

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER  
**आ.अ.सं./ITA No.258/SRT/2024** (AY 2017-18)  
(Hybrid processing Hearing)

Veljibhai Nathubhai Dobaria 78, Harekrishna Society, Opp.Vandna Society, Nana Varachha, Surat-395006 <b>[PAN No. AHMPD 4352 P]</b>	Vs	Income Tax Officer, Ward- 3(3)(1), Surat, Aayakar Bhawan, Nr. Majura Gate, Opp. New Civil Hospital, Majura Gate, Surat-395001
<b>अपीलार्थी/</b> Appellant		<b>प्रत्यर्थी /</b> Respondent

निर्धारिती की ओर से /Assessee by	Shri Manish J Shah, Advocate
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeals instituted on	06.03.2024
सुनवाई की तारीख/Date of hearing	04.07.2024
उद्घोषणा की तारीख/Date of pronouncement	27.08.2024

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [ for short, "NFAC)/Ld. CIT(A)"] dated 08.01.2024 for the assessment year 2017-18, which in turn arises out of assessment order passed by Assessing Officer under section 143(3) of Income Tax Act, 1961 (the Act) on 26.12.2019. The assessee has raised following grounds of appeal:

*"The appellant is aggrieved by the assessment order on the follownig grounds of appeal, which may be taken as without prejudice to each other:*

1. ADDITION ON ACCOUNT OF CASH WITHDRAWAL FROM BANK OF RS.57,08,000/- & CAPITAL GAIN DIFFERENCE AMOUNT (COST OF ACQUISITION) OF RS.16,20,272/-.

- 1.1 *The Ld. AO has grossly erred in law & on facts in making addition u/s 68 in respect Cash Withdrawal whereas the said section is applicable only to sum of credit & not to sum of withdrawal.*
- 1.2 *The Ld.AO has erred in law & on facts in making addition of genuine cash withdrawal by travelling beyond the reason of selectin of limited scrutiny. Such action being in violation of the CBDT Instructions may kindly be held to be invalid and cancelled.*
- 1.3 *TheLd.AO has grossly erred in law & on facts in not appreciation all supporting evidences of genuine cost of acquisition which have already been duly submitted during assessment proceeding online portal but Ld.AO has incorrectly alleged that no supporting evidences submitted.*
- 1.4 *The Ld. AO has grossly erred in law & on facts in not appreciating the genuine submission which is submitted online portal.*
- 1.5 *The Ld.AO has grossly erred in law & on facts in doing arbitrary assessment by taking shelter of pure guess work, surmises, conjecture, assumption & presumption without any cogent evidence / or material on record.*
- 1.6 *The Ld. AO has erred inn law & on facts that, the Ld. AO has not found any specific defect in all documentary evidences which is submitted during the assessment proceedings.*
- 1.7 *Ld. AO has erred in law & on facts in made all baseless, arbitrary, prejudicial, incorrect, allegations without appreciating the documents on record.*

**In view of above, the addition of Rs.73,28,272/- (57,08,000/- + 16,20,272/-) is requested to be deleted fully.**

**2. GENERAL**

- 2.1 *The Ld.AO has erred in law in holding that levy of interest u/s 234B and 234C of the Act which is consequential and thus, erred in adjudicating upon the same. The provisions of neither section are attracted in the instant case. Also, interest has been levied without giving any opportunity of being heard.*

*2.2 The Ld.AO has erred in law and on facts in initiating penalty under section 271(1)(c). The provisions of neither section are attracted in the instance case.*

*2.3 The appellant craves leave to add, amend, alter, change, delete and/or to modify all or any of the above rounds of appeal at the time of or before the hearing of appeal.”*

2. Facts in brief are that assessee is an individual filed his return of income for assessment year 2017-18 declaring income of Rs.3,13,630/-. In the computation of income, assessee has also shown agricultural income of Rs. 35,500/-. The case was selected for limited scrutiny on the issues of capital gains/loss and cash withdrawal. During assessment, Assessing Officer noted that assessee has sold two immovable properties (i) situated at Plot No.39/A, Parvati Nagar Society, Block No.185 and (ii) situated at Umra (B.No.37) 10 Plot. The first property was sold for a consideration of Rs.34,91,836/- and second property sold at a consideration of Rs.6,80,785/- respectively. The assessee was having 50% share in both the properties. In computation of income, assessee claimed loss while calculating capital gains of Rs.5,96,647/ and Rs. 26,756/- respectively. The Assessing Officer further noted that assessee has shown huge cash withdrawal during the relevant financial year. The Assessing Officer issued detailed show cause notices with respect of both the issues. The contents of show cause notices is recorded in para-3 of the assessment order. The show caused notice was issued on 20.12.2019 and the assessee was asked to furnish details on or before 23.12.2019. The Assessing Officer recorded that no details were furnished by assessee in response to the show cause notices. The Assessing Officer

noted that the assessee along with other co-owners sold the immovable properties at Rs.34,91,836/- and Rs. 6,80,785/-. The assessee was having 1/2 share. The assessee claimed index cost of acquisition of property at Rs.23,42,565/- and offered capital loss at Rs.5,96,647/-. The Assessing Officer further held that on verification of purchase deed, he found that Stamp Valuation Authority assessed the value at Rs.10,08,000/- but the assessee has taken valued at Rs.16,20,590/- instead of Rs.5,04,000/- (1/2 of Rs.10,08,000/-). The assessee was asked to explain the reason for adopting the higher value along with documents and as to why the difference of Rs.16,20,272/- should not be disallowed. Since no supporting documents furnished by assessee the Assessing Office added difference of Rs.16,20,272/- under the head "capital gains".

3. The Assessing Office further noted that assessee has made cash withdrawal of Rs.57,08,000/- from his bank account. The assessee was asked to furnish the details of debit entries and purpose and source thereof. The Assessing Officer noted that no reply was filed by assessee. Thus, Assessing Office added Rs.57,08,000/- as unexplained cash credit under section 68 of the Act and taxed amount @ 60% as per provisions of Section 155BBE of the Act. Aggrieved by both the additions made by the Assessing Officer assessee filed appeal before Ld.CIT(A).
4. Before Ld.CIT(A) assessee filed detailed written submission regarding both the additions made by Assessing Officer. The submission of assessee is recorded in para-5 of the order of Ld.CIT(A). Against the addition of

Rs.16,20,272/-, the assessee submitted that during the period under consideration, assessee earned income from "interest" and "agricultural produce". The assessee has sold two immovable properties *wherein* assessee was having 1/2 share. The assessee has deducted index cost for both the properties and has shown capital loss of Rs.5,96,467/- and Rs. 26,756/- respectively. The assessee submitted that Assessing Office wrongly alleged that he has not furnished any details, as a matter of fact, assessee furnished all documentary evidence and explanation while submitted dated 23.12.2019 in respect of index cost of acquisition of properties. But the Assessing Officer has not appreciated the explanation and documentary evidence, which were submitted on-line ITBA portal during assessment proceedings. The assessee furnished copy of purchase and sale deeds of first property i.e., 39/A Parvati Society, Plot No.39, Moje Sarthana and Plot No.39, Parvati Nagar Society of ledger account of immovable property sold and with cost of acquisition property from the period 01.04.2011 to 31.03.2017. The assessee also furnished construction agreement and in support of construction of immovable properties i.e., open plot. The ledger account of Sagar Vallabhbhai Dobariya, who has constructed such immovable properties. The assessee also furnished copy of bank statement and pass-book showing payment against the contractor. The assessee again furnished all such details and submitted that index cost of acquisition of Rs.23,42,565/- (16,34,950 \* 1125/785) is genuine. The Assessing Officer made addition without considering the submission.

Against the cash withdrawal, assessee furnished bank statement and return of income and submitted that section 68 of the Act is not applicable on cash withdrawal rather it is applicable when sum is credited. The Assessing Officer made addition arbitrarily and illegally, which is a very good example of harassing of assessee by hook and crook under the irresponsible manner by Assessing Officer. The assessee made prayer to delete both the additions.

5. The Ld.CIT(A) on considering the submissions of assessee held that in support of enhanced cost of acquisition property, sold, the assessee claimed that documents were furnished on-line to the Assessing Officer which was not considered by Assessing Officer. The documents have been furnished at appellate stage which are being considered. On the issue, the Ld.CIT(A) held that construction contract is not supported by documents for the period over which such construction was carried out. The details of payment made from time to time is not available. The ledger account furnished by the assessee does not a specific reasons of payment and confirmed the action of Assessing Officer.
6. On addition of cash withdrawal, Ld.CIT(A) concurred with the findings of Assessing Officer by holding that assessee has not given any satisfactory explanation for reasons for cash withdrawal, with supporting evidence and confirmed the action of Assessing Officer. Further, aggrieved the assessee has filed present appeal before this Tribunal.

7. We have heard the submission of learned Authorized Representative (Ld.AR) for the assessee and learned Senior Departmental Representative (Ld. Sr-DR) for the Revenue and perused the material available on record carefully. Ld. AR for the assessee submits that lower authorities failed to consider various documents and submission made before Assessing Officer. The assessee filed paper book contains pages 1 to 110 and decision of Hon'ble jurisdictional High Court in case of Gajanand Agro Industries vs. ITO Special Civil Application No.20988 of 2018 and 20991 of 2018 dated 18.11.2019. The assessee has filed screen shot of ITBA portal showing various details furnished from time to time. The assessee furnished submission on 06.02.2019 consisting showing ITR for assessment year 2017-18, computation of income, balance-sheet, return of income for assessment year 2016-17, computation of income, balance-sheet bank statement of The Varachha Co-Op. Bank Ltd., ICICI Bank, Central Bank of India, which are clearly discernible in the acknowledgement of ITBA portal. The assessee again while submission dated 06.02.2022 furnished other required details including purchase deed and sale deed of both the properties. The assessee again while submission dated 11.08.2019 and 12.09.2019 furnished all required details including construction agreement, ledger account of contractor and details of unsecured loan. The Assessing Officer ignored all the evidence and simple held that no evidence was furnished by assessee. The Ld. AR of the assessee submits that assessee purchased open plot and carried out construction work after availing loan. The assessee made a

construction, which is shown in sale deed at page 20 of paper book wherein figure of property registered. The assessee furnished construction agreement dated 02.09.2011, wherein assessee along with co-owners paid Rs.22,00,000/- on account of construction work. The assessee has offered capital loss on sale of such property. However, in case of assessee, Assessing Officer has made addition by disallowing the expenses. However, no addition is made in case of other co-owners. The assessee cannot be treated indifferently. The Assessing Office disallowed cost of improvement in arbitrary manner despite providing all details of the person who has constructed the property and evidence of payment thereof.

8. Against Ground No.2, the Id. AR of the assessee submits that no addition under section 68 can be made against withdrawal cash from bank. The Assessing Office has not doubted the credit. It is settled law that no addition against withdrawal of cash can be made against the assessee. To support his argument, Ld. AR of the assessee relied upon the decision of Hon'ble jurisdictional High Court in case of Gajanand Agro Industries vs. ITO Special Civil Application No.20988 of 2018 and 20991 of 2018 dated 18.11.2019.
9. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities. Regarding Ground No.1, the Id. Sr-DR for the Revenue submits that in the assessment order, there is no reference that assessee has filed any documents to substantiate the cost of construction no proof loan amount was given during assessment. Against Ground No.2, Ld. Sr-DR for the Revenue supported the order of lower authorities.

10. We have considered the rival submission of both the parties and have gone through the orders of the lower authorities carefully. We have also deliberated on case law relied by Id AR of the assessee. Ground No.1 relates to addition / disallowance cost of improvement of Rs.16,20,272/-. We find that both the lower authorities made and confirmed the addition by taking view that assessee has not furnished any documentary evidence to substantiate such claim. We find that before us Ld. AR of the assessee has filed copy of acknowledgement of ITBA portal *wherein* assessee has furnished copy of sale deed, purchase deed and other relevant documents. We find that sale deed of the property at page-20 of paper book shows that assessee has sold fully build-up property. We also find that copy of purchase deed dated 02.11.2011 is available at pages 13 to 27 of the paper book. On pae-12 of purchase deed, the property has shown demolished having some debris, in the sale deed dated 04.08.2016, assessee has shown fully build-up property to substantiate his claim. We find that assessee has also filed copy of construction agreement showing cost of construction at Rs.22,00,000/- with co-owners. The assessee has 50% share comes to Rs.11,00,000/- apart from cost of construction and some other incidental expenses including stamp duty and other miscellaneous expenses may have been incurred by assessee. We find that assessee has filed various evidence but exact complete details of cost of improvement is not available. Therefore, considering the overall facts and circumstances of the case, the

cost of improvement of Rs.15,00,00/- is allowed to the assessee. In the result Ground No.1 is partly allowed.

11. So far as Ground No.2 of the appeal is concerned, we find that addition under section 68 of the Act is not attracted on cash withdrawal Unless, the source of cash is doubted. We do not find any justifiable reason in making addition of Rs.57,08,000/- against the withdrawal from the bank account. In the result, Ground No.2 of assessee is allowed.
12. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 27/08/2024.

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
[लेखा सदस्य/ACCOUNTANT MEMBER] [न्यायिक सदस्य JUDICIAL MEMBER]

Surat, Dated: 27/08/2024

*Dkp. Out Sourcing Sr. P.S*

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr. Private Secretary /Assistant  
Registrar, ITAT, Surat