



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH(SMC), RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No.71/RJT/2025
निर्धारणवर्ष / Assessment Year: (2009-10)
(Hybrid Hearing)

Mohanbhai Savjibhai Vegad, B-704, Sarvam Hights, Behind Amin Park, Sun City Circle to Vishwamitry Station Road, Majalpur, Vadodara -390011	Vs.	The Income-tax Officer, Ward -4, Yogeshwar Bhavan, Near Ambaji Temple, Veraval -362265
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AATPV0162H		
(Appellant)		(Respondent)

Appellant by : Shri Chetan Agarwal, Ld. AR
Respondent by : Shri Abhimanyu Singh Yadav , Ld. Sr. (DR)
Date of Hearing : 11/03/2025
Date of Pronouncement : 28/04/2025

आदेश / ORDER

Per, Dr. ARJUNLALSAINI AM;

Captioned appeal filed by the assessee, pertaining to Assessment Year 2009-2010, is directed against the order passed by the Commissioner of Income Tax (Appeal), vide order dated 20/12/2024, which in turn arises out of an order passed by the Assessing Officer, dated 02/12/2016, u/s 143(3)r.w.s 147 of the Income Tax Act, 1961.

2. Grievances raised by the assessee are as follows:

“The grounds of appeal mentioned herein under are without prejudice to each other:

1.0 Ld. Commissioner of Income tax (Appeals), National Faceless Appeal Centre has erred in law and facts in dismissing the grounds raised in appeal in violation of principles of natural justice;



1.1 Ld. Commissioner of Income tax (Appeals), National Faceless Appeal Centre has erred in law and facts in placing reliance in the case of ACIT vs. Rajesh Zaveri Stock Brokers Pvt. Ltd. 210 CTR 0030 (SC);

1.2 Ld. Commissioner of Income tax (Appeals), National Faceless Appeal Centre has erred in law and facts in ignoring the fact that the assessment was founded on borrowed satisfaction;

1.3 Ld. Commissioner of Income tax (Appeals), National Faceless Appeal Centre has erred in law and facts in ignoring the sworn-in-affidavit of appellant deposing non-receipt of notice u/s 148 of the Act;

1.4 Ld. Commissioner of Income tax (Appeals), National Faceless Appeal Centre has erred in law and facts in showing blinkered attitude towards falsity of explanation deposed by Shri Rushabh Sheth in his cross examination;

1.5 Ld. Commissioner of Income tax (Appeals), National Faceless Appeal Centre has erred in law and facts in holding the view that no petition is filed for admission of new evidences and denial of admission of the same;

*2.0 Ld. Commissioner of Income tax (Appeals), National Faceless Appeal Centre has erred on facts in confirming the addition of Rs. 14,00,000/- and 10,75,000/-as unexplained investment **on-money in purchase of residence in Parijat**;*

Your appellant craves leave to add, alter, withdraw any one or more grounds of appeal.

3. Learned Counsel for the assessee, at the outset, submitted that the issue under consideration is squarely covered by the judgement of the Coordinate Bench of ITAT Rajkot, in ITA No. 376/ RJT/ 2023, vide order dated 31stJuly 2024, wherein the issue of “**on-money in purchase of residence in Parijat**” was discussed in detail and adjudicated in favour of assessee. The ld. Counsel, therefore, submitted that issue involved, on merit, is covered in favour of assessee, in respect of residence in Parijat, therefore, appeal of the assessee should be allowed.

4. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer.



5.I have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. I find that issue is squarely covered in favour of the assessee by the judgement of the Coordinate Bench of ITAT Rajkot, in ITA No. 376/ RJT/ 2023, vide order dated 31st July 2024, wherein the issue of “on-money in purchase of residence in Parijat” was discussed in detail and adjudicated in favour of assessee. I find that issue under consideration is also covered by the order dated 02.08.2023, passed by the Division Bench of this Tribunal in group cases in ITA Nos.63/Rjt/2023 for AY.2009-10, wherein the issue relating to ‘on-money’ in respect of Parijat Residency was adjudicated in favour of the assessee in respect of Block No.140 of Parijat Residency, wherein some of the assessee’s appeals were allowed. The findings of the Tribunal, are as follows:

“7. We have heard the rival contentions and perused the materials available on record. In the present case, the proceedings were initiated under Section 148 of the Act and not under the provisions of Section 153C of the Act. Thus, it is transparent that there was no document of incriminating nature found during the search proceedings at the premises of the builder being Parijat Residency. Otherwise, the proceedings under Section 153C could have been initiated by the Assessing Officer. However, the Assessing Officer has recorded the reasons to believe for the escape of income for Rs. 8,50,000/- on the basis of the affidavit furnished by the partner of the builder i.e. Parijat Residency. In simple words, the entire thrust of the Revenue was based on the affidavit for the impugned addition which was not corroborated by any documentary evidence suggesting that the assessee has made payment by way of on-money in the purchase of the residential property. Now the controversy arises whether the addition can be made merely based on the affidavit of the third party. The answer is no. It is because the affidavit given by the third party cannot be used against the assessee without affording the opportunity of cross examination. It is equally important to note that the assessee has also furnished the affidavit dated 01.10.2016 stating that there was no investment of on-money in the purchase of residential property but the authorities below without pointing out any defect or infirmity in such affidavit of the assessee as relied on the affidavit of the third party for making the impugned addition. In our considered view, it was the onus upon the Revenue to disprove the affidavit furnished by the assessee based on cogent reasons. Had there been recovered any tangible material during the search, the Assessing Officer would have initiated the proceedings under Section 153C of the Act, but the situation establishes the fact that no material of incriminating nature was found



during the search proceedings belonging to the assessee. Accordingly, the Assessing Officer initiated the proceedings under Section 147 of the Act in place of the provisions of Section 153C of the Act. It is the trite law that affidavit is written statement and a statement given by the third party cannot bind the assessee as held by the Hon'ble Bombay High court in the case of Aditi construction vs. DCIT reported in 454 ITR 456 where it was held as under:

9. We find that the jurisdictional conditions for invoking section 147 - 148 are not satisfied as there is no failure to disclose material facts fully and truly. It is not in dispute that by the letter dated 11th September 2015 (Exhibit H) the Petitioner have submitted all the particulars along with supporting documents to the Respondent No. 1. Hence the reasons to believe and a presumption based on the statement of Shri Bhanwarlal Jain (a third party) in the course of a search, that the loans of the entities were bogus or accommodation entries was clearly dispelled. Moreover, the specific provisions of s. 153C would Page | 4 ITA No.376/RJT/2023 A.Y. 2010-11 prevail over the general provisions of section 147 in the case of search on 3rd party.

7.1 At the cost of repetition, it is also pertinent to note that the assessee also furnished counter affidavit before the AO but the AO on one hand relied upon the affidavit of third party but rejected the affidavit of assessee without assigning any reason to it. The Hon'ble Gujarat High Court in the case of Glass Line Equipments Co. Ltd vs. CIT reported in 253 ITR 454 held it is not open for the revenue to rely upon part of the affidavit which is favorable to department and against the assessee. The relevant observation of the Hon'ble High Court reads as under:

As laid down by the Supreme Court in the case of Mehta Parikh & Co. v. CIT [1956] 30 ITR 181, none of the authorities considered it necessary to cross-examine the deponent with reference to the statement made in the affidavit, and, hence, under these circumstances it was not open to the revenue to challenge the correctness of the statement made by the deponent in the affidavit. In other words, consequently, the assessee was entitled to assume that the authorities were satisfied with the affidavit as sufficient proof on this point.

In the present case it was found that the Commissioner (Appeals) while dealing with the affidavit, had conveniently chosen to accept only one part of the statement which was in favour of the revenue and against the assessee while ignoring the rest of the portion wherein specific averments were made in relation to the balance items of expenditure.

In view of the settled legal position, it was not open to either the Commissioner (Appeals) or the Tribunal to ignore a part of the contents of the affidavit. The findings recorded by the Commissioner (Appeals) and the Tribunal were concurrent as regards the facts and evidence on record and but for the averments made in the affidavit which had been ignored, the said findings would not have been interfered with.

7.2 In view of the above and after considering the necessary facts, we are of the view that the addition made by the authorities below based on the thirdparty statement is not sustainable. Hence, we set-aside the finding of the Ld. CIT(A) and direct the Assessing Officer to delete the addition made by him. As, we have decided the issue in favour of the assessee on merit, we do not find any reason to interfere in Ground No.



1 challenging the validity of the initiation of the proceedings under Section 148 of the Act. As such the technical ground raised by the assessee becomes infructuous. Hence, the ground of appeal of the assessee is partly allowed.

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

6. As the issue is squarely covered in favour of the assessee by the decision of the Coordinate Bench, (supra), and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings of the Coordinate Bench. Therefore, respectfully following the order of the Coordinate Bench, of ITAT, Rajkot (supra), I, allow the appeal of assessee.

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

Order pronounced in the open court on 28/04/2025.

**Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER**

Rajkot
दिनांक/ Date: 28/04/2025

(True Copy)

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot