

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**IT(SS)A No.144/Ahd/2023
Assessment Year: 2012-13**

Nirmalkumar Shantilal Jain, A-21, Maskati Market, Nr. Sakar Bazar, Kalupur, Ahmedabad – 380 002. [PAN – AHKPJ 1421 B] (Appellant)	Vs.	The Income Tax Officer, Ward – 1(2)(3), Ahmedabad. (Respondent)
Assessee by	Shri S.N. Divatia, AR & Shri Samir Vora, AR	
Revenue by	Shri Sanjay Kumar, Sr. DR	
Date of Hearing	10.07.2024	
Date of Pronouncement	28.08.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against order dated 26.10.2023 passed by the CIT(A)-11, Ahmedabad for the Assessment Year 2012-13.

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

“1.1 The order passed by u/s.250 passed on 26.10.2023 by CIT(A)-11, Ahmedabad upholding the addition of Rs.33,23,360/- as on-money towards purchase of three shops/office in H N Safal Group made by A.O. is wholly illegal, unlawful and against the principles of natural justice.

2.1 The Id. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made by the appellant as well as not providing the relevant seized material, details of ITSC order and the opportunity to cross examine the concerned parties before upholding the addition. The Id. CIT(A) ought to have provided sufficient opportunity of hearing after the decision of the Apex Court.

- 3.1 *The Id. CIT(A) has grievously erred in law and or on facts in upholding the addition of Rs.33,23,360/- as on-money towards purchase of three shops/office in HN Safal Group made by A.O.*
- 3.2 *That in the facts and circumstances of the Id. CIT(A) ought not to have upheld the addition of Rs.33,23,360/- as on-money towards purchase of three shops/office in HN Safal Group made by A.O.*
- 3.3 *The Ld. CIT(A) has failed to appreciate that since the seized material & opportunity to cross-examine the parties was not allowed the impugned orders were illegal.*
- 4.1 *The Id. CIT(A) has grievously erred in law and or on facts in upholding the disallowance of loss of Rs.1.23,160/- in respect of House property and Rs.13,908/- being short term capital loss.*
- 4.2 *That in the facts and circumstances of the Id. CTT(A) ought not to have upheld the disallowance of loss of Rs.1,23,160/- in respect of House property and Rs.13,908/- being short term capital loss.*
- 5.1 *The Ld. CIT(A) has failed to appreciate that the conditions precedent for invoking Sec.153C were not satisfied so that entire proceedings were illegal.*

It is, therefore, prayed that the additions upheld by the CIT(A) may kindly be deleted.”

3. The assessee filed original return of income under Section 139(1) of the Income Tax Act, 1961 on 21.07.2012 declaring total income of Rs.5,21,670/-. This return of income was processed. Thereafter, there was a search operation on various premises of HN Safal Group of cases and on scrutiny of seized documents, it was observed that the assessee made investment in the office premises in Sumel Park-2, a scheme organised by HN Safal group of cases. A satisfaction note was prepared on the basis of seized documents and notice under Section 153C of the Act was accordingly issued on 06.03.2019. In response to the notice under Section 153C of the Act issued on 06.03.2019, the assessee filed return of income on 30.03.2019 declaring total income of Rs.5,21,670/-. A Notice under Section 143(2) of the Act was issued on 11.04.2019 fixing the hearing on 21.05.2019. The assessee raised objection to the reasons for reopening which was disposed of by the Assessing Officer on 11.11.2019. Show cause notice under Section 142(1) of the Act was issued and the assessee filed its submissions. After taking into the account the submissions of the assessee, the

Assessing Officer made addition of Rs.33,23,360/- as unexplained investment under Section 69 of the Act.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that ground no.1.1 and 2.1 are general in nature and hence not pressed. As relates to ground nos.3.1, 3.2 & 3.3, the Id. AR submitted that there was no tangible material seized during the search which shows that the alleged on-money was paid by the assessee and in fact the data recovery from the third party did not contain any signature or any name of the assessee and, therefore, it will not be binding upon the assessee. Merely filing Settlement Petition by HN Safal group cannot be the basis for making addition by the Assessing Officer. The Ld. AR also relied upon the decision of the Tribunal in case of Kashish Gaurav Chandani vs. ITO in respect of the said search only related to HN Safal Group (IT(SS) A No.147/Ahd/2023, order dated 10.06.2024). The assessee also relied upon the decision of Hon'ble Apex Court in case of ITO vs Vikram Bhatia & Others (Civil Appeal No.911-1026 (2022) dated 06.04.2023). As relates to ground nos.4.1 & 4.2, the same will not survive as the same is not based on any incriminating material.

6. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. Since ground nos.1.1, 2.1 and 5.1 are general in nature and specifically ground no.2.1 which was not pressed, the same are dismissed. As relates to ground nos.3.1, 3.2 & 3.3, the very basis of the addition was taken into account Settlement Petition filed by the Safal Buildcon and no nexus has been shown by the Assessing Officer as to how the seized material during the search is related to the assessee in the entire Assessment Order. Thus, the decision relied by the assessee/AR is applicable in the present case and the addition made by the Assessing Officer does not sustain. As regards to ground nos.4.1 & 4.2, the same are not based on any incriminating material and besides this, the Assessing Officer has not given any finding as to the details given by the assessee regarding

loss of inhouse property and loss on Short Term Capital Gain. Thus, ground nos.4.1 & 4.2 are allowed.

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

Order pronounced in the open Court on this 28th August, 2024.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 28th day of August, 2024

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Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad