

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

I.T(SS).A. No. 08/SRT/2024
(Assessment Year: 2016-17)

Ghanshyambhai Kanjibhai Gangadia-Individual, Bungalow No.11, Kantareshvar Society, Nr. Balashram, Katargam, Surat-395004	Vs.	Assistant Commissioner of Income Tax, Central Circle-3, Surat
[PAN No.AAWPG3371J]		
(Appellant)	..	(Respondent)

I.T.A. No. 210/SRT/2024
(Assessment Year: 2018-19)

Ghanshyambhai Kanjibhai Gangadia-Individual, Bungalow No.11, Kantareshvar Society, Nr. Balashram, Katargam, Surat-395004	Vs.	Assistant Commissioner of Income Tax, Central Circle-3, Surat
[PAN No.AAWPG3371J]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Rasesh Shah, C.A.
Respondent by:	Shri Ravi Kant Gupta, CIT DR

Date of Hearing	03.04.2025
Date of Pronouncement	08.04.2025

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

Both appeals have been filed by the Assessee against the orders passed by the Ld. Commissioner of Income Tax (Appeals)-4, (in short “Ld. CIT(A)”), Surat vide order dated 27.12.2023 passed for A.Ys. 2016-17 and 2018-19.

IT(SS)A No. 08/Srt/2024 (A.Y. 2016-17)

2. The assessee raised the following grounds of appeal:

“1. On facts and circumstances of the case and in law, the learned CIT(A), has grossly erred in confirming the action of the learned AO of issuing the notice u/s. 153C of the Act which is absolutely illegal and bad-in-law and consequently even the impugned assessment order as passed u/s. 153C r.w.s. 143(3) is null and void, requiring outright annulment.

2. On facts and circumstances of the case and in law, the learned CIT(A), has grossly erred in partly confirming the action of the learned AO in making an addition of Rs. 6,62,686/- u/s. 56(2)(vii)(b) of the Act, in respect of difference between the stamp duty value and the actual purchase value of the plots of land purchased by the appellant, without even acceding to the request of the appellant to make reference to the Departmental Valuation Officer (i.e. DVO) to determine the Fair Market Value (i.e. the FMV) of the subject plots of land, which is erroneous, illegal and bad-in-law and needs to be deleted.

3. The appellant craves leave to add, amend, alter, substitute, modify in any or all the above grounds of appeal, if necessary, on the basis of submissions to be made at the time of personal hearing.”

3. The brief facts of the case are that the assessee filed return of income for the impugned year under consideration declaring total income of Rs. 6,91,210/-. Subsequently, a search action under Section 132 of the Act was carried out on 06.03.2018 in the case of Balar Group of Surat. During the course of search, several documents and evidences were found and seized which reflected certain financial transactions. Accordingly, notices under Section 153C of the Act were issued to the assessee for various assessment years, including the assessment year under consideration. In response to notice issued under Section 153C of the Act, the assessee filed its return of income for A.Y. 2016-17 on 16.08.2021 declaring total income of Rs. 4,85,580/-. During the course of assessment, on the basis of details / evidences, the Assessing Officer noticed that during the year the assessee had

purchased five immovable properties, wherein the consideration paid for these properties was less than the Fair Market Value (in short “FMV”) as compared to Stamp Duty valuation. The details of properties and the difference in stamp valuation is reproduced below for ready reference:

<i>Sr. No.</i>	<i>Bungalow No.</i>	<i>Purchase Consideration Rs.</i>	<i>Stamp Duty used in Rs.</i>	<i>Fair Market Value (FMV) as per SDV in Rs.</i>	<i>Difference in Rs.</i>
1	40	3,50,500	22,850	4,66,326	1,15,826
2	45	4,14,500	27,020	5,41,430	1,26,930
3	46	4,11,000	26,780	5,46,530	1,35,530
4	49	4,32,500	28,200	5,75,510	1,43,010
5	50	4,28,000	27,900	5,69,390	1,41,390
<i>Total</i>					6,62,686

4. During the course of assessment, the Assessing Officer took the written submissions of the assessee on record and made an addition of Rs. 6,62,686/- as income of the assessee by invoking the provisions of Section 56 (2)(viib) of the Act. The relevant extracts of the assessment order is reproduced below for ready reference:

“5.3 In view of the above, by invoking provisions of sec. 56(2)(viib) of the Act the difference in the market value and the documentation value of the properties purchased by the assessee as tabled above to the tune of Rs. 6,62,686/- is treated as Income from other sources of the assessee for the year under consideration and added to the total income of the assessee.

Penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate of particulars of income.”

5. In appeal, the assessee took several legal and factual contentions, however, the appeal of the assessee was dismissed by Ld. CIT(A) with the following observations:

“6.3 On perusal of the assessment order as well as the copies of satisfaction notes available on record, it is seen that the first notice u/s 153C of the Act was issued by the ITO Ward 3(2)(1), Surat on 19.05.2021 after recording necessary satisfaction. The

contention of the appellant that the ITO is not competent to issue notice u/s 153C of the Act is devoid of any merit as the provision of Section 158BG of the Act are not applicable to the proceedings u/s 153A / 153C of the Act. The satisfaction note recorded by the AO contains all the necessary facts relevant to the appellant for assuming jurisdiction to initiate proceedings u/s 153C of the Act. Therefore, considering the overall facts of the case, I do not agree with the contention of the appellant and in my opinion the AO has initiated proceedings u/s 153C of the Act by following due procedure of law. Hence, **Ground No.1 raised by the appellant is dismissed.**

.....

7.2 On perusal of the assessment order and the submissions made by the appellant, it is seen that the addition has been made by invoking provision of Section 56(2)(viib) of the Act being the difference between the stamp duty value and purchase consideration in respect of 5 immovable properties purchased by the appellant. The appellant in his submissions simply stated that he has paid consideration as mentioned in the registered purchase deed and no amount over and above has been paid to the seller party. During the Appellate Proceedings, the appellant reiterated the same submissions as made before the AO. It is undisputed fact that the appellant has purchased 5 immovable properties situated at Raghuvir Bunglows, Niyol, Surat for a consideration which is less than the stamp duty value by an amount of Rs.6,62,686/- and therefore, as per the provision of Section 56(2)(viib) of the Act, this amount of Rs.6,62,686/- is chargeable to income tax under the head 'Income from other sources'. The appellant has not furnished any valid reasons which justify referring the matter to the DVO u/s 50C(2) of the Act. The provision of the section 56(2)(viib) of the Act is deeming provision and the same is attracted in this case for the reason that the appellate has received immovable property for a consideration which is less than the stamp duty value of the property. Therefore, I do not find any reason to interfere with the decision taken by the AO. Accordingly, **Ground No.2 raised by the AO is dismissed.**"

6. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A).

7. Before us, the assessee took an additional ground challenging the validity of the additions made during the course of assessment by arguing that the case of the assessee was covered by the decision of Abhishar Buildwell (SC) and the additions were not made on the basis of incriminating documents found during the course of search at third party premises. The Counsel for the assessee drew our attention to the satisfaction note recorded by the

concerned officer, enclosed part of the paper book. Further, the Counsel for the assessee submitted that the assessee had also taken various other legal arguments before Ld. CIT(A), which as per the assessee were not considered by Ld. CIT(A) while dismissing the appeal of the assessee. The Counsel for the assessee drew our attention to the legal argument taken by the assessee at Pages 5 & 7 of the Ld. CIT(A)'s order and submitted that despite these legal contentions which were raised by the Ld. CIT(A), the appeal of the assessee was dismissed without specifically giving a finding with respect to the legal arguments taken by the assessee, challenging the validity of assessment proceedings.

8. On going through the facts of the assessee's case, the additional legal arguments taken before us for the first time, which is to the effect that the additions were not based on incriminating material found during the course of search and also taking into consideration the legal arguments taken before Ld. CIT(A), we are of the considered view that in the interest of justice, the matter may be restored to the file of Ld. CIT(A) to give a specific finding on the various legal arguments taken by the assessee challenging the validity of the assessment made during the course of proceedings under Section 153C of the Act. We note that the additional legal argument stating that the additions were not made on the basis of incriminating material found during the course of search have been raised for the first time before us and this aspect, whether additions have been made on the basis of incriminating materials found during the course of search, in our considered view, would require further investigation into the facts of the case to assess whether there is any factual force in this ground sought to be taken by the assessee. In our view, this

additional legal argument would require further investigation into the documents found during the course of search and whether the additions have been made on the basis of such incriminating documents found during the course of search at third party premises. Since this additional ground has been taken before us for the first time and as pointed by us the preceding part of the order that this additional ground would require further enquiry took into the facts, the matter is hereby restored to the file of Ld. CIT(A). Further, we also note that the assessee had taken several additional legal ground before Ld. CIT(A), part of which have been dealt with by the Ld. CIT(A), but certain legal grounds have not been specifically adjudicated upon by Ld. CIT(A) while passing the appellate order. Accordingly, in the interest of justice, the matter is hereby being restored to the file of Ld. CIT(A) and the assessee would be at liberty to take / raise additional legal grounds before Ld. CIT(A) for his consideration, challenging the validity of assessment proceedings.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

ITA No. 210/Srt/2024 (A.Y. 2018-19)

10. The assessee has taken the following grounds of appeal:

“1. On facts and circumstances of the case and in law, the learned AO, has grossly erred in issuing the notice u/s. 143(2) of the Act consequential to the action u/s. 132/153C of the Act which itself been challenge by the appellant and accordingly, the impugned notice u/d. 143(2) is absolutely erroneous, illegal and bad-in-law and consequently even the impugned assessment order as passed u/s. 143(3) is bad-in-law, requiring outright annulment.

2. On facts and circumstances of the case and in law, the learned CIT(A), has grossly erred in confirming the action of the learned AO in making an addition of Rs. 1,00,000/- u/s. 69A of the Act alleging unexplained money, in respect of advance to

staff for his business duly reflected in the regular books of the appellant, which is erroneous, illegal and bad-in-law and needs to be deleted.

3. On facts and circumstances of the case and in law, the learned CIT(A), has grossly erred in partly confirming the action of the learned AO in making an addition of Rs. 72,325/- u/s. 50C of the Act in respect of difference between the market value and document value of the property sold, without even allowing the set off of long term capital loss of the current year to the extent of Rs. 65,712/-, which is absolutely erroneous, illegal and bad-in-law and needs to be deleted.

4. The appellant craves leave to add, amend, alter, substitute, modify in any or all the above ground of appeal, if necessary, on the basis of submissions to be made at the time of personal hearing.”

11. Before us, at the outset, the Counsel for the assessee submitted that he shall not be pressing Ground No. 1 of the assessee’s appeal. Accordingly, Ground No. 1 of the assessee’s appeal is hereby dismissed as not pressed.

Ground No. 2: Additon of Rs. 1,00,000/- under Section 69A of the Act

12. The brief facts in relation to this ground of appeal are that during the assessment proceedings, the Assessing Officer asked the assessee to explain the contents of certain loose documents which showed that an amount of Rs. 1,00,000/- was given by the assessee to Shri Punabhai Babarbhahi on 22.04.2017. During the course of assessment, the assessee submitted that the amount of Rs. 1,00,000/- was an advance payment made by the assessee for purchase of construction material etc. to it’s contractor Shri Punabhai Babarbhahi. Further, the assessee submitted that as mentioned in the said page/loose paper, if the work is not executed till 13.12.2017, the said amount is liable to be returned back to the assessee. The assessee submitted that the advance amount of Rs. 1,00,000/- which was given by the assessee for purchase of construction material was also duly reflecting in the books of accounts of the assessee. Further, the said amount advanced by the assessee

to Shri Punabhai Babarbai was also returned back to the assessee on 10.09.2017, since the construction work could not materialize and hence the amount was returned back to the assessee. The assessee also submitted copy of ledger account reflecting the said transactions in the regular books of accounts of the assessee to the Assessing Officer for his consideration. However, the Assessing Officer added a sum of Rs. 1,00,000/- as unexplained money under Section 69A of the Act.

13. In appeal Ld. CIT(A) confirmed the additions made by the Assessing Officer with the following observations:

*“6.2 On perusal of the assessment order, the submissions made by the AR of the appellant and other material available on record, it is seen that the appellant had admitted payment of Rs. 1,00,000/- in cash to Sh. Punabhai Babarbai and nowhere hi the statement he had mentioned that the same represented advance towards construction contract. Further, during the course of assessment proceedings, no supporting evidences were furnished in support of the claim made before the AO. Even, during the Appellant Proceedings, the appellant has not furnished any details showing execution of any contract work by the said party during the normal conduct of business of the appellant. In absence of any satisfactory explanation including any supporting evidences, I do not find any reason to interfere with the above finding of the AO. Therefore, the action of the AO to treat the amount of Rs.1,00,000/- u/s 69A of the Act as unexplained money is upheld. **Ground No.1 is dismissed.**”*

14. The assessee is in appeal before against the aforesaid addition confirmed by Ld. CIT(A).

15. Before us, the Counsel for the assessee submitted that the said advance of Rs. 1,00,000/- to Shri Punabhai Babarbai and it was duly reflecting in the books of accounts maintained by the assessee. The Counsel for the assessee drew our attention to ledger at Page 30 of the Paper Book, in which this amount of advance was duly reflecting. Further, it is also seen from the said ledger account that this amount was also returned back to the assessee by Shri

Punabhai Babarbai on 10.09.2017. The Department has not challenged the veracity of the books of accounts maintained by the assessee. Further it has also not been disputed that as per the cash book available with the assessee, the assessee had adequate cash on hand to advance this amount to Shri Punabhai Babarbai. The only reason why the addition was confirmed in the hands of the assessee was on the ground that the assessee was unable to show details showing execution of contract with the said party. In our considered view, on going through the facts of the instant case, it a fit case where the addition is liable to be deleted. This is for the reason that this amount of Rs. 1,00,000/- was advanced to Shri Punabhai Babarbai was duly reflecting in the books of accounts maintained by the assessee and the fact of refund of such amount back to the assessee was also duly reflecting in the books of account maintained by the assessee. Further, even as per the cash book available with the assessee, the assessee had adequate cash in hand to advance the aforesaid amount to Shri Punabhai Babarbai. Accordingly, looking into the instant facts and taking into consideration that even before us during the course of hearing as well, the Department has not been able to bring anything on record to controvert these facts, we are of the considered view that the addition of Rs. 1,00,000/- is liable to be deleted.

16. In the result, Ground No. 2 of the assessee's appeal is allowed.

17. Ground No.3 with respect to Ground No. 3, the Counsel for the assessee submitted that the assessee is not challenging the addition of Rs. 72,325/- made under Section 50C of the Act in respect of difference between the market value and document value of the property sold. The only limited point in appeal is that while passing the appellate order, though Ld. CIT(A)

in the operative part of the order has allowed set off of addition made under Section 50C (Rs. 72,325/-) against Long Term Capital Loss for the current year amounting to Rs. 65,712/-, however, in the concluding line, the CIT(A) has held that the appeal of the assessee is dismissed with respect to this ground. Accordingly, in view of the contradictory observations made by CIT(A), in the appeal effect proceedings, the Assessing Officer refused to give credit of set off of Long Term Capital Loss against the additions made under Section 50C of the Act. It would be useful to reproduce the relevant extract of the order passed by Ld. CIT(A) for ready reference:

*“...The appellant in his alternate submission has requested to allow set off against Long Term Capital Loss claimed by the appellant in his ROI. The AO is directed to verify the claim of the appellant and allowed the set off as per the relevant provision of the Act. Accordingly, **Ground No.2 raised by the AO is dismissed.**”*

18. In the interest of justice, it is directed that the alternate claim of the assessee with regards to set off of Long Term Capital Loss against the additions made under Section 50C of the Act may be considered and decided by the Assessing Officer, in accordance with law.

19. In the result, Ground No. 3 of the assessee’s appeal is allowed for statistical purposes.

20. In the combined result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 08/04/2025

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Ahmedabad; Dated 08/04/2025
TANMAY, Sr. PS

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

TRUE COPY

IT(SS)A No.08/Srt/2024 & ITA No. 210/Srt/2024
Ghanshyambhai Kanjibhai Gangadia Individual vs. ACIT
Asst. Years –2016-17 & 2018-19

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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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, सूरत/ ITAT, Surat