered Capital and Investment Ltd. Residence of Mohib N. Khericha and corporate office of Chartered Capital and Investment Ltd. At 711, Mahakant, Paldi, Ahmedabad were covered. Shri Mohib N. Khericha, director of Chartered Capital and Investment Ltd. was one of the directors in Ravindu Motors Pvt. Ltd. and in past, had done transactions with the entities of the Ravindu Motors Pvt. group. It is thus submitted that the business premise of the

assessee Chartered Capital and Investment Ltd. was covered u/s 132 of the Act.

It is submitted that as per the guideline issued by the CBDT vide letter F.No.225/66/2023/ITA-II dated 24.05.2023, search and seizure cases u/s 132 and requisition u/s 132A cases are required to be centralized with central charge as per provisions of section 127 of the IT Act. It is therefore submitted that the contentions raised in this para are erroneous, illegal and untenable.

8. With reference to para 3.6 the respondent denies each and every allegation, averment and contention raised therein. It is submitted that the order u/s 127 is passed by the Pr. CIT-1, Ahmedabad on 29.09.2023 after affording necessary opportunities to the assessee and considering the report of the DDIT(Inv.), Unit -1(2), Bengaluru vide which the objections of the assessee was rebutted by giving elaborate reasons as to why the case is required to be centralised to the same assessing officer to whom the entire group has been centralised for administrative convenience, coordinated investigation and completion of assessment which is well within the powers conferred to Pr. Commissioner/ Commissioner of Income Tax by sub-section 2 of section 127 of the IT Act, 1961. The original signed order by the Pr. Commissioner of Income Tax -1, Ahmedabad is placed in the respective file. Since, the order has to be communicated to various Income tax authorities, copies of the order of Pr. Commissioner of Income Tax-1, Ahmedabad have been communicated to the assessee under the signature of Income Tax Officer (Tech)-1 O/o Pr. Commissioner of Income Tax-1, Ahmedabad, which is the usual procedure followed by the department across the country.

> *9. With reference to para 3.7, the respondent denies each and every allegation, averment and contention raised therein. It is submitted that on perusal of the order u/s 127(2) of the act dated 29-09-2023, it can be clearly seen that the order was passed only after agreement between the PCIT-1, Ahmedabad and PDIT(Inv), Bengaluru for better coordinated investigation and assessments, in fact, the comments of the DDIT(Inv), Unit-1(2), Bengaluru were also called for disposing the objections raised by the assessee and DDIT(Inv), Unit-1(2), Bengaluru had again stated that the case of Mr. Mohib N. Khericha and his company, Chartered Capital and Investment Ltd are required to be centralized for the purpose of better coordinated investigation and passing of assessment order. Therefore, the claim of the assessee that there is no agreement between the required authorities is without any basis and is not tenable."*

[10] Having heard the learned advocates for the respective parties and considering the facts of the case and the material made available on record, it is not in dispute that Mr. Mohib Khericha was the Managing Director of the petitioner – Company and search took place in case of the Managing Director and other persons of the Kirloskar family. During the course of the search, the transactions pertaining Shri Mohib N. Khericha were found from the premises of the

petitioner – Company, however, there is nothing on record to show that any documents or material is found pertaining to or relating to the petitioner – Company in connection with the searched persons. It is also pertinent to note that there is no search authorization in the case of the petitioner – Company issued by the respondents and therefore, only the premises of the petitioner – Company was under search as it could not have been the reason for transferring the PAN of the petitioner or centralization, while invoking the provisions of Section 127 of the Act.

[11] On perusal of the impugned order dated 29.09.2023 passed under Section 127 of the Act while dealing with the objections raised by the petitioner, relied upon the comments of the DDIT, Investigation, that Mr. Mohib Khericha was Director of the petitioner – Company and also Director of M/s Ravindu Motors Private Limited

and he had done transaction with the entities of the M/s Ravindu Motors Private Limited Group and therefore, premises of the petitioner – Company was covered under the search, it would be necessary to transfer the PAN of the petitioner – Company to Bengaluru. It is also discernible from the order that the transaction between Mr. Mohib Khericha and the Kirloskar family was the basis of the search proceedings and there is no reference to any transaction between the petitioner – Company so as to transfer the PAN of the petitioner from Ahmedabad to Central Charge at Bengaluru.

[12] From reading of the impugned order passed under Section 127(2) of the Act, it does not reflect as to why it was necessary to transfer the jurisdiction from Ahmedabad to Central Charge, Bengaluru as none of the issues raised by the petitioner have been dealt with in the impugned order. The respondent has also

failed to demonstrate as to what was the need for coordinated investigation connected with the petitioner when there is no incriminating material found during the course of the search pertaining to or relating to petitioner – Company and merely because Managing Director of the petitioner was a searched person would not have led to invocation of jurisdiction under Section 127 of the Act as none of the criteria or reasons as indicated under Section 127 of the Act are fulfilled.

[13] It would be therefore germane to refer to the provisions of Section 127 of the Act, which reads as under:

> *127. Power to transfer cases.—(1) The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer*

or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,—

(a) where the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) where the Principal Directors General or Directors General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section

(2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation.—In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year."

[14] On perusal of the provisions of Section 127 of the Act, it is clear that main purpose of centralization of cases is to investigate dubious transactions of the assessee with the searched person. However in the facts of the case, there is nothing on record to show that the petitioner – Company has entered into any transaction with

the searched person.

[15] In the facts of the case, the respondent has assumed the jurisdiction, though there is no sufficient material on record to justify such action. It is true that the transfer of cases for effective investigation and coordination can be resorted in case of the persons other than the searched persons. However, in the facts of the case, the respondent has failed to demonstrate the circumstances which warrant the transfer of the PAN. The reliance placed on the circular dated 24.05.2023 is also not applicable in the facts of the case as it only states that the cases were to be selected for scrutiny with prior administrative approval of the Principal Commissioner concerned who shall ensure that such cases are transferred to central charge under Section 127 of the Act within 15 days of the service of the notice under Section 143(2) or 142(1) of the Act by the jurisdictional

Assessing Officer concerned. In the facts of the case, no notice under Section 143(2) or 142(1) or 153C is issued in case of the petitioner – Company by the jurisdictional Assessing Officer and therefore, the Circular relied upon by the respondent would not be applicable in the facts of the case.

[16] Even otherwise, on perusal of the Assessment Orders, which are passed during the pendency of the petition, in case of the Kiloskar family referred to and relied upon by the learned advocate for the petitioner clearly shows that there is no addition made at the ends of those searched persons to show that any transaction with the petitioner – Company.

[17] In view of the foregoing reasons, petition succeeds and accordingly, allowed. The impugned order dated 29.09.2023 passed by the respondent – the Principal Commissioner of Income Tax-1, Ahmedabad under Section 127 of the Act, is

hereby quashed and set aside. Rule made absolute.

No orders as to costs.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

Lalji Desai

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI MAKARAND V.MAHADEOKAR, ACCOUNTANT MEMBER

IT(SS)A No.42 and 43/Ahd/2025
Asstt.Year : 2019-20 and 2020-21

Asstt.Commissioner of Income Tax, Aayakar Bhavan Cent.Cir.1(4) Ahmedabad.		Shailesh Kantilal Mistry 14, Sanidhya Bungalows ISCON Ambali Road Bopal, Daskroi, Bhopal, S.O. Ahmedabad. PAN : AGBPM 8919 K
(Applicant)		**(Responent)**

Assessee by	:	Shri Biren Shah, AR
Revenue by	:	Shri Sher Singh, CIT-DR

सुनवाई की तारीख/**Date of Hearing : 23/09/2025**
घोषणा की तारीख /**Date of Pronouncement: 29/09/2025**

आदेश/O R D E R

PER MAKARAND V.MAHADEOKAR, AM:

These appeals by the Revenue are directed against the orders of the Commissioner of Income Tax (Appeals)-11, Ahmedabad [hereinafter referred to as "the CIT(A)"] arising out of assessments framed by the Assistant Commissioner of Income Tax, Central Circle – 1(2), Ahmedabad [hereinafter referred to as "Assessing Officer or AO"] under section 153C of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] for Assessment Years 2019-20 and 2020-21. Since common issues are involved in these appeals and arise out of a common set of facts, they were heard together and are disposed of by this consolidated order for the sake of convenience and brevity.

2. Facts of the Case

2.1 The relevant facts as emanating from the orders of the Assessing Officer, may be briefly noted. The assessee is engaged in the business of construction and development of residential and commercial properties. For Assessment Year 2019-20, the assessee filed his return of income under section 139(1) on 24.10.2019 declaring a total income of Rs. 3,08,81,900/-. The return was processed under section 143(1) on 25.11.2019. For Assessment Year 2020-21, the assessee filed his return of income on 06.02.2021 declaring an income of Rs. 68,09,600/-, which was similarly processed under section 143(1) on 07.12.2021.

2.2 A search and seizure operation under section 132 of the Act was conducted on 15.10.2019 in the case of one Shri Suresh Ranchhodbhai Thakkar, who is a land broker by profession. During the course of such search, certain incriminating material and digital data allegedly pertaining to the assessee was found and seized. Consequent upon recording of satisfaction under section 153C of the Act, proceedings were initiated in the case of the assessee for Assessment Years 2014-15 to 2020-21. The case was thereafter centralized under section 127 of the Act by order dated 28.02.2023.

2.3 For A.Y. 2019-20, the Assessing Officer, in the course of assessment proceedings, relied upon a WhatsApp image file seized from the mobile phone of one Shri Anand Keshubhai Patel, who was associated with the Popular Group. The said document allegedly reflected a transaction of land situated at Survey No. 66, Manipur Village, having an area of 36,363 square yards. According to the Assessing Officer, while the registered sale deed disclosed a

consideration of Rs. 90,00,000/-, the seized document showed that the actual consideration was Rs.5,87,66,400/-, worked out at the rate of Rs.9,900 per square yard. On this basis, the Assessing Officer alleged that the assessee had received unaccounted cash to the extent of Rs.4,97,66,400/- over and above the recorded sale consideration. The Assessing Officer further alleged that in respect of other properties at Makarba and Vejalpur, the assessee had invested substantial amounts in cash, namely Rs. 12.75 crore and Rs. 6.03 crore respectively, over and above the consideration disclosed in registered instruments. The assessment was framed making addition of Rs.4,97,66,400/- under section 69A of the Act and further Rs.9,60,000/- towards alleged unexplained brokerage expenditure under section 69C of the Act.

2.4 For A.Y. 2020-21, the Assessing Officer relied upon page 146 seized from the mobile phone of Shri Suresh Thakkar, which allegedly contained details of a transaction for purchase of 3000 square yards of land situated at TP No. 204, Gurjari Society, Makarba, Ahmedabad. The said document recorded the transaction value at Rs. 54,444 per square yard aggregating to Rs. 16.33 crore. The Assessing Officer further relied upon the statement of Shri Suresh Thakkar to the effect that the land was sold by one Shri Dhiren Bharwad and his family to the assessee for an amount of Rs. 17.23 crore, comprising cash of Rs.12.75 crore and cheque payment of Rs. 4.48 crore. The public records, however, disclosed that the registered deed was executed for a consideration of only Rs. 6 crore in the name of the assessee. The Assessing Officer also referred to draft affidavit and indemnity bond images seized from the premises of Dharinidhar Developers, which purportedly related to the same transaction. On the basis of such seized material and statements, the Assessing Officer concluded that

the actual consideration was Rs. 16.33 crore and therefore made an addition of Rs. 5,35,65,600/- under section 69B of the Act and further addition of Rs. 8,16,660/- under section 69C of the Act towards alleged unexplained brokerage expenditure.

2.5 The assessee carried the matter in appeal before the CIT(A). Before the appellate authority, the assessee raised jurisdictional objections challenging the very validity of proceedings under section 153C. It was contended that in terms of the first proviso to section 153C, the "date of search" in the case of a person other than the searched person is to be reckoned from the date of receiving the seized documents by the Assessing Officer having jurisdiction over such other person. In the present case, such date was 21.10.2021. In view of sub-section (3) of section 153C, it was urged that since the search was deemed to have taken place after 01.04.2021, no proceedings could have been validly initiated. It was further contended that no incriminating material pertaining to the assessee was found during the search, and that the documents relied upon by the Assessing Officer were unsigned, dumb documents, and not belonging to the assessee. The assessee also contended that no opportunity of cross-examination of the third parties, whose statements were relied upon by the Assessing Officer, had been afforded, and therefore the additions were unsustainable.

2.6 The learned CIT(A), after considering the submissions of the assessee and the material on record, held that the assessment framed under section 153C was invalid in law. Relying upon the decisions of the Hon'ble Supreme Court in *Vikram S. Bhatia v. CIT and Jasjit Singh v. CIT*, the CIT(A) concluded that for the purposes of section 153C, the date of search in the case of the assessee had to be reckoned as

21.10.2021, being the date on which the Assessing Officer of the assessee received the seized documents. In view of section 153C(3), the CIT(A) held that no assessment could be initiated in respect of searches deemed to be conducted on or after 01.04.2021. On this jurisdictional ground alone, the CIT(A) quashed the assessments for both the years under appeal. Without prejudice, the CIT(A) also examined the merits of the additions and found that the seized material did not pertain to the assessee and were merely unsigned *WhatsApp* images or rough notings. It was observed that the additions were made on the basis of uncorroborated third-party statements without granting cross-examination. The CIT(A), therefore, deleted the additions made by the Assessing Officer in both the assessment years.

2.7 For a clearer appreciation of the factual matrix, the relevant details of returns filed, assessment framed by the Assessing Officer, additions made, and the orders of the CIT(A) are tabulated as under:

Particulars	**A.Y. 2019-20**	**A.Y. 2020-21**
Return of Income	Filed u/s 139(1) on 24.10.2019 declaring income of Rs. 3,08,81,900/-	Filed u/s 139(1) on 06.02.2021 declaring income of Rs. 68,09,600/-
Processing u/s 143(1)	Processed on 25.11.2019	Processed on 07.12.2021
Assessment framed by AO	u/s 153C	u/s 153C
Additions made by AO	(i) Rs. 4,97,66,400/- u/s 69A (alleged unexplained money) (ii) Rs. 9,60,000/- u/s 69C (alleged brokerage)	(i) Rs. 5,35,65,600/- u/s 69B (alleged unexplained investment) (ii) Rs.8,16,660/- u/s 69C (alleged brokerage)
Date of AO's Order	24.03.2023	21.03.2023

Order of CIT(A)	Quashed assessment u/s 153C(3) as invalid; without prejudice, deleted additions holding seized material to be dumb/uncorroborated	Quashed assessment u/s 153C(3) as invalid; without prejudice, deleted additions holding seized material to be dumb/uncorroborated
Date of CIT(A) Order	04.02.2025	05.02.2025

2.8 Aggrieved by the relief granted by the CIT(A), the Revenue is now in appeal before raising following grounds of appeal:

In IT(SS)A – 42/Ahd/2025 for A.Y. 2019-20

i) In the facts and on the circumstances of the case, the Ld. CIT(A) has erred in quashing the assessment proceeding u/s.153C of the Act by invoking provision of section 153C(3) of the Act by holding that the date of initiation of search would be considered as 21J02021, in view of first proviso of section 153C, grossly ignoring that this proviso is applicable only for the limited purpose of calculating the number of assessment years as per second proviso to subsection (1) of section 153A of the Act, and hence the decision is perverse and not in accordance with law.

ii) The Ld. CIT(A) has erred in quashing the proceeding u/s,153C of the Act without considering the incriminating documents seized & satisfaction drawn by A.O. as per provision of section 153C of the Act.

iii) In the facts and on the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.4,97,66,4001- u/s.69A of the Act being unexplained money without considering the incriminating documents found & seized during search and without appreciating the meticulous findings of the AO.

iv) The Revenue craves leave to add/alter/armed and/or substitute any or all of the grounds of appeal.

In IT(SS)A – 43/Ahd/2025 for A.Y. 2020-21

i) In the facts and on the circumstances of the case, the Ld. CIT(A) has erred in quashing the assessment proceeding u/s.153C of the Act by invoking provision of section 153C(3) of the Act by holding that the date of initiation of search would be considered as 21.10.2021, in view of

first proviso of section 153C, grossly ignoring that this proviso is applicable only for the limited purpose of calculating the number of assessment years as per second proviso to subsection (1) of section 153A of the Act, and hence the decision is perverse and not in accordance with law.

ii) In the facts and on the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.5,35,65,600/- u/s.69B of the Act being unexplained investment without considering the incriminating documents found & seized during search and without appreciating the meticulous findings of the AO.

iii) In the facts and on the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.8,16,660/- u/s.69C of the Act being unexplained expenditure without considering the incriminating documents found & seized during search and without appreciating the meticulous findings of the AO.

iv) The Revenue craves leave to add/alter/armed and/or substitute any or all of the grounds of appeal.

3. During the course of hearing before us, the learned Departmental Representative (DR) reiterated the facts as recorded by the Assessing Officer in the assessment orders and submitted that incriminating material was found in the course of search which clearly demonstrated that the assessee was engaged in unaccounted cash dealings in respect of land transactions.

3.1 The learned DR drew our attention to the seized material referred to by the Assessing Officer in A.Y. 2019-20. It was explained that a *WhatsApp* image file, namely IMG-20180530-WA0003.jpg, was retrieved from the mobile phone of one Shri Anand Keshubhai Patel, an associate of Popular Group. This image contained the details of a land transaction pertaining to Survey No. 66, Manipur village. For the sake of clarity, the translated details are given below:

Particulars	**Details**
Date	26.05.2018

Seller	Kartikbhai Patel
Purchasers	Amratbhai Patel, Dharminbhai Patel
Location	At/Po – Manipur, Old Survey No. 506, New Survey No. 66
Area	4963 Sq. Mtr. / 5936 Sq. Var.
Nature	Non-agricultural land
Rate	Rs. 9,900/- per Sq. Yards
Tenure	4 Months
Document Price	Rs. 90,00,000/-
Token	Rs. 11,00,000/- in cash on 26.05.2018
Payment Schedule	31.06.2018 – Rs. 1.50 31.07.2018 – Rs. 1.50 31.08.2018 – Rs. 1.50 31.09.2018 – Remaining after document

3.2 The Assessing Officer compared the contents of the seized image with the registered sale deed and found that while the registered sale deed dated 24.10.2018 reflected a consideration of only Rs.90,00,000/-, the seized document mentioned the rate of Rs. 9,900 per square yard, working out to an aggregate consideration of Rs.5,87,66,400/- (5936 Sq. Yards X Rs.9,900/- Sq. Yard). For the sake of clarity, the details verified by the Assessing Officer from the land revenue department are given below:

Particulars	**Details**
S.R.O.	Sanand
Seller	Shri Shailesh Kantilal Mistry
Purchasers	(i) Green Impact Realty – 75% share (ii) Mitesh Amrutbhai Patel – 25% share
Location	Village Manipur

Survey / Block Details	Survey No. 66 (Old Survey No. 506 Paiki) Block/TP No. 955 – Area: 0-49-63 hectare Block/TP No. 1214 – Area: 0-48-56 hectare
Total Land Area	4963 sq. mtr. (approx. 5936 sq. var.)
Document Value	Rs. 90,00,000/-
Date of Registration	24.10.2018
Document No.	12193

On this basis, the Assessing Officer concluded that the assessee had received on-money in cash to the extent of Rs. 4,97,66,400/- over and above the recorded value.

3.3 For A.Y. 2020-21, the learned DR pointed out that the incriminating material relied upon by the Assessing Officer included page No. 146 retrieved from the mobile of Shri Suresh Ranchhodbhai Thakkar. This page contained the details of a transaction relating to a plot of land admeasuring 3000 square yards in Gurjari Society, TP No. 204, Makarba, Ahmedabad. The seized page recorded the transaction at the rate of Rs. 54,444 per square yard, aggregating to Rs.16,33,32000/-. The statement of Shri Suresh Thakkar was also relied upon, wherein he had categorically stated that the land was sold by the family of Shri Dhiren Bharwad to the assessee for Rs.17.23 crore, comprising cash of Rs. 12.75 crore and cheque payment of Rs. 4.48 crore. It was further submitted that though the registered sale deed reflected consideration of only Rs. 6 crore, corroborative material was also found from the premises of Dharinidhar Developers, in the form of WhatsApp image files (IMG-20191002-WA0018 to 0020) containing unsigned draft affidavits/indemnity bonds relating to the same property. In his statement, Shri Dhiren Bharwad had also

confirmed that the seized draft affidavit pertained to the transaction of sale of the said land to the assessee. On this basis, the Assessing Officer concluded that the assessee had in fact invested Rs.16.33 crore in the property, out of which Rs. 12.75 crore was paid in cash and not recorded in the books. Brokerage expenditure of Rs.8,16,660/- was further noted to have been incurred in cash in respect of the same.

3.4 The learned DR further placed strong reliance on the admission made by the assessee himself in his written reply dated 17.03.2023, more particularly para 32 thereof. In the said reply, the assessee had, inter alia, stated as under:

> *"In case your kind office takes an adverse view without accepting the above-referred facts and explanation then in that case no addition shall be made as proposed by your kind office. Your kind office is proposing to make addition of Rs. 496.77 lakhs and Rs. 1275 lakhs on account of on money received on sale of land survey no. 66 at Manipur and on money paid on purchase of land TP survey no. 204 at Makarba respectively. Here it may be noted that in case your kind office assumes that the Assessee has received on money on sale of land survey no. 66 then corresponding application of on money is to be considered for purchase of land TP survey no. 204. The cash received on sale land in FY 2018-19 is utilised for purchase of land in FY 2019-20 thus addition cannot be made for source of cash receipt as well as application of cash payment. It is submitted that the on money is considered as revenue receipt then any expenditure and/or investment out of such money cannot be treated as unexplained expenditure/investment."*

3.4 The learned DR argued that the above categorical admission clearly establishes two material facts: firstly, that on-money of Rs.4.96 crore was received by the assessee on sale of land at Manipur (Survey No. 66), and secondly, that a cash component of Rs.12.75 crore was paid by the assessee in respect of purchase of land at Makarba (TP

No. 204). It was emphasised that once such admission is made in writing by the assessee, the same constitutes the best evidence, and the assessee cannot subsequently retract or claim that no incriminating material existed.

3.5 The learned Departmental Representative also drew our attention to the dates of the assessment orders and submitted that the assessment for A.Y. 2020-21 was completed on 21.03.2023, while that for A.Y. 2019-20 was completed on 24.03.2023. It was emphasised that the Assessing Officer, while framing the assessments, had proceeded strictly in line with the proposal made by the assessee himself in para 32 of his written reply dated 17.03.2023. The Departmental Representative pointed out that the assessee, in unequivocal terms, suggested that if the addition on account of on-money received on sale of land at Manipur (Survey No. 66) is to be made, then the same should be treated as the source for the on-money paid for purchase of land at Makarba (TP No. 204). It was accordingly urged that the Assessing Officer has only adopted the working as per the assessee's own admission and proposal, and the assessee cannot now turn around to challenge the very additions which were made on the basis of such proposal.

3.6 The DR accordingly urged that the orders of the CIT(A) deleting the additions deserve to be reversed.

3.7 In regard to the legal grounds, the learned DR submitted that the learned CIT(A) has erred in quashing the assessments by invoking section 153C(3) of the Act. It was argued that the CIT(A) wrongly reckoned the date of initiation of search as 21.10.2021, being the date of receipt of seized material by the Assessing Officer of the assessee and thereby held that no proceedings could be initiated. The DR

contended that such interpretation is contrary to law, as the first proviso to section 153C only provides for reckoning of the date of receiving seized material for the limited purpose of calculating the six assessment years in terms of the second proviso to section 153A(1). It was emphasised that the proviso does not in any manner nullify or bar the initiation of proceedings under section 153C itself. Thus, according to the DR, the decision of the CIT(A) is perverse and unsustainable in law.

4. Per contra, the learned Authorised Representative (AR) for the assessee strongly supported the impugned orders of the CIT(A). It was submitted that the CIT(A) has correctly quashed the assessments as being without jurisdiction in terms of section 153C(3) of the Act. The AR emphasised that the first proviso to section 153C clearly stipulates that the date of search in the case of a person other than the searched person shall be the date on which the Assessing Officer of such other person receives the seized material. In the present case, the Assessing Officer of the assessee received the documents only on 21.10.2021, which falls after 01.04.2021. In such a situation, by virtue of section 153C(3), the search is deemed to have been conducted on or after the 1st day of April 2021, and therefore the provisions of section 153C cannot be invoked. The AR pointed out that the CIT(A) has relied on this statutory mandate to quash the assessments, and the Revenue's challenge is misconceived.

4.1 The learned AR, on the other hand, relied heavily on the orders of the learned CIT(A) and reiterated that the assessments framed under section 153C are without jurisdiction. It was submitted that the seized material relied upon by the Assessing Officer consisted of certain WhatsApp images allegedly retrieved from the mobile phone of

a third party, Shri Anand Patel, which did not pertain to the assessee. The AR invited our attention to the assessee's detailed reply wherein a comparison was drawn between the contents of the alleged seized document and the actual registered sale deed. For ease of reference, the assessee had tabulated the same as under:

Particulars	**Information as per Seized Document (page 8 of Satisfaction Note)**	**Details as per Actual Sale Deed (dated 23.10.2018)**
Date of Transaction	26.05.2018	23.10.2018
Name of Seller	Kartik Patel	Shailesh Mistry
Name of Buyer	Amratbhai Patel and Dharminbhai Patel	Green Impact Realty and Mitesh Patel

4.2 It was submitted that the above comparison itself demonstrated that the seized page does not relate to the assessee's transaction and therefore cannot form the foundation for initiation of proceedings under section 153C.

4.3 The AR further pointed out that the assessee had specifically denied having made or received any cash payment in relation to the Manipur land transaction and clarified that no such transaction had taken place between the persons mentioned in the seized material. It was urged that the scanned pages relating to the alleged MOU had no evidentiary value, being only rough notings or unsigned documents, and could not be treated as incriminating material belonging to the assessee.

4.3 The AR thus submitted that the CIT(A) has correctly quashed the assessments by holding that the date of receipt of seized material by the AO of the assessee was 21.10.2021, and therefore, in view of section 153C(3), the provisions of section 153C could not have been invoked and even otherwise, the additions made were without any incriminating material belonging to the assessee, resting merely on third-party statements and unsigned loose papers. The AR accordingly prayed for upholding the well-reasoned orders of the CIT(A).

5. At the outset, we find that in both these appeals the primary controversy raised by the Revenue relates to the legality of the assessments framed under section 153C of the Act. Since the issue goes to the very root of the validity of the proceedings, it would be appropriate to deal first with the legal ground challenging the order of the learned CIT(A) in quashing the assessments under section 153C(3).

5.1 It is an undisputed position that the documents referred to by the Assessing Officer were received by the Assessing Officer of the assessee on 21.10.2021. The learned CIT(A) has taken a view that by virtue of the first proviso to section 153C, the date of search in the case of a person other than the searched person is to be reckoned as the date on which the Assessing Officer of such other person receives the seized documents. Since such date falls after 01.04.2021, the CIT(A) held that the provisions of section 153C were not available and, in terms of section 153C(3), the assessments are invalid.

5.2 The Revenue contended that the first proviso to section 153C is only for the limited purpose of computing the block of six assessment

years in terms of the second proviso to section 153A(1), and does not govern the initiation of proceedings under section 153C itself. In contrast, the Authorised Representative has strongly supported the interpretation adopted by the CIT(A) by pointing out that the statutory language of section 153C(3) read with its proviso makes it clear that where the seized documents are received by the Assessing Officer of the "other person" on or after 01.04.2021, the assessment has to be framed only under the new regime of section 153C, as substituted, and the old provision cannot be pressed into service.

5.3 The CIT(A), while quashing the assessments, has recorded a categorical finding that the date of receipt of documents being 21.10.2021, the case falls within section 153C(3), and therefore, initiation of proceedings under section 153C, as invoked by the AO, was not permissible. The CIT(A) observed that the first proviso to section 153C(1) creates a deeming fiction for determining the date of search in the case of a person other than the searched person. He relied on the judgement of Hon'ble Supreme Court in **Vikram S Bhatia v. CIT (2023) 149 taxmann.com 123 (SC)** where it was held that the effect of this proviso is that any reference to the date of initiation of search is to be construed as the date on which the Assessing Officer of the "other person" receives the seized books of account, documents or assets. In other words, the date of search in the case of the assessee has to be reckoned with reference to the date of such receipt by his Assessing Officer, and not the date on which the actual search took place in the case of the searched person. Applying this ratio to the facts of the present case, the CIT(A) noted that the Assessing Officer of the assessee received the seized material on 21.10.2021. Thus, by operation of law, the date of search in the case of the assessee is to be taken as 21.10.2021 and not the original

date of search as assumed by the Assessing Officer. This construction, according to the CIT(A), flows directly from the statutory language and has also been affirmed by the Apex Court in the above decision.

5.4 The CIT(A) further relied on the judgement of the Hon'ble Supreme Court in **Jasjit Singh v. CIT [2023] 155 taxmann.com 155 (SC)**, wherein it was held that the proviso to section 153C was not enacted merely to address the question of abatement but also to ensure that the six-year block period is reckoned with reference to the date of receipt of the seized material by the AO of the other person. The Court rejected the Revenue's contention that the proviso has a limited operation and instead adopted an interpretation that avoids undue hardship to the assessee who otherwise would be compelled to maintain records for disproportionately long periods. On this plain reading, the date of receipt of seized documents by the AO of the other person becomes the decisive factor for computing the date of search.

5.5 Having determined that the date of search for the assessee was 21.10.2021, the CIT(A) proceeded to examine the effect of sub-section (3) of section 153C, inserted by the Finance Act, 2021 with effect from 01.04.2021. This provision expressly states that nothing contained in section 153C shall apply in relation to a search initiated on or after 01.04.2021. The CIT(A) reasoned that since, in view of the first proviso, the date of search in the case of the assessee is to be deemed as 21.10.2021, the prohibition contained in section 153C(3) squarely applies. Consequently, no proceeding under the erstwhile section 153C could have been initiated in the case of the assessee after 01.04.2021.

5.6 In conclusion, the CIT(A) held that the initiation of assessment proceedings under section 153C in the case of the assessee was without jurisdiction and invalid in law. He categorically recorded that the Assessing Officer had erred in assuming jurisdiction under the old provisions of section 153C despite the fact that the receipt of seized material by him was on 21.10.2021. Accordingly, the assessments framed under section 153C were quashed, and grounds 1 to 4 of the appeal were allowed.

5.7 We have also noted the specific grievance of the Revenue that the first proviso is intended only for the purpose of reckoning the six assessment years as contemplated in the second proviso to section 153A(1), and not for deciding the validity of initiation of proceedings under section 153C. The Revenue further argued that the Assessing Officer had rightly initiated proceedings under the old provisions of section 153C inasmuch as the search was conducted on 21.10.2021 in the case of the searched person, and the seized material was thereafter duly handed over to the Assessing Officer of the assessee. The interpretation placed by the CIT(A), according to the Revenue, results in an anomalous situation where assessments otherwise validly initiated under section 153C are rendered void only on account of the technicality of the date of receipt of material. It was thus contended that the order of the CIT(A) is perverse and not sustainable in law.

5.8 On a careful consideration of the issue, we find no merit in the grievance of the Revenue. The language of the first proviso to section 153C(1) is unambiguous and creates a statutory deeming fiction that, in the case of a person other than the searched person, the “date of search” is the date on which the Assessing Officer of such other

person receives the seized books, documents or assets. This construction has been consistently affirmed by the Hon'ble Supreme Court in Vikram S Bhatia v. CIT (supra), wherein it was held that the proviso is determinative for reckoning the date of search in such cases. Further, in Jasjit Singh v. CIT (supra), the Apex Court has clarified that the proviso is not confined merely to the computation of six assessment years or the question of abatement but has a broader operation in fixing the date of search for the "other person" with reference to the receipt of material.

5.9 In the present case, it is an admitted position that the seized material pertaining to the assessee was received by the Assessing Officer only on 21.10.2021. Consequently, in view of the statutory proviso and binding judicial pronouncements, the date of search in the case of the assessee has to be reckoned as 21.10.2021. Once this position is accepted, the operation of section 153C(3), inserted by the Finance Act, 2021 with effect from 01.04.2021, squarely applies. This provision categorically enacts that nothing contained in section 153C shall apply in relation to a search initiated on or after 01.04.2021. Therefore, the initiation of proceedings against the assessee under the old provisions of section 153C is barred in law.

5.10 We are unable to accept the Revenue's contention that the first proviso is applicable only for the limited purpose of reckoning the six assessment years as per section 153A(1). Such a restrictive construction is not borne out by the plain language of the proviso, which speaks of "reference to the date of initiation of search" and directs that it shall be deemed to be the date of receipt of seized material by the AO of the other person. The Hon'ble Supreme Court has squarely negatived the Revenue's very argument in the case of

Jasjit Singh (supra), by holding that the proviso operates not merely to determine abatement but also to determine the date of search itself. At the cost of repetition, for the sake of completeness, we reproduce here the relevant para referred by the CIT(A) in his order at para 5.3.2 [CIT(A) order for A.Y. 2019-20)] :

> *9. It is evident on a plain interpretation of Section 153C(1) that the Parliamentary intent to enact the proviso was to cater not merely to the question of abatement but also with regard to the date from which the six year period was to be reckoned, in respect of which the returns were to be filed by the third party (whose premises are not searched and in respect of whom the specific provision under Section 153-C was enacted. The revenue argued that the proviso [to Section 153(c)(1)] is confined in its application to the question of abatement.*
>
> *10. This Court is of the opinion that the revenue's argument is insubstantial and without merit. It is quite plausible that without the kind of interpretation which SSP Aviation adopted, the A.O. seized of the materials – of the search party, under Section 132 – would take his own time to forward the papers and materials belonging to the third party, to the concerned A.O. In that event if the date would virtually "relate back" as is sought to be contended by the revenue, (to the date of the seizure), the prejudice caused to the third party, who would be drawn into proceedings as it were unwittingly (and in many cases have no concern with it at all), is dis-proportionate. For instance, if the papers are in fact assigned under Section 153-C after a period of four years, the third-party assessee's prejudice is writ large as it would have to virtually preserve the records for at latest 10 years which is not the requirement in law. Such disastrous and harsh consequences cannot be attributed to Parliament. On the other hand, a plain reading of Section 153-C supports the interpretation which this Court adopts.*

5.11 It is thus clear that the order of the learned CIT(A) is firmly grounded in the statutory scheme as well as binding judicial precedent. The finding that the assessments framed under section 153C are without jurisdiction and invalid cannot be faulted. We therefore uphold the order of the CIT(A) in quashing the assessments, and dismiss the grounds raised by the Revenue on this issue in case of both the appeals.

5.12 We now turn to the grounds raised by the Revenue challenging the deletion of additions sustained by the Assessing Officer in both the assessment years under appeal. The Assessing Officer had made additions on account of alleged on-money receipts and payments arising from certain land transactions, based on loose papers/images found in the mobile phone of a third party. The CIT(A) consistently applied the principle that loose papers, rough notings, or third-party documents without corroboration, signature, or cross-examination cannot form the sole basis of additions.

5.13 In case of A.Y. 2019-20, the CIT(A) noted that the AO had placed reliance on seized material found in the *WhatsApp* chat of Shri Anand Patel's mobile phone. The AO had emphasized that the description of land, the sale price, and the registered sale deed matched the seized material. However, the CIT(A) held that beyond this *WhatsApp* chat, no corroborative evidence had been brought on record to substantiate the addition of Rs. 4,97,66,400/-. The assessee contended that the seized data did not pertain to him and that he had never paid brokerage to Shri Anand Patel. This fact was not rebutted by the AO. The CIT(A) recorded that the assessee had raised the issue of denial of cross-examination of Shri Anand Patel, whose digital data formed the basis of the addition. The AO neither produced Shri Anand Patel's statement nor gave the assessee an opportunity to test its veracity. Relying on settled judicial principles, the CIT(A) agreed with the assessee that additions could not be sustained in the absence of cross-examination. The CIT(A) finally observed that the seized material from Shri Anand Patel's mobile phone was an unregistered and unsigned rough noting, not even on stamp paper. In the absence of any independent inquiry by the AO or any corroborative evidence,

such loose paper could not be given evidentiary value. Therefore, the entire addition of Rs. 4,97,66,400/- was deleted.

5.14 In case of A.Y. 2020-21, the AO relied on the statement of Shri Suresh Thakkar recorded during search proceedings, who alleged that the assessee had purchased land from Dhiren Bharwad and family for Rs.17.23 crore, including Rs. 12.75 crore in cash. The AO matched this with the registered sale deed of 03.10.2019 reflecting Rs. 6 crore as the consideration and treated the balance as 'on-money.' The CIT(A) noted the assessee's categorical submission that the seized *WhatsApp* images from Shri Suresh Thakkar's mobile did not pertain to him. The assessee argued that the AO relied solely on third-party statements without corroboration and ignored the fact that the registered consideration of Rs. 6 crore was duly recorded in books, backed by sale deed, bank statements, and TDS compliance. The assessee also emphasized that no brokerage was paid to Shri Suresh Thakkar, proving that he was not involved in the transaction. The CIT(A) held that the seized material had no evidentiary value as it neither bore signatures, nor dates, nor the assessee's name. Moreover, the AO had not examined Shri Suresh Thakkar in cross-examination, despite relying on his statement.

5.15 The CIT(A) highlighted that there was a material inconsistency between the seized notings and the actual sale deed. The seized papers named different sellers and buyers, whereas the registered document reflected Zeel Dipakbhai Mevada and the assessee. Such mismatch eroded the evidentiary weight of the seized notings. Importantly, the AO had not made any independent inquiries to reconcile these differences. The CIT(A) emphasized that the seized WhatsApp images were rough papers, not notarized or signed, and

therefore constituted "dumb documents." In the absence of corroboration, no presumption u/s 132(4A) could be drawn against the assessee since the material was recovered from a third party's device. The addition of Rs. 5,35,65,600/- was accordingly deleted, as the AO had failed to establish any nexus between the seized material and the assessee.

5.16 We have carefully considered the rival submissions and perused the orders of the lower authorities along with the material placed before us. The principal dispute relates to the additions made by the Assessing Officer on the basis of certain seized material and statements recorded from third parties during the course of search, which according to the Assessing Officer evidenced unaccounted 'on-money' transactions in the purchase and sale of immovable property.

5.17 It is a well settled proposition of law, as laid down inter alia by the Hon'ble Supreme Court in the case of *CBI v. V.C. Shukla* (1998) 3 SCC 410, and followed in subsequent decisions including those of the Hon'ble jurisdictional High Courts, that loose papers or unsigned notings recovered from third parties cannot by themselves constitute incriminating evidence unless supported by cogent corroborative material. The presumption under section 132(4A) or section 292C of the Act is confined only to the person from whose possession such documents are found and cannot be extended to implicate other persons. The CIT(A), in our considered opinion, has correctly applied this principle in the present case.

5.18 We also note that both in the case of Shri Anand Patel (A.Y. 2019-20) and Shri Suresh Thakkar (A.Y. 2020-21), the Assessing Officer has failed to provide the assessee any opportunity to cross-examine the said third parties, despite heavily relying on the material

seized from them. This goes to the root of natural justice. The law is well established that if an addition is founded on third-party statements, the denial of cross-examination vitiates the addition itself.

5.19 We have carefully considered the additional contention advanced by the learned Departmental Representative, wherein reliance has been placed on para 32 of the assessee's written submission dated 17.03.2023. In the said reply, the assessee had urged that if, despite his explanation, the Assessing Officer were to take an adverse view, then the alleged "on-money" receipt on sale of Manipur land (Survey No. 66) may be telescoped against the alleged "on-money" payment on purchase of Makarba land (TP No. 204). The Department has argued that this constitutes a categorical admission of two facts, namely (i) the assessee received Rs. 4.96 crore in cash as "on-money" on sale of Manipur land, and (ii) the assessee paid Rs.12.75 crore in cash as "on-money" for purchase of Makarba land. It was contended that such admission being in writing, the Assessing Officer was justified in making the impugned additions, and the assessee cannot resile from the same at the appellate stage.

5.20 We are unable to agree with this contention. A careful reading of para 32 of the assessee's reply makes it evident that the assessee had, at the forefront, denied the correctness of the allegation regarding any "on-money" transaction either in respect of Survey No. 66 at Manipur or TP No. 204 at Makarba. The so-called admission is in fact couched as an alternative plea in the nature of a protective argument, to the effect that if the Assessing Officer were to reject the explanation of the assessee and proceed to make addition on account of alleged on-money, then the principle of telescoping ought to be applied so as to avoid double taxation of the same source. It is a well-

established principle of law that an alternative plea cannot be construed as an admission of fact. The assessee, in the present case, never accepted the existence of on-money transaction; he merely submitted that even if the Department were to hold otherwise, then the consequential application of such cash should be telescoped against the receipt, so that the same amount is not taxed twice. The Hon'ble Courts have consistently held that such protective or alternative submissions are made to safeguard the assessee against the contingency of an adverse view and do not amount to binding admissions.

5.21 We also note that the learned CIT(A), while adjudicating the merits, has categorically held that there is no incriminating material on record to prove the assessee's involvement in the alleged on-money transactions. The seized *WhatsApp* chats were from the devices of third parties, were unsigned, undated and uncorroborated. The Assessing Officer neither produced the third parties for cross-examination nor conducted any independent enquiry to substantiate the allegation. In the absence of legally admissible evidence, the foundation itself for the impugned additions does not survive. Once this finding has been returned on merits, the so-called alternative plea loses all relevance.

5.22 The reliance of the Department on the chronology of assessment orders also does not advance its case. The mere fact that the Assessing Officer proceeded on the basis of assessee's alternative working does not dispense with the requirement of establishing, with cogent evidence, the existence of on-money transactions. The jurisdictional High Courts have time and again emphasised that additions cannot rest on conjectures, loose papers or untested statements, much less

on a conditional plea advanced by an assessee to avoid double jeopardy.

5.23 In view of the foregoing, we hold that para 32 of the assessee's written reply dated 17.03.2023 cannot be read as an admission of on-money transactions, but only as a protective plea in the alternative.

5.24 Before we conclude, it is pertinent to record the submission of the learned AR who placed reliance on the recent decision of the Co-ordinate Bench of ITAT, Delhi in the case of Olive Overseas Pvt. Ltd. & Nakshatra Business Pvt. Ltd. v. DCIT in ITA Nos. 3310, 3330–3335/Del/2023 & 3358–3361/Del/2023, order dated 08.10.2024. In that case, the Co-ordinate Bench held in categorical terms that mere statement of a person under section 132(4) of the Act in the course of search, by itself, cannot be regarded as incriminating material found during the search. The Tribunal, after referring to judgments of the Hon'ble Delhi High Court in PCIT v. Anand Kumar Jain (HUF) (ITA No. 23/2021, dated 12.02.2021) and PCIT v. Pavitra Realcon Pvt. Ltd. (ITA No. 579/2018, dated 29.05.2024), concluded that additions made solely on the basis of a confessional statement, without any supporting corroborative material discovered during search, are unsustainable in law.

5.25 Applying the same principle here, we find that the Revenue's reliance on statement of third parties and also on para 32 of the assessee's reply dated 17.03.2023 cannot cure the fundamental deficiency of absence of incriminating material. The so-called admission was an alternative plea, and even otherwise, the settled law is that statements recorded under section 132(4) cannot, standing alone, constitute incriminating material. The ratio of Olive Overseas squarely supports the assessee's stand. The Hon'ble Supreme Court

in Abhisar Buildwell Pvt. Ltd. v. ACIT (2023) 149 taxmann.com 399 (SC), wherein it was laid down that in search assessments under section 153A/153C, no addition can be made unless it is based on incriminating material unearthed during the course of search qua the assessee. The Apex Court reiterated the principle that assessments cannot be disturbed merely on the basis of assumptions, presumptions, or statements without cogent seized evidence directly relating to the assessee.

5.26 We, therefore, uphold the order of the learned CIT(A) deleting the impugned additions and reject the Revenue's grounds in case of both the appeals.

6. The next ground raised by the Revenue for A.Y. 2020–21 relates to the deletion of addition of Rs.8,16,660/- made by the Assessing Officer under section 69C of the Act on account of alleged unexplained expenditure.

6.1 The Assessing Officer proceeded on the footing that, *"though the quantum of brokerage expenditure has not been specified by the assessee but Shri Suresh R. Thakkar himself has stated that as per prevalent market practice in real estate, brokerage @ 0.5% is charged when the aggregate deal value exceeds Rs. 10 crores"*. On that basis, the Assessing Officer computed brokerage at 0.5% and, treating the same as not recorded in the books and source not explained, made the addition of Rs. 8,16,660/- under section 69C. This foundation is recorded by the CIT(A) at para 7.1 along with the assessee's categorical stand that no purchase was executed "through" Shri Suresh Thakkar and no brokerage was paid by the assessee.

6.2 The learned CIT(A) has then examined the issue in detail. At para 7.2, the CIT(A) records a clear finding that the Assessing Officer has not independently substantiated that any brokerage was in fact incurred by the assessee. It is specifically noted that section 69C applies only when expenditure is actually incurred and the assessee fails to explain the source. In the present case, there is no evidence of any real expenditure; the alleged brokerage is assumed solely on the basis of the statement of Shri Suresh Thakkar. The CIT(A) further observes that such statement, in the absence of corroboration and without opportunity of cross-examination, "does not have any evidentiary value". The CIT(A) also notes that the substantive issue on "on-money" investment in land has been decided in favour of the assessee, thereby undermining the very premise for a consequential brokerage claim.

6.3 In para 7.3, the CIT(A) concludes that the entire addition under section 69C of Rs. 8,16,660/- is to be deleted, since there is no proof of actual incurrence of expenditure and the addition rests on mere assumption. While reaching this conclusion, the CIT(A) has also noticed the legal position relied upon by the assessee, inter alia Lubtec India Ltd. [2009] 311 ITR 175 (Del.) and Suresh Chandra Kothari v. ITO [2009] 31 SOT 14 (Jodhpur), which hold that when the Revenue brings no evidence of the expenditure said to have been incurred, a notional or estimated figure cannot be sustained under section 69C.

6.4 On these facts, we find no error in the order of the CIT(A). Section 69C postulates two jurisdictional facts: first, that an expenditure is incurred; second, that the source thereof is not explained to the satisfaction of the Assessing Officer. Unless the Revenue first proves the factum of expenditure, the question of calling

upon the assessee to explain its source does not arise. Here, there is no bill, voucher, receipt, ledger entry, banking trail, or confirmation evidencing any brokerage outgo. The addition is founded purely on a generalised "market practice" statement of a third party and an ad hoc rate of 0.5 percent. Such a course is impermissible.

6.5 We also note that the statement relied upon is of a third party; the Assessing Officer did not produce the deponent for cross-examination, nor did he verify whether any brokerage service was rendered in the assessee's transaction. Consistent with the CIT(A)'s reasoning and settled law, an uncorroborated third-party assertion cannot, by itself, justify an addition under section 69C.

6.6 In the totality of the above circumstances, the finding returned by the CIT(A) that the impugned brokerage addition is assumption-based and unsupported by evidence is unexceptionable. We therefore uphold the deletion of Rs.8,16,660/- under section 69C.

7. In the combined result, both the appeals by the Revenue are dismissed.

Order pronounced in the Court on 29th September, 2025 at Ahmedabad.

Sd/-	**Sd/-**
(SIDDHARTHA NAUTIYAL)	**(MAKARAND V. MAHADEOKAR)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad, dated 29/09/2025

vk*

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री रविश सूद, न्यायिक सदस्य **एवं** श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 16 & 17/RPR/2025

(**निर्धारण वर्ष** Assessment Year: 2016-17)

M/s Ashta Vinayak Estate, Sadhani Building, Sadar Bazar, Raipur-492001, C.G.	v s	Assistant Commissioner of Income Tax, Circle-1(1), Raipur
PAN: AALFA8707F		
M/s Ashta Vinayak Farms, Sadhani Building, Sadar Bazar, Raipur-492001, C.G.		Assistant Commissioner of Income Tax, Circle-1(1), Raipur
PAN: AAMFA9467B		
(**अपीलार्थी/Appellant**)	. .	(**प्रत्यर्थी / Respondent**)
निर्धारिती की ओर से /Assessee by	:	Shri R. B. Doshi, CA
राजस्व की ओर से /Revenue by	:	Shri S. L. Anuragi, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	03.02.2025
घोषणा की तारीख/Date of Pronouncement	:	04.02.2025

आदेश / O R D E R

Per Bench:

The captioned appeals are filed by the assessee's namely, (i) M/s Ashta Vinayak Estate, (ii) M/s Ashta Vinayak Farms, pertains to a same group against the separate orders of Commissioner of Income Tax (Appeals), NFAC, Delhi, [in short "Ld. CIT(A)"], dated 12.11.2024 and 18.11.2024, under section 250 of the Income Tax Act, 1961 (in short "the Act"), for the Assessment Year 2016-17, which in turn arises from the order u/s 144 of the

Act, passed by Assistant Commissioner of Income Tax, Circle-1(1), Raipur, (in short "Ld. AO"), dated 14.12.2018 and 13.12.2018, respectively.

2. The amended grounds of appeal along with additional grounds of appeal filed by the assessee in the aforesaid appeals are as under:

ITA No. 16/RPR/2025, Amended Grounds of Appeal:

1. *The assessment order passed by the AO is illegal, invalid and ab initio void inasmuch as it was passed without issuing notice u/s 143(2) within the prescribed time. The assessment order has been passed in violation of mandatory provisions of law and is liable be quashed as illegal and not sustainable.*

2. *The assessment order passed by Assessing Officer is without jurisdiction inasmuch as it has been passed by an Assessing Officer who did not have jurisdiction over the appellant. The assessment order is illegal and not sustainable.*

3. *Assessment order passed by ACIT-1(1), Raipur is illegal and without jurisdiction inasmuch as no order u/s 127 was passed for transfer of case from ACIT-4(1), Raipur to ACIT-1(1), Raipur. Assessment order is illegal and liable to be quashed*

4. *The appellant reserves the right to add, amend or alter any ground/s of appeal.*

Additional Ground:

"Assessment order passed by ACIT-1(1), Raipur is illegal inasmuch as no order u/s 127 was passed for transfer of case from ACIT-4(1), Raipur to ACIT-1(1), Raipur. Assessment order is liable to be quashed."

ITA No. 17/RPR/2025, Amended Grounds of Appeal:

1. ***The assessment order passed by the AO is illegal, invalid and ab initio void inasmuch as it was passed without issuing notice u/s 143(2) within the prescribed time. The assessment order has been passed in violation of mandatory provisions of law and is liable be quashed as illegal and not sustainable.***

2. ***The assessment order passed by AO is without jurisdiction inasmuch as it has been passed by an AO who did not have jurisdiction over the appellant. The assessment order is illegal and not sustainable.***

3. ***Assessment order passed by ACIT-1(1), Raipur is illegal and without jurisdiction inasmuch as no order u/s 127 was passed for transfer of case from ITO-2(1), Raipur to ACIT-1(1), Raipur. Assessment order is illegal and liable to be quashed.***

4. ***The appellant reserves the right to add, amend or alter any ground/s of appeal.***

Additional Ground:

"Assessment order passed by ACIT-1(1), Raipur is illegal inasmuch as no order u/s 127 was passed for transfer of case from ITO-2(1), Raipur to ACIT-1(1), Raipur. Assessment order is liable to be quashed."

3. Since the aforesaid two appeal pertains to same group of assessees, having common and identical issues except the quantum involved therein, therefore, the same are being heard together and decided by this common order.

4. For the sake of convenience and brevity, the case of M/s Ashta Vinayak Estate in ITA No. 16/RPR/2025 is taken up as the lead case, wherein our observations and decisions on the common issues involved therein, shall apply *mutatis mutandis* to the grounds raised in the other case in the matter of M/s Ashta Vinayak Farms in ITA No. 17/RPR/2025.

5. The brief facts of the case of M/s Ashta Vinayak Estate are that the assessee firm has filed its Return of Income (ROI) on 30.06.2016 by declaring total income of Rs.1,22,97,810/-. The case of assessee was selected through compulsory manual selection. Statutory notices u/s 143(2) was issued on 21.09.2017. Further, notice u/s 142(1) dated 08.12.2018 and 10.12.2018 were issued, seeking details of sales & purchases of lands, producing books of accounts and to substantiate the Short-Term Capital Gain. The assessee did not respond to the notices issued by the Ld. AO, thus, in absence of any response by the assessee on various occasions, the Ld. AO had made additions of Rs.66,66,000/- u/s 69 of the Act, on account of undisclosed investment and for and Rs.10,81,74,000/-, on account of Short Term Capital Gain, respectively.

6. Aggrieved with the aforesaid additions, assessee preferred an appeal before the Ld. CIT(A) assailing various grounds on merits as well as to

challenge the legality in framing the impugned assessments u/s 144 of the Act *qua* the assumption of jurisdiction by the Ld. AO. After discussing the case of assessee, Ld. CIT(A) disposed of the appeal of the assessee with the following observations:

7. Decision:

(i) I have considered the submissions of the appellant and perused the material available on record. In para 1,2 of. page No. 1&2 of the assessment order, the learned AO stated that "Notice u/s 143(2) of the Act dated 21.09.2017 was duly served upon the assessee to produce evidences in support of the Return of Income. Further, notices u/s 142 (1) of the Act dated 08.12.2018 and 10.12.2018 were served upon the assessee seeking details of sales & purchases of lands, producing books of accounts and to substantiate the Short Term Capital Gain claimed. However, the assessee did not comply with the various legal notices in any manner. In absence of any reply from the assessee, it is construed that the assessee has no explanation regarding source of investments in land and to substantiate the LTCG claimed in the ITR. Therefore, the total income of the assessee is being computed as under:-

2. On perusal of ITS data, it is seen that during the previous year, the assessee has purchased following immovable properties:-

Sl.	*Date of Transaction*	*Transaction Amount in Rs.*	*Filer Branch*
1	*21.05.2015*	*66,66,000/-*	*Sub-registrar, Collectorate Campus, Raipur*

However, on perusal of return of income of the assessee, it is found that the assessee has not disclosed any asset in its return of income for the assessment year under consideration. Since, the assessee disclose the transaction of purchase of lands in its return of income or alternatively, since, the assessee has failed to explain the queries raised by the undersigned in respect of the above transactions of Rs.66,66,000/- are construed to be undisclosed investment of the assessee u/s 69 of the Act."

On the other hand, the appellant pleaded that due to its nature of business activity the mailbox was not opened regularly as the appellant has no business over e-mail. In view of that, the appellant pleaded that it was not able to comply with the notice of Ld. AO. Further, the appellant submitted financial statements etc. for the consideration during the appellate proceedings. The remand report called from the Ld. AO not yielded anything other than pleading that the additional evidence should not be admitted at this stage.

(ii) On going through the submissions filed by the appellant, I am of the considered opinion that the issues contained in the response of the appellant require extensive enquiries and verification. It would best serve in the interest of justice if the appellant gets another chance to represent his case before Ld. AO and thereupon Ld. AO can verify the submission of the appellant and conduct necessary enquiries to gather material for a true and correct estimation of income of the appellant.

(iii) As per the newly inserted proviso to section 251(1)(a) of the Act, Commissioner (Appeals) in case of order of assessment made u/s. 144 of the Act, may set aside such assessment and refer the case back to the Ld. AO for making a fresh assessment. This proviso has been inserted in the Act w.e.f. 1.10.2024. The said proviso to section 251(1)(a) of the Act is reproduced as under:

***"251**. (1) In disposing of an appeal, the Commissioner (Appeals)] shall have the following powers-*

1. in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;

[Provided that where such appeal is against an order of assessment made under section 144, he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment;]

(iv) Thus, as per the new provisions coming into effect from 01.10.2024 the CIT(A) have been granted powers to set- side assessments to Ld. AO in cases where assessment order has been issued u/s 144. As in the present case the assessment order has been issued u/s 144 by the Ld. AO and there are issues which need to be further examined and investigated by the Ld. AO, it's a fit case for set-aside of assessment made by the Ld. AO. In view of the above facts and changes in the Act, as enumerated above, it is felt that the consideration of the submissions filed by the appellant for the first time in the appellate proceedings, are germane to the correct appreciation of the issues under deliberation.

(v) Therefore, the assessment order passed by the Ld. AO u/s. 144 of the Act dated 14.12.2018 is hereby set aside for making fresh assessment, de-novo, after taking into account the above submissions filed by the appellant. Needless to say that the Ld. AO should, while conducting the set aside proceedings, give proper opportunities of representation to the appellant in view of principles of natural justice and take into account any further submissions which it has to file during the course of the said proceedings. The ld. AO should also conduct all necessary enquiries to verify the submissions filed by the appellant. The appellant is also directed to comply with all the notices/correspondences issued by the ld. AO.

(vi) Therefore, all grounds filed by the appellant are thus remanded to the Ld. AO and the case is set aside for re-adjudication by the ld. AO afresh.

7. In the aforesaid order, Ld. CIT(A) had set aside the assessment for fresh adjudication to the files of Ld. AO, however, the legal ground raised by the assessee challenging the assumption of jurisdiction by the Ld. AO in passing the assessment order without issuance of notice u/s 143(2) within the prescribed time was not adjudicated, therefore, the assessee being aggrieved, preferred the present appeal which is under consideration before us.

8. At the outset, Shri R. B. Doshi, CA, Authorized Representative (in short "Ld. AR") on behalf of the assessee have submitted that the assessee is not aggrieved with the decision of Ld. CIT(A) on merits by setting aside the assessment order and remitting the to the file of Ld. AO for fresh adjudication, however as the legal ground raised by the assessee before the Ld. CIT(A) was not adjudicated by him, the same needs to be decided, as the assessment order passed in violation of mandatory provisions of law is illegal, bad in law, at nullity, therefore, liable to be quashed..

9. Per Contra, Shri S. L. Anuragi, CIT-DR vehemently supported the order of Ld. CIT(A) and submitted that since the issues in appeal of assessee restored back to the file of Ld. AO for fresh adjudication, the assessee has

fair opportunity to represent its case before the Ld. AO, therefore the Ld. CIT(A's) order is justified and deserves to be sustained.

10. We have considered the rival submissions, perused the material available on record *inter alia* the amended grounds of appeal including additional ground raised by the assessee *qua* the validity of assessment for want of assumption of jurisdiction by the Ld. AO, who had passed the assessment. Admittedly, on perusal of order of Ld. CIT(A), it is evident that the legal ground No. 5 raised by the assessee before the Ld. CIT(A) was not deliberated upon, for the sake of completeness of information, the ground raised before the First Appellate Authority, which was not adjudicated, is culled out as under:

"Assessment order passed by ACIT-1(1), Raipur is illegal inasmuch as no order u/s 127 was passed for transfer of case from ACIT-4(1), Raipur to ACIT-1(1), Raipur. Assessment order is liable to be quashed."

11. The Ld. CIT(A) had only discussed the matter on merits and restore back to the file of Ld. AO for fresh adjudication, whereas it was the duty of Ld. CIT(A) to decide all the issues raised by the assessee during appellate proceedings before him.

12. In view of aforesaid facts and circumstances in the instant case, as the appeal of assessee was not disposed of by the Ld. CIT(A) *qua* the legal ground raised by the assessee, therefore, we find it appropriate to restore this matter back to the file of Ld. CIT(A) for the limited purpose to decide the legal ground raised by the assessee before him, and at the same time the assessee would be at liberty to furnish necessary explanations, evidence, supporting case laws etc. before the Ld. CIT(A) to support its legal contentions.

13. Consequently, the matter for adjudication of legal ground has been referred to the file of Ld. CIT(A) for adjudication of legal ground, following the mandate of law. Needless to say, reasonable opportunity of being heard shall be provided to the assessee in the set aside appellate proceedings.

14. Resultantly, the present appeal in **ITA No. 16/RPR/2025** M/s Ashta Vinayak Estate filed by the assessee is **Partly Allowed** for statistical purposes.

15. As we have restored **ITA No. 16/RPR/2025** in the case of M/s Ashta Vinayak Estate to the file of Ld. CIT(A) for the limited purpose to adjudicate

the legal ground raised by the assessee, having similar facts and circumstances and ground which was not adjudicated by the Ld. CIT(A), the matter in **ITA No. 17/RPR/2025** in the case of M/s Ashta Vinayak Farms is also directed to restore back to the file of Ld. CIT(A) for adjudication of the legal ground raised therein which was not dealt with. Resultantly, **ITA No. 17/RPR/2025** M/s Ashta Vinayak Farms filed by the assessee is **Partly Allowed** for statistical purposes.

16. In combined result**, ITA No. 16/RPR/2025 M/s Ashta Vinayak Estate** and **ITA No. 17/RPR/2025 M/s Ashta Vinayak Farms** filed by the assessee are **Partly Allowed** for statistical purposes**,** in terms of our aforesaid observations.

Order pronounced in the open court on 04/02/2025.

Sd/-	**Sd/-**
(RAVISH SOOD)	**(ARUN KHODPIA)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

रायपुर/Raipur; दिनांक Dated 04/02/2025
Vaibhav Shrivastav

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

1. अपीलार्थी / The Appellant- M/s Ashta Vinayak Estate and M/s Ashta Vinayak Farms
2. प्रत्यर्थी / The Respondent- ACIT, Circle-1(1), Raipur
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

I.T.A. No.1095/Ahd/2025
(Assessment Year: 2018-19)

Malay Multani, 3, Prabhat Society,, Nr. Suvidha Shopping Centre, Ellisbridge, Ahmedabad-380006. [PAN :AEDPM2637 N]	Vs.	The Principal Commissioner of Income Tax(Central), Ahmedabad.
(**Appellant**)	..	(**Respondent**)

Appellant by :	Shri Vartik Chokshi, AR
Respondent by:	Shri Alpesh Parmar, CIT(DR)

Date of Hearing	29.09.2025
Date of Pronouncement	14.11.2025

O R D E R

PER DR. B.R.R. KUMAR, VICE-PRESIDENT:-

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Principal Commissioner of Income Tax (Central), Ahmedabad, arising in the matter of the order passed under s. 263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2018-2019.

2. The assessee has raised the following grounds of appeal:

1. *On the facts and circumstances of the case, the order dated 30.03.2025 passed by the Ld.PCIT u/s.263 of the Act is bad in law and void ab inito.*
2. *On the facts and circumstances of the case, the Ld. PCIT erred in considering the order passed u/s.143(3) r.w.s by Addl. CIT, Central Range-2, Ahmedabad as erroneous and prejudicial to the interest of revenue and setting aside the same before the Assessing Officer.*
3. *On the facts and circumstances of the case, the Ld.PCIT erred in observing that the appellant has made payment of Rs.4.2 crore in observing that the appellant has made payment of Rs.4.2 crore in cash to Shri Rajesh Brahmbhatt for purchase of TDR and transaction of*

purchase was done by the assessee, either in an individual capacity or as a partner of the firm "M/s. Parshwa Infraventures"

3. The brief facts of the case are that the assessee filed his original return of income on 30.10.2018 declaring total income of Rs. 8,74,230/-. Subsequently, a search and seizure operation under section 132 of the Act was carried out on 15.10.2019 in the case of "Land Broker & Financier Group". Based on certain documents found during the course of the said search, allegedly pertaining to the assessee, notice under section 153C was issued to the assessee on 26.10.2021.

4. The assessment under section 153C was completed on 24.03.2023 accepting the returned income. Later, the Ld. PCIT observed that the assessment was completed without proper enquiry or verification in respect of an alleged transaction of Rs. 4.20 crores relating to purchase of TDR from Shri Rajesh Brahmbhatt. Accordingly, the Ld. PCIT invoked section 263 of the Act and held that the assessment order passed under section 153C r.w.s. 143(3) was erroneous and prejudicial to the interests of the Revenue. The order was therefore set aside to the file of the Assessing Officer for fresh assessment.

5. Aggrieved by the order of the Ld. PCIT, the assessee is now in appeal before the Tribunal.

6. Before us, the Ld. AR submitted that the proceedings initiated under section 263 are bad in law and *void ab initio* for the following reasons:

- The very foundation of the 153C proceedings was the loose material found at the premises of Shri Suresh Ranchhodbhai Thakkar. The same issue was examined during the course of assessment under section 153C, and after considering the assessee's detailed explanation, the AO accepted the returned income.

- The Ld. PCIT has alleged that the order passed under section 153C is erroneous. This, according to the assessee, implies that the approval granted under section 153D was also defective, rendering the assessment order itself invalid and "non-est". A non-est order cannot be subject to revision under section 263.

- Section 263 empowers revision only of valid assessment orders. Therefore, invoking section 263 against a void or invalid assessment is beyond jurisdiction.

6.1 The assessee relied on various judicial precedents including Malabar Industrial Co. Ltd. v. CIT (243 ITR 83, SC), CIT v. Arvind Jewellers (259 ITR 502, Guj), and decisions holding that once the Assessing Officer has made due enquiry and taken a possible view, the order cannot be revised merely because the PCIT has a different opinion.

6.2 The assessee further contended that the had specifically examined the issue during assessment proceedings. The statement of Shri Suresh Thakkar was recorded under section 131, and the assessee's detailed reply dated 03.03.2023 explaining the seized material was considered before the Assessing Officer accepted the returned income. Therefore, the assessment order cannot be said to be passed without enquiry.

6.3 It was further argued that the alleged seized pages were mere rough jottings and "dumb documents" without any corroborative evidence linking the assessee. The name mentioned therein was "Malaybhai" and not "Malay Multani." The alleged payment of Rs. 75 lakhs by cheque was disproved by producing bank statements showing no such transaction.

6.4 The assessee also contended that the seized material was found from the premises of a third party and, in the absence of any corroboration, could not be

relied upon to draw any adverse inference. Reliance was placed on CBI v. V.C. Shukla (1998) Taxmann.com 2155 (SC), where the Supreme Court held that loose sheets found during search do not constitute reliable evidence unless corroborated by independent material.

7. The Ld. DR, on the other hand, supported the order of the Ld. PCIT. The Ld. DR argued that the seized materials reflect payment of monies by the assessee to Shri Rajeshbhai for purpose of TDRs. The Ld. DR argued that the deal for purchase of TDR was made in the month of January 2018 as an amount of Rs.50 lakhs was paid in the month of January, 2018 and an amount of Rs.3.7 crores was made on 28.02.2018. He argued that Shri Suresh R. Thakkar has given a categorical statement that in "Malaybhai" mentioned in the seize material refers to "Malay Shah". The Ld. DR argued that the assessee is a parner with Shri Hemal Dhirenbhai Shah, s/o Shri Dhiren Ramanlal Shah in the firm M/s. Parshwa Infraventures and the said firm has purchased TDR from Safal Constructions Pvt Ltd. The Ld. PCIT at para No. 6, page no. 31, mentioned that firm on its own cannot carry out any transactions with any person. Any partner on behalf of the firm in his own as partner of the said firm does any transaction with another entity. The Ld. DR strongly argued that the Ld. PCIT has rightly held that assessee is a partner in M/s. Parshwa Infraventrues and thus the name "Malaybhai" referred in the seized documents points to the assessee "Malay Multani". The Ld. DR argued that the payment of Rs.75 lakhs was actually made to banking channel and the ledger of M/s. Parshwa Infraventrues reflects such payment of Rs.75 lakhs made to M/s. Safal Constructions Pvt Ltd. Thus, the Ld. DR argued that it can be safely concluded that Rs.4.2 crores in cash was paid by the assessee for acquisition of TDR and the Assessing Officer has ignored clinging evidences found during the course of search and hence, the Ld. PCIT rightly invoked provisions of Section 263 of the Act.

8. Rebutting the arguments of the Revenue, Ld. AR argued that Shri Suresh Thakkar stated "Malaybhai" refers to "Malay Shah" who is partner of Shri Dhiren Ramanlal Shah, whereas the assessee is not a partner of Shri Dhiren Ramanlal Shah, nor he is a partner in any concern in which Shri Dhiren Ramanlal Shah is the partner.

9. Heard the arguments of both the parties and perused the material available on record.

9.1 With regard to the objections of the assessee that the order has been passed after taking the approval of the ACIT u/s 153D of the Act and hence treating the assessment order as erroneous by the PCIT makes the assessment order itself *void ab initio* are not acceptable, as administrative approval u/s 153D and subsequent passing of orders u/s 143(3) of the Act is one comprehensive procedure envisaged by the Act in passing an assessment order in such search cases (153A / 153C), hence the powers of the PCIT to invoke provisions of Section 263 are unfettered.

9.2 With regard to the merits of the issue, we find that page No.152 of the seized material mentioned at page No. 3 of the Ld. PCIT's order headed as "Malaybhai", 50=00 Jan 18, 370=00 28.02.2018. The Ld. PCIT has heavily relied on the statement of Shri Suresh Thakkar wherein he has allegedly stated that payments amounting to Rs.4.2 crores were made by Shri Malaybhai Shah to Shri Rajeshbhai of Safal for acquisition of TDR. Facts reveal that on 15.03.2023, during the assessment proceedings, the Assessing Officer has recorded the statement of Shri Suresh Thakkar u/s 131 who stated that, to the best of his memory, he does not recall making deal with someone named "Malay Shah" or "Malay Multani" (Question No. 6 of AO). The Ld. PCIT alleged that the monies were paid by the assessee and also subsequently it was alleged that the monies were paid by M/s. Parshwa Infraventrues. The Assessing Officer examined the

bank account and found that no such payment was paid by the assessee. The Assessing Officer was duly satisfied after the examination of the bank statement. Before the Assessing Officer, Shri Suresh Thakkar has also filed two affidavits disputing that "Malaybhai" cannot refer to "Malay Multani". While Ld. PCIT started the order u/s 263 alleging that the assessee has paid Rs.50 lakhs by cheque and Rs.3.7 lakhs in cash to Shri Rajeshbhai of Safal for acquisition of TDR, slowly the matter transformed into the allegation that the amounts have been paid by M/s. Parshwa Infraventures. The assessee is a partner with Shri Hemal Dhirenbhai Shah, S/o Shri Dhirenbhai Ramanlal Shah in the firm M/s. Parshwa Infraventures and the said firm has purchased TDR from Safal Constructions Pvt Ltd. For the sake of ready reference, the relevant part viz. para 6 page no. 31 of the order of the Ld. PCIT is reproduced as under:-

> *'6. Facts of the case clearly show that the assessee is a partner with Shri Hemal Dhirenbhai Shah, son of Shri Dhirenbhai Ramanlal Shah in the firm M/s Parshwa Infraventures and the said firm has purchased the TDR from M/s Safal Construction Pvt. Ltd. It is true that the firm and individual are separate entities. However, firm on its own cannot carry out any transaction with any person. Any partner on behalf of the firm in his role as partner of the said firm does any transaction with another entity. It is a fact that the assessee is a partner in Parshwa Infraventures and thus the Malaybhai referred to in the seized documents is assessee only.'*

9.3 From the above, it is clear that though the Ld. PCIT firmly believed that the payments have been made by the firm namely M/s. Parshwa Infraventures, the alleged cash payment has been fastened to the assessee in his individual capacity. Thus, the order suffers from infirmities. In this case, we also find that the Assessing Officer has made enquiries, called for supporting documents, verified the evidences, and taken a credible view. The Assessing Officer has also recorded the statement of Shri Suresh Thakkar who denied linking of notings on the seized material to the assessee. The Revenue was unable to point out any specific enquiry that remained to be conducted by the Assessing Officer nor

could the Revenue place on record any incriminating material from the search directly implicating the assessee. Keeping in view the entire facts, we hold that the order of the Ld. PCIT cannot be sustained.

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

The order is pronounced in the open Court on 14.11.2025.

Sd/-	**Sd/-**
(SIDDHARTHA NAUTITAL) **JUDICIAL MEMBER**	**(DR. B.R.R. KUMAR)** **VICE-PRESIDENT**

Ahmedabad; Dated 14.11.2025

***btk*

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IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

I.T.A. No.957/Ahd/2024
(Assessment Year: 2016-17)

Smt. Neetu Hurkat, A-4, Adarsh Nagar, Pali-306401. Rajasthan. [PAN :ADDPM4294 Q]	Vs.	The Principal Commissioner of Income Tax, Ahmedabad-1, Ahmedabad.
(**Appellant**)	..	(**Respondent**)

Appellant by :	Shri Javed Khan, AR
Respondent by:	Shri Alpesh Parmar, CIT. DR

Date of Hearing	29.09.2025
Date of Pronouncement	14.11.2025

O R D E R

PER DR. B.R.R. KUMAR, VICE-PRESIDENT:-

This appeal by the assessee is directed against the order dated 12.03.2024 passed by the Learned Principal Commissioner of Income Tax, Ahmedabad–1 (hereinafter referred to as "Ld. PCIT"), under section 263 of the Income-tax Act, 1961 ("the Act"), for the Assessment Year 2016–17.

2. The assessee has raised the following grounds of appeal:

1. That, Ld. PCIT Ahmedabad, Ward (5)(3)(2) erred in assuming jurisdiction under Section 263 of the Act and in setting aside order dated 16/03/2022 passed by the Assessing Officer in the case of assessee even when none of the jurisdictional conditions requisite for invoking section 263 were grossly missing.

2. The Ld. PCIT erred in holding that the AO has not verified the issue of accommodation entry in the form of exempt Long Term Capital Gain u/s 10 (38) of the Act, amounting to Rs.25,98,752/- in a penny stock scrip Toyam Industries Ltd., even when complete verification of the transaction was done by the Assessing Officer which is evident from the Assessment Order itself.

3. The Id. PCIT erred in holding that the order passed by the AO is erroneous and prejudicial to the interest of the revenue.

4. The Id. PCIT erred in concluding that, Toyam Industries Ltd. is paper entity with no genuine business activity and its scrip is nothing but penny stock which has been used to provide bogus profit/loss to the beneficiaries. Conclusion of Ld. PCIT is based on surmises and conjectures and therefore, cannot take the place of proof.

5. That the appellant craves the right to add, delete, amend any of the grounds of appeal either before or at the time of hearing of appeal

3. Brief facts of the case are that the assessee is an individual and for the year under consideration i.e. A.Y. 2016-17, the assessee had filed her return of income declaring total income of Rs.22,37,120/-, which was processed u/s 143(1) of the Act. Thereafter, the case was reopened u/s 147 of the Act by issuance of notice u/s 148 dated 30.03.2021. During reassessment proceedings, the assessee was served with notices u/s 143(2) and 142(1) of the Act, in response to which, the assessee submitted detailed replies along with supporting documents and evidences. After considering the same, the Assessing Officer completed the assessment vide order dated 16.03.2022, accepting the returned income without drawing any adverse inference.

4. Subsequently, the Ld. PCIT issued a notice under section 263 of the Act, proposing to revise the assessment on the ground that the order dated 16.03.2022 passed by the Assessing Officer was erroneous in so far as it was prejudicial to the interests of the Revenue. Accordingly, the Ld. PCIT set aside the said assessment order.

5. Being aggrieved by the order of the Ld. PCIT, the assessee is in appeal before us.

6. The Ld. Counsel for the assessee before us submitted a detailed written submission in support of her claim, along with supporting documentary evidence, which were also furnished before the Assessing Officer during the course of assessment proceedings, as under:

a. That, the increase in the quantity of sold stock as compared to purchased stock is attributable to the sub-division [stock-splitting) of shares in the ratio of 01: 10 such that the equity share having face value of Rs. 10/- each got divided into value of Rs. 1/- each share as on 22.09.2015.

b. That, the assessee had purchased 20000 shares of M/s Ojas Asset Reconstruction Company [old name] on 01.04.2014 and made payment in consideration thereof to the tune of Rs. 2,00,000/- on 05.06.2014 by banking channel, which is evident from bank statement of assessee. Thereafter, on 07.10.2015, as per Minutes of the company dated 22.09.2015, the said company re-classified its capital by carrying out sub-division [stock-split] of equity shares of face value of Rs. 10/- each into Rs. 1/ each. In this manner, the stock of assessee got raised from 20000 shares to 200000 shares.

c. That, during the year under consideration, the assessee sold out 98501 shares out of 200000 shares and thus, balance of 101499 shares was left in the closing stock.

d. That, later on, the said company i.e. M/s Ojas Asset Reconstruction Company Limited had changed its name to "Toyam Industries Ltd." vide Board Resolution dated 1212.2016.

e. That, the Capital Gain claimed by assessee is duly supported by every possible documentary evidence such as:-

   i. Purchase Invoices evidencing purchase of shares;

   ii. Sales Invoices evidencing sale of shares;

   iii. Copy of Demat Account evidencing actual delivery of shares into the Demat account of assessee;

iv. Bank Statement evidencing payment of purchase consideration from the bank account of assessee;

v. Bank Statement evidencing receipt of sale consideration into the bank account of assessee;

vi. Contract Note evidencing purchase of stock through registered broker i.e. M/s Kamalakshi Finance Corporation Ltd.

vii. Copy of Income Tax Return;

viii. Computation of Income;

ix. P&L Account of Shares;

x. Capital Account; and

xi. Balance Sheet.

xii. Copy of Board Resolution, Minutes of Meeting, Newspaper publication etc. evidencing change of name of company from M/s Ojas Asset Reconstruction Company Ltd. to M/s Toyam Industries Ltd.

6. We have carefully considered the rival submissions and perused the materials available on record.

The reasons recorded on 31.01.2022 by the Assessing Officer for the reopening of assessment u/s 148 of the Act are as under:-

> *"2. Brief details of Information collected/ received by the AO: In this case, information was reflected on Insight Portal. On verification of the information, it is noticed that the assessee has received claimed bogus LTCG/STCG amounting to Rs. 25,98,752/- in the penny stock Toyam Industries Ltd wherein sale trade quantity is greater than buy quantity for the year under consideration.*
>
> *3. Basis of forming reasons to believe and details of escapement of income:*

On perusal of the details and information, it is very clear that the assessee has received claimed bogus LTCG/STCG amounting to Rs. 25,98,752/- in the penny stock Toyam Industries Ltd. wherein sale trade quantity is greater than buy quantity for the year under consideration. In view of the above facts, I have reason to believe that income of Rs. 25,98,752/- has escaped assessment within the meaning of section 147 of the Act. Therefore it is a fit case for reopening of the assessment by invoking the provision of section 147 of the I.T. Act 1961. Accordingly, it is fit case for issuing notice u/s. 148 of the I.T. Act."

7. The Ld. PCIT, in the show-cause notice dated 14.02.2024, held that the reasons recorded for reopening were related to the claim of bogus LTCG/STCG, and since the addition was not made, there was an audit objection; therefore, the amounts needed to be added back to the total income. The Ld. PCIT further held that since the above issues were not verified while finalizing the assessment, the assessment order passed was erroneous and prejudicial to the interest of the Revenue.

8. We find that the assessee has replied vide letter dated 26.02.2022 about the scrip and the details of purchase and sale. During the year, the assessee sold 98501 shares out of 2,00,000 shares and the balance 101,499 shares are reflected in the balance sheet as closing balance. The assessee has paid an amount of Rs.2 lakhs by cheque No. 252709 on 30.05.2014. The Assessing Officer has issued notices to the assessee during the assessment proceedings and called for entire details and also enquired into in detail regarding the sale, purchase, closing stock and profits earned and also the minutes of the meetings for stock split. Thus, the Assessing Officer had made due enquiries and after diligently examined what is required to be done and then accepted the profits returned by the assessee.

9. Further, we find that the operative part of the Ld. PCIT's order u/s 263 of the Act which is as under:-

5. I have carefully and thoroughly gone through submission of the assessee. The assessee has submitted that her transactions are genuine and proceedings u/s 263 of the Act are not warranted. However, the fact is that scrip of Toyam Industries Ltd. (formally known as Ojas Asset Reconstruction Co. Ltd.) is identified as penny stock. Very few counter parties have picked up major shares of Toyam Industries Ltd. during the various Financial Years against which huge profits/losses were generated. Further, there are common counter parties who have purchased the shares of Toyam Industries Ltd. from various clients/These clients were pr-arranged to punch matching orders for purchase of the shares sold by the various clients. It is also found that some of the counterparties have not filed their return of income While some of the counter parties have filed their ITRs showing very petty income and are not filing ITR regularly, who have only booked losses in the capacity of exit providers. The creditworthiness of these parties to punch in such huge orders remained un-sustained and unexplained. Thus, it was concluded that Toyam Industries Ltd. is paper entity with no genuine business activity and its scrip is nothing but penny stock which has been used to provide bogus profit/loss to the beneficiaries.

In view of the above, it is evident that the assessee has earned bogus long term capital gain of Rs.25,98,752/- during the yar through manipulative trading of penny stock for claiming exemption u/s 10(38) of the Act. ***The Assessing Officer should have added the assessee bogus transaction as such credits u/s 68 of the Act. Therefore, the order of the A.O. is erroneous which caused loss of revenue."***

10. On going through the reasons recorded by the Assessing Officer, the show-cause notice issued by the Ld. PCIT and the relevant order of the Ld. PCIT, we find that the order u/s 263 has been invoked for the firmness that the Assessing Officer has not made the addition of the amounts mentioned in the reasons recorded and there was a consequential audit objection. The Ld. PCIT has not brought on record as to how the order of the Assessing Officer is erroneous so far as it is prejudicial to the interest of the revenue. The Assessing Officer has conducted due enquiries and has taken a reasonably plausible view after due diligence and enquiries.

11. It is well-settled that when the Assessing Officer makes due enquiries and takes a plausible view, the order cannot be held to be "erroneous" merely because the Ld. PCIT holds a different opinion. Where the Assessing Officer has made inquiries and taken one of the possible views, the assessment order cannot be treated as "erroneous" merely because the Ld. PCIT holds a different opinion. For this proposition, reliance is being placed on the judgment of Hon'ble Supreme Court in *Malabar Industrial Co. Ltd. v. CIT* (2000) 243 ITR 83 (SC), wherein it was held that for valid invocation of section 263, the order must be both "erroneous" and "prejudicial to the interests of the Revenue"; if the Assessing Officer adopts one of the permissible views, the order cannot be revised. The same view was reiterated by the Hon'ble Supreme Court in *CIT v. Max India Ltd.* (2007) 295 ITR 282 (SC), holding that where two views are possible and the Assessing Officer has taken one, the order cannot be termed erroneous merely because the Ld. PCIT prefers another view. Similarly, the Hon'ble Bombay High Court in *Gabriel India Ltd. v. CIT* (1993) 203 ITR 108 (Bom) held that once the Assessing Officer has made due enquiries and taken a conscious decision, the order cannot be branded as erroneous merely because it is not elaborate or detailed in its reasoning. In the present case, the record clearly demonstrates that the Assessing Officer conducted adequate enquiry, examined all relevant aspects, and took a plausible view based on evidence; therefore, the assumption of jurisdiction under section 263 is legally untenable.

12. The reliance placed by the Ld. PCIT on the decision of the Hon'ble Madras High Court in *CIT vs. Seshasayee Paper & Boards Ltd. [2000] 242 ITR 490 (Mad.)* is misplaced and not applicable to the present case. In that case, the CIT had conducted independent enquiries, gathered fresh material, and established that the Assessing Officer's order was erroneous. In contrast, in the present case, the Ld. PCIT has neither conducted any fresh enquiry nor

brought any new material on record to show that the Assessing Officer's view was incorrect. The issues were already examined during assessment, and the Ld. PCIT has merely formed a different opinion on the same facts. Hence, the cited decision is clearly distinguishable on facts and does not justify revision under section 263 of the Act.

13. It is also observed that the Ld. PCIT's decision to invoke section 263 was largely influenced by the existence of an audit objection. However, an audit objection, being only an expression of opinion by the audit wing, cannot confer jurisdiction for revision. The Hon'ble Supreme Court in *Indian & Eastern Newspaper Society v. CIT* (1979) 119 ITR 996 (SC) held that an audit objection constitutes mere opinion and cannot form the basis either for reopening an assessment or for revision under section 263. The same view has been reiterated by the Hon'ble Bombay High Court in *CIT v. Reliance Communication Ltd.* (2016) 69 taxmann.com 138 (Bom), holding that audit objections do not empower the PCIT to revise a completed assessment. Accordingly, the reliance placed by the Ld. PCIT on audit objection as a ground for revision is legally impermissible.

14. In view of the above, we hold that the revisional order passed by the Ld. PCIT under section 263 of the Act is unsustainable and is hereby quashed.

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

The order is pronounced in the open Court on 14.11.2025.

Sd/-	**Sd/-**
(SIDDHARTHA NAUTITAL) **JUDICIAL MEMBER**	**(DR. B.R.R. KUMAR)** **VICE-PRESIDENT**

Ahmedabad; Dated 14.11.2025
***btk*

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IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH, AHMEDABAD

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

ITA No.1357/Ahd/2025
Assessment Year: 2020-21

Narayanbhai Shivabhai Patel, Vimal Engineering Company, 4, G.I.D.C. Estate Highway, Mehsana – 384 002. (Gujarat) **[PAN – ABXPP 3036 H]**	Vs.	Income Tax Officer, Ward – 1, Mehsana, Income Tax Office, Apollo Enclave, Opp. Simandhar Swami Jain Temple, Highway, Mehsana - 384 002. (Gujarat)
(Appellant)		(Respondent)

Assessee by	Shri Biren Shah, AR
Revenue by	Ms. Urvashi Mandhan, Sr. DR
Date of Hearing	04.09.2025
Date of Pronouncement	18.09.2025

O R D E R

PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi (in short "the CIT(A)") dated 02.06.2025 for the Assessment Year (A.Y.) 2020-21 in the penalty proceedings under Section 270A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The brief facts of the case are that the assessee had filed his return of income for the A.Y. 2020-21 on 13.02.2021 declaring total income of Rs.13,89,890/-. The case of the assessee was selected for limited scrutiny to examine the purchase value of property which was less than the value as per the stamp authority. It transpired that the assessee, as a co-owner, had purchased two properties at a consideration which was lower than the stamp duty value of the properties. Therefore, the Assessing Officer had invoked the provisions of Section 56(2)(x) of the Act and the difference of Rs.30,50,000/- between the stamp duty value and the purchase price was considered as income of the assessee. The assessment was completed under Section 143(3) of the Act on 21.09.2022 at total income of Rs.44,39,890/-. The Assessing Officer had also initiated penalty proceedings under Section 270A of the Act for under-reporting the income during the year. Thereafter, a separate penalty order under Section 270A of the Act was passed on 20.03.2023, whereby penalty of Rs.4,75,800/- was imposed on the assessee.

3. Aggrieved with the penalty order of the Assessing Officer, the assessee had filed an appeal before the First Appellate Authority which was decided by the ld. CIT(A) vide the impugned order and the appeal of the assessee was dismissed.

4. Now the assessee is in second appeal before us. The following grounds have been taken in this appeal: -

1. *In law and in facts and circumstances of the case of the appellant, the penalty order u/s.270A of the Act dated 20.03.2023 is void and bad in law and hence deserves to be cancelled.*

2. *In law and in the facts and circumstances of the case of the appellant, the Ld. CIT(A) has grossly erred in confirming penalty of Rs.4,75,800/-*

u/s.270A of the I.T. Act 1961 levied by Ld. AO as no penalty can be levied on the basis of deeming provision of Section 56(2)(x) of the Act.

3. *In law and in the facts and circumstances of the case of the appellant, the Ld. CIT(A) has grossly erred in confirming penalty of Rs 4,75,800/- u/s.270A of the 1.T. Act 1961 levied by Ld. AO as appellant case falls under Section 270A(6)(a) of the Act, i.e., exception to underreported income.*

4. *In the law and circumstances of the case of the appellant, the Ld. CIT(A) has grossly erred in confirming penalty of Rs 4,75,800/- uls.270A of the 1.T. Act 1961 levied by Ld. AO as appellant case falls under Section 270A(6)(b) of the Act, i.e, exception to underreported income.*

5. *The appellant craves leave to add, amend and or alter the ground or grounds of appeal either before or at the time of hearing of the appeal."*

5. Shri Biren Shah, Ld. AR of the assessee, submitted that the sole basis of levy of penalty under Section 270A of the Act was the deeming provision under Section 56(2)(x) of the Act, which cannot be considered as any under-statement of income by the assessee. In this regard, he has relied upon various decisions as quoted in the paper-book filed by the assessee. The Ld. AR further submitted that the assessee's case was covered under the exception as provided under Section 270A(6) of the Act, as the assessee had explained that the properties were acquired at less than stamp value rate for the reason that they did not bear clear title to fetch the market value as decided by the State Government. He submitted that considering the bona-fide explanation of the assessee and that all the material facts were duly disclosed in the return of income, the imposition of penalty under Section 270A of the Act was not proper.

6. Per contra, Ms. Urvashi Mandhan, Ld. Sr. DR submitted that the assessee did not bring any evidence on record to establish the defect in the title of the lands and, therefore, it was not covered in the exceptions provided u/s 270A(6) of the Act. Further that the assessee did not contest

the valuation of the stamp duty adopted by the authorities. Therefore, the provisions of Section 56(2)(x) of the Act was squarely applicable and the addition of Rs.30,50,000/- as made by the Assessing Officer was also not contested by the assessee. Considering these facts, the Assessing Officer had rightly imposed the penalty under section 270A of the Act for under-reporting of the income. The Ld. Sr. DR strongly supported the orders of the lower authorities.

7. We have carefully considered the rival submissions. It is found that the addition in this case was made under the deeming provisions of Section 56(2)(x) of the Act. The contention of the assessee is that no penalty under Section 270A of the Act can be imposed for such deeming addition. It is found that the case laws relied upon by the assessee were in the context of penalty levied under Section 271(1)(c) of the Act which are not found relevant to decide the issue before us. Only the decision of Co-ordinate Bench of Bombay Tribunal in the case of *Alrameez Construction Pvt. Ltd. vs. CIT/NFAC, 152 taxmann.com 382 (Mumbai-Trib.)* is found to be in the context of penalty under Section 270A of the Act for under-reporting the income. In that case also, the addition was made under Section 56(2)(x) of the Act, which was held as not falling in the category of underreporting or misreporting of income.

7.1 The assessee has also contended that his case is covered under the exception under Section 270A(6) of the Act. The said section is reproduced for the sake of easy understanding.

> **Penalty for under-reporting and misreporting of income.**
>
> **270A.**
>
> (6) The under-reported income, for the purposes of this section, shall not include the following, namely: —

(*a*) the amount of income in respect of which the assessee offers an explanation and the Assessing Officer or [95][the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, is satisfied that the explanation is *bona fide* and the assessee has disclosed all the material facts to substantiate the explanation offered;

(*b*) the amount of under-reported income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the Assessing Officer or [95][the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, but the method employed is such that the income cannot properly be deduced therefrom;

(*c*) the amount of under-reported income determined on the basis of an estimate, if the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance;

(*d*) the amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer, where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction; and

(*e*) the amount of undisclosed income referred to in section 271AAB.

7.2 It is found that the assessee had disclosed all the material facts and explanation as to why the purchase price of the property was less than the stamp duty value was also given by the assessee. However, the Assessing Officer had held that the explanation of the assessee was not bona-fide as no supporting evidence for the explanation was brought on record. The addition made under Section 56(2)(x) of the Act is not absolute addition, as the assessee has an option to dispute the stamp value of the property on the grounds mentioned in Section 50C of the Act and, thereafter, the Assessing Officer is required to refer the matter to the Valuation Officer. Further, if the value as determined by the Valuation Officer is within 20% of the purchase consideration, then no addition is required to be made under Section 56(2)(x) of the Act. Therefore, no penalty u/s 270A can be automatically levied for all the additions made u/s 56(2)(x) of the Act. It is also relevant to consider that the value determined by the DVO is also an estimate, based on the sale consideration of other

properties in the same vicinity or on the basis of other yardsticks as prescribed. Therefore, any addition made under Section 56(2)(x) of the Act on the basis of difference in the stamp duty value and the purchase price or between the value determined by the DVO and the purchase consideration, cannot be considered as underreporting of income by the assessee so as to invoke the provisions of Section 270A of the Act. The provision of Section 270A(6)(d) of the Act stipulates that the amount of under-reported income on the basis of addition made in conformity with Arm's Length Price determined by the TPO, does not qualify for imposition of penalty under Section 270A of the Act. Following the same rationale, the amount of under-reported income determined on the basis of the report of the DVO also cannot qualify for imposition of penalty under Section 270A of the Act. Merely because the assessee didn't opt to refer the matter to the Valuation Officer, it doesn't make a case fit for imposition of penalty u/s 270A of the Act.

8. In view of the above facts and discussions, we are of the considered view that no penalty under Section 270A was leviable in this case as there was no underreporting or misreporting of income by the assessee. Therefore, the penalty imposed by the Assessing Officer under Section 270A of the Act is quashed.

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

Order pronounced in the open Court on this 18th September, 2025.

Sd/-	*Sd/-*
(SANJAY GARG)	**(NARENDRA PRASAD SINHA)**
Judicial Member	Accountant Member

Ahmedabad, the 18th September, 2025

PBN/*

Copies to: (1) The appellant
(2) The respondent
(3) The PCIT
(4) The CIT(A)
(5) Departmental Representative
(6) Guard File

By order

TRUE COPY

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad

NEUTRAL CITATION
2014:GUJHC:28718-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 461 of 2000
TO
TAX APPEAL NO. 464 of 2000
With
TAX APPEAL NO. 833 of 2005
TO
TAX APPEAL NO. 836 of 2005

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE KS JHAVERI

and
HONOURABLE MR.JUSTICE K.J.THAKER

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANISH DHIRAJLAL MEHTA L/H OF LATE DHIRAJLAL C MEHTA....Appellant(s)

Versus

ASSTT C I T....Opponent(s)

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Appearance:

NEUTRAL CITATION
2014:GUJHC:28718-DB

MR JP SHAH, ADVOCATE for the Appellant(s) No. 1
MRS MAUNA M BHATT, ADVOCATE for the Opponent(s) No. 1
==========

CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**
and
HONOURABLE MR.JUSTICE K.J.THAKER

Date : 05/11/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. Being aggrieved and dissatisfied with the impugned judgment and orders passed by the Income Tax Appellate Tribunal, Rajkot Bench (hereinafter referred to as 'the Tribunal') dated 12.09.2000 in ITA Nos. 856/Ahd/1193, 857/Ahd/1193, 858/Ahd/1193 and 859/Ahd/1193 for the Assessment Years 1985-86, 1986-87, 1987-88 and 1988-89 respectively, the assessee has preferred the Tax Appeals No. 461 to 464 of 2000 for consideration of the following substantial question of law:

> *" **Tax Appeal No. 461 of 2000***
> *A. Whether, on the facts of the case and the evidence on record, the Tribunal erred in raising an inference that the appellant had an unaccounted business income for the A.Y. 1985-86?*
>
> *B. Whether the Tribunal was right in raising an inference from the facts on record of unexplained investment in the sum of Rs. 40,000/- and unaccounted business income of Rs. 30,000/-?*

NEUTRAL CITATION
2014:GUJHC:28718-DB

Tax Appeal No. 462 to 464 of 2000

A. Whether, on the facts of the case and the evidence on record, the Tribunal erred in raising an inference that the appellant had an unaccounted business income for the assessment year in question"

2. On the other hand, the assessee by way of filing Tax Appeals No. 833 to 836 of 2005 has sought to challenge the orders dated 29.10.2004 passed by the Income Tax Appellate Tribunal, Rajkot Bench, Rajkot in ITA Nos. 813/RJT/2003 for A.Y. 1985-86, 814/RJT/2003 for A.Y. 1986-87, 815/RJT/2003 for A.Y. 1987-88 and 816/RJT/2003 for A.Y. 1988-89. These appeals were admitted for determination of the following substantial question of law:

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in sustaining the penalty levied under Section 271 (1)(c) of the Income Tax Act, 1961?"

3. The common ground of appeals is regarding additions of Rs. 70000/-, Rs. 1,22,000/-, Rs. 60000/- and Rs. 90000/- made by the assessee for the assessment years 1985-86, 1986-87, 1987-88 and 1988-89 respectively on the basis of unaccounted business profits out of their sales of silver ornaments are not reflected in the books of account. According to the assessee, CIT(A) has erroneously confirmed the additions without considering the various stages where melting had taken place. The Appellate Authority as well as the Tribunal confirmed the findings of the Assessment Officer and therefore being

aggrieved by the same, the assessee has filed the present appeals.

4. Learned advocate appearing for the assessee submitted that the books of accounts maintained by the assessee have not been considered though the Assessing Officer could not point out any irregularity in such books of account. He submitted that the CIT(A) committed an error in not considering the affidavits filed by various workers in this regard.

4.1 Learned advocate for the appellant also submitted that the Tribunal has erred in upholding the penalty levied u/s 271(1)(c) of the Act by the respondent in respect of alleged unaccounted gross profit earned out of alleged unaccounted sale of silver ornaments. In support of his submission, reliance has been placed on a decision reported in the case of **Commissioner of Income Tax vs. Krishi Tyre retreading and Rubber Industries reported in [2014] 360 ITR 580 and Naresh Chand Agarwal vs. Commissioner of Income-Tax reported in [2013] 357 ITR 514**.

5. Mr. Bhatt, learned Senior Counsel appearing for the revenue submitted that the detraction of disclosure made by the assessee was an afterthought. He has supported the impugned decision imposing penalty upon the assessee. He supported the decisions impugned in the present appeals and submitted that the same do not call for any interference by this Court.

6. Heard both the parties and gone through the material

available on record. In the instant case, we are of the opinion that assessment made is just and proper. The statements made in the affidavits are not based on any record or corroborated with cogent evidence. The presumption raised by the papers which were seized from the custody of the appellant had not been rebutted. Therefore, the issues raised in appeals no. 461 to 464 of 2000 are required to be answered in the affirmative and against the assessee.

6.1 So far as the issue involved in appeals no. 833 to 836 of 2005 is concerned, in view of the decisions cited hereinabove by learned advocate for the appellant we are of the opinion that the penalty has been wrongly imposed under Section 271(1)(c) of the Act. In the case of **Krishi Tyre Retreading and Rubber Industries (supra)**, it has been held that as the addition had been sustained purely on estimate basis and no positive fact or finding had been had been found so as to even make the addition which was a pure guess work, no penalty under section 271(1)(c) of the Act could be said to be leviable on such guess work or estimation. We therefore answer the issue involved in appeals no. 833 to 836 of 2005 in the negative and in favour of the assessee.

7. In the premises aforesaid, Appeals No. 461 to 464 of 2000 are dismissed. Appeals no. 833 to 836 of 2005 are hereby allowed.

(K.S.JHAVERI, J.)

NEUTRAL CITATION
2014:GUJHC:28718-DB

(K.J.THAKER, J)

divya

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13124 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 13062 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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Approved for Reporting	Yes	No
		✔

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NARENDRABHAI PARSOTTAMBHAI CHAUHAN THROUGH POA RATHOD HITENDRAKUMAR UDESANG
Versus
PRINCIPAL COMMISSIONER OF INCOME TAX & ANR.

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Appearance:
MR TUSHAR HEMANI SR. ADVOCATE with MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1
KARAN G SANGHANI(7945) for the Respondent(s) No. 1
MR.VARUN K.PATEL(3802) for the Respondent(s) No. 2
NOTICE SERVED for the Respondent(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 07/10/2025

ORAL COMMON JUDGMENT

(PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)

1. Heard learned Senior Advocate Mr. Tushar Hemani with learned advocate Ms. Vaibhavi Parikh for the petitioner and learned Senior Standing Counsel Mr. Karan Sanghani for the respondent.

2. Having regard to the controversy involved, with the consent of the learned advocates for the respective parties, the matter is taken up for hearing.

3. The issue involved in both the petitions is identical and therefore, they have been heard together and would be disposed of by this common judgment.

4. Rule returnable forthwith. Learned Senior Standing Counsel Mr. Karan Sanghani waives service of notice of rule on behalf of the respondent in the respective petitions.

5. For the sake of convenience, facts are recorded from Special Civil Application No.13124 of 2025.

6. By this petition under Article 227 of the Constitution of India, the petitioner has prayed to quash and set aside order dated 28.03.2025 rejecting the declaration made by the petitioner under Direct Tax Vivad Se Vishwas Scheme, 2024 (For short “the DTVSV Scheme, 2024”).

7. The petitioner filed the return of income for the

Assessment Year 2014-2015 which was the subject to the assessment order passed under section 144 read with section 147 of the Income Tax Act, 1961 (For short "the Act") dated 31.01.2022 making addition of Rs.6,00,203/-.

8. Being aggrieved, the petitioner preferred an appeal before the appellate authority along with application to condone the delay on 18.04.2024. Therefore, the appeal filed by the petitioner was pending as on 22.07.2024 which is the specified date as per provisions of section 89(1)(n) of the DTVSV Scheme, 2024.

9. By Finance (No.2) Act, 2024, the DTVSV Scheme, 2024 came into force as per Chapter IV from section 88 to section 99 of the said Act. As per the said Scheme for dispute resolution in respect of pending income tax litigation and to reduce the pending tax litigation in order to generate timely revenue for Government and benefit the tax payers by providing them peace of mind, certainty and savings on account of time and resources that would otherwise be spent on the long drawn and vexatious litigation process, DTVSV Scheme, 2024 was notified with

effect from 1.10.2024. The Rules under the DTVSV Scheme, 2024 have been notified on 20.09.2024.

10. Under section 97 of the DTVSV Scheme, 2024, the Central Board of Direct Taxes issued Guidance Note No.1/2024 in form of answers to the Frequently Asked Questions (FAQs) vide Circular No. 12 of 2024 dated 15.10.2024. Thereafter, Guidance Note No. 2/2024 was issued on 16.12.2024 and following FAQ NO.36 was inserted in place of FAQ NO.8 of Guidance Note No.1/2024 which reads as under:

S. No.	*Issue*	*Comments*
Eligibility of cases		
36	*Suppose a taxpayer is eligible to apply for DTVSV Scheme, 2024 as his appeal is pending as on 22.7.2024. But subsequently, before the taxpayer could file declaration under the DTVSV Scheme, 2024, his appeal has been disposed off on merits or dismissed as withdrawn for the purposes of the Scheme. Can such a taxpayer still file declaration under the Scheme?*	*Yes, such cases are eligible for settlement under the Scheme as appeal was pending as on 22.7.2024. Disputed tax will be calculated in the same manner as if the appeal pending on 22.7.2024 is yet to be disposed off.*

11. The Central Government thereafter issued Notification No.S.O.1650(E) [F.No. 32/2025/ F.No.370142/9/2025-TPL] dated 8.04.2025 in exercise of the powers conferred by clause(l) of sub-section (1) of section 89 of the Finance (No.2) Act, 2024 and notified the last date as the 30th day of April, 2025 under

the DTVSV Scheme, 2024 on or before which, a declaration in respect of tax arrear was to be filed by the declarant to the Designated Authority in accordance with the provisions of section 90 of the said Act.

12. Accordingly, the petitioner filed a declaration for the Assessment Year 2014-2015 on 21.12.2024 in Form-1 under sub-section (1) of section 90 read with sub-section (4) of section 91 of the Finance (No.2) Act, 2024 under the DTVSV Scheme, 2024 wherein the petitioner stated that appeal before the CIT(Appeals) was pending as on 22.07.2024.

13. Learned Senior Advocate Mr. Tushar Hemani with learned advocate Ms. Vaibhavi Parikh for the petitioner submitted that the eligibility criteria for filing declaration in Form-1 under the DTVSV Scheme, 2024 is that the appeal filed by the petitioner before the CIT(Appeals) should be pending on the specified date i.e. 22.07.2024.

13.1. It was submitted that as per FAQ No.36 which is inserted by Guidance Note No.2/2024 dated 16.12.2024, CBDT has clarified that the assessee would be eligible for settlement

under the Scheme as the appeal was pending as on 22.07.2024 and the disputed tax will be calculated in the same manner as if the appeal pending on 22.07.2024 is yet to be disposed of. In the instant case, the appeal is still pending.

13.2. It was therefore, submitted that even if the appeal is held to be non maintainable by CIT(Appeals) subsequently, after 22.07.2024, the petitioner would be eligible for benefits under the DTVSV Scheme, 2024.

14. In support of his submissions, reliance was placed on the following decisions:

(i) ***Tushar Agro Chemicals v. Principal Commissioner of Income-tax-1*** reported in ***(2022) 441 ITR 179 (Gujarat).***

(ii) ***Bhaskar Manubhai Mehta v. Designated Authority***, **Principal Chief Commissioner** reported in ***(2022) 441 ITR 186 (Gujarat).***

15. *Per contra*, learned Senior Standing Counsel Mr. Karan Sanghani for the respondent submitted that the delay occurred in filing the appeal was not condoned by the appellate authority, it could not be said that the valid appeal was pending before the appellate authority, nor the petitioner could be treated as an

"Appellant" within the meaning of Section 89 (1)(a) of the said Act.

15.1 It was therefore, submitted that an invalid appeal cannot be said to be pending as on the specified dated i.e 22.07.2024 and therefore, the Designated Authority has rightly rejected the declaration of the petitioner.

16. Having considered the rival submissions made by learned advocates for the respective parties, it would be germane to refer to the relevant provisions of the DTVSV Scheme, 2024 as contained in sections 88 to 99 in Finance (No.2) Act, 2024 as under:

> *"89.(1) in the Scheme, unless the context otherwise requires-*
>
> > *(l) "last date" means such date as may be notified by the Central Government in the Official Gazette."*
> >
> > *(n) "specified date" means the 22nd day of July, 2024"*

17. As per section 90 of the the DTVSV Scheme, 2024, a declarant assessee has to pay the tax as on 1st day of January, 2025. The date of computation of tax payable was further extended by Circular No.20/2024 dated 30.12.2024 from 31st

December, 2024 to 31st January, 2025 and in view of Notification dated 8.04.2025, the last date of the Scheme was notified as the 30th day of April, 2025. Accordingly, the petitioner has filed a declaration under section 90(1) read with section 91(4) of the DTVSV Scheme, 2024 in Form-1 on the ground that the appeal preferred by the petitioner before the CIT(Appeals) which was filed on 18.04.2024 is still pending as on the specified date i.e. 22.07.2024 as per the provisions of section 89(1)(n) of Finance (No.2) Act, 2024.

18. In case of *Tushar Agro Chemicals(supra)*, this Court has held as under:

> *"10. At this juncture, it would be relevant to refer to the decision of Supreme Court in case of Commissioner of Income Tax v. Shatrusailya Digvijaysingh Jadeja, relied upon by the learned Senior Advocate Mr. Hemani, in which the S.C. had an occasion to deal with the issue, as to whether, the department could have rejected the Declaration filed under the similar scheme called Kar Vivad Samadhan Scheme, introduced vide the Finance [No.2] Act 1998, on the ground that the Revision / Appeal filed by the concerned Petitioner was time barred or was not valid. In the said case, the Supreme Court considered the object of the said Scheme as also the other earlier decisions, and observed as under:*
>
> > *"13. In our view, the Scheme was in substance a recovery scheme though it was nomenclatured as a "litigation settlement scheme" and was not similar to the earlier Voluntary Disclosure Scheme. As stated above, the said Scheme was a complete Code by itself. Its object was to put an end to all pending matters in the form of appeals, reference, revisions and writ petitions under the IT*

Act/WT Act. Keeping in mind the above object, we have to examine section 95(i)(c) of the Scheme, which was different from appeals under section 246, revisions under section 264, appeals under section 260A etc. of the IT Act and similar provisions under the W.T. Act. Under the I.T. Act, there is a difference between appeals, revisions and references. However, those differences were obliterated and appeals, revisions and references were put on par under section 95(i)(c) of the Scheme. The object behind section 95(i)(c) in putting on par appeals, references and revisions was to put an end to litigation in various forms and at various stages under the IT Act/Wealth Tax Act and, therefore, the rulings on the scope of appeals and revisions under the IT Act or on Voluntary Disclosure Scheme, will not apply to this case.

15. In the case of Dr. Mrs. Renuka Delta (supra), this Court has held on interpretation of section 95(i)(c) that if the appeal or revision is pending on the date of the filing of the declaration under section 88 of the Scheme, it is not for the DA to hold that the appeal/revision was "sham", "ineffective" or "infructuous" as it has.

16. In the case of Raja Kulkarni v. The State of Bombay reported in AIR 1954 SC 73, this Court laid down that when a section contemplates pendency of an appeal, what is required for its application is that an appeal should be pending and in such a case there is no need to introduce the qualification that it should be valid or competent. Whether an appeal is valid or competent is a question entirely for the appellate court before whom the appeal is filed to decide and this determination is possible only after the appeal is heard but there is nothing to prevent a party from filing an appeal which may ultimately be found to be incompetent, e.g., when it is held to be barred by limitation. From the mere fact that such an appeal is held to be unmaintainable on any ground whatsoever, it does not follow that there was no appeal pending before the Court.

17. To the same effect is the law laid down by the judgment of this Court in the case of Tirupati Balaji Developers (P) Ltd. v. State of Bihar & Others reported in (2004) 5 SCC 1, in which it has been held that an appeal does not cease to be an appeal though irregular and incompetent."

> *11. In view of the aforestated legal position, there remains no shadow of doubt that appeal could be said to be pending, even if the delay occurred in filing the same was not condoned and even if it was allegedly irregular or incompetent. In the instant case therefore also, the Respondent could not have rejected the Declaration Form of the Petitioner filed under the said Act merely on the ground that the Appeal was not valid or competent, as the delay occurred in filing the Appeal was not condoned by the Appellate Authority. In the opinion of the Court, the Respondent had to only take into consideration, as to whether, the Petitioner had filed an Appeal, and the same was pending on the 'specified date' i.e. 31.1.2020. It was not for the Respondent to decide, as to whether, such Appeal was irregular or incompetent or invalid in the eye of law."*

19. In case of *Bhaskar Manubhai Mehta (supra)*, it was held by this Court that if delay occurred in filing an appeal was not condoned by the appellate authority, still appeal could be said to be pending and department could not have rejected the declaration filed by the petitioner under the DTVSV Act.

20. Applying the above decisions to the facts of the case and in view of FAQ No.36, it is not in dispute that appeal filed by the petitioner was pending on the specified date i.e. 22.07.2024 and therefore, we are of the opinion that the Designated Authority was not justified in rejecting the declaration filed by the petitioner in Form-1 on the ground that the petitioner was not eligible for VSVS 2024 as among other things mentioned above,

the appeal was very much pending as on 22.07.2024.

21. In view of the foregoing reasons, the impugned communication in both the petitions dated 28.03.2025 displayed on the Portal of the Department, rejecting declaration in Form-1 filed by the petitioner under the DTVSV Scheme, 2024 is hereby quashed and set aside. The respondent Designated Authority is directed to process the declaration in Form-1 filed by the petitioner under the DTVSV Scheme, 2024 in accordance with the said scheme.

22. The petitions are accordingly allowed and disposed of. Rule is made absolute to the above extent in each petition. No order as to costs.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

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