

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH "SMC", RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**

**ITA No.838/RJT/2024  
Asstt. Year: (2009-10)**

Hinaben Pravinkumar Vithalani C/o. Shree Laxmi Finance Shop No.1, Ami Apartment Vanzari Chowk, Junagadh. PAN : ABPPV 4234 P	Vs.	Income Tax Officer, Ward- 1, Junagadh, Aayakar Bhavan, Shakti Chamber, Junagadh-362 001
<b>(Appellant)</b>		<b>(Respondent)</b>

निर्धारिती की ओर से/Assessee by : Shri Mehul Ranpura, Id.AR

राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Id.Sr.DR

सुनवाई की तारीख/Date of Hearing : 12/03/2025

घोषणा की तारीख/Date of Pronouncement : 29/04/2025

**आदेश / ORDER**

**Per,Dr. ARJUNLAL SAINI AM;**

Captioned appeal filed by the assessee, pertaining to Assessment Year 2009-10, is directed against the order passed by Commissioner of Income Tax (Appeal), which in turn arises out of an assessment order passed by the Assessing Officer u/s.143(3) read with section 147 of the Income Tax Act, 1961 ("the Act" for short) on 26.12.2016.

2. The grounds of appeal raised by the assessee are as follows:

*"1. The grounds of appeal mentioned hereunder are without prejudice to one another.*

*2. The Id. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as the "CIT(A)") erred in rejecting the ground of appeal related to validity of notice of appeal related to validity of notice issued u/s 148 of the Income-tax Act, 1961. That on facts as also in law,*



*the proceedings-initiated u/s. 147 of the Act, is invalid and assessment finalized on such invalid initiation deserves to be quashed and may kindly be quashed.*

*3. The ld. CIT(A) erred on facts as also in law in confirming addition made on account of alleged on-money payment Rs.6,80,000/- on **purchase residential unit at Parijat Residency, Rajkot**. The addition confirmed is unjustified and uncalled for.*

*4. Your Honour's appellant craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.”*

3. When this appeal was called out for hearing, the ld.Counsel for the assessee invited my attention to the order dated 02.08.2023 in ITA No.63/RJT/2023, in the case of Bhavish Hiralal Moradia *wherein* similar and identical issue, as that of the assessee, has been adjudicated by the Tribunal, in respect of the property of Parijat Residency *wherein* the Tribunal allowed the appeal of the assessee. The ld.Counsel for the assessee submitted that this present appeal is also squarely covered by the above said order of the Tribunal. A copy of which was placed before the Bench.

4. On the other hand, the ld.DR for the Revenue relied on the order of authority below.

5. I see no reason to take other view of the matter than the view so taken by the Division Bench in the case of Bhavish Hiralal Moradia (*supra*) order dated 02.08.2023. In this order the Tribunal *inter alia* observed 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, 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 an affidavit is a 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 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 third-party 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.**”*

6. The Id.Counsel for the assessee also submitted that the similar issue is also covered by the Coordinate Bench of the Tribunal, Rajkot in th case of Hiralal Ambavibhai Moradiya vs. ITO in ITA No.376/Rjt/2023 dated 31.07.2024.

7. As the issue is clearly covered in favour of the aswsessee by the decision of the Coordinate Bench of the Tribunal in ITA No.63/RJT/2023 (supra) and it is also covered by the decision of Coordinate Bench in ITA No.376/RJT/2023 for AY 2010-11 order dated 31.7.2024 (supra), and there is no change in facts and in law, and the Revenue is unable to produce any material to controvert the above said finding of the Coordinate Bench. I find no reason to interfere in the above orders of the Co-ordinate Bench, therefore, respectfully following the binding decision of the Co-ordinate Bench in the cases of Bhavish Hiralal Moradia and Hiralal Ambavibhai Moradiya (supra), I allow the appeal of the assessee.

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

**Order pronounced in the open court on 29/04/2025.**

Sd/-

**(Dr. A.L. SAINI)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

राजकोट /Rajkot

दिनांक/ Date: 29/04/2025

DKP Outsourcing Sr.P.S



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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

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By order/आदेशसे,

सहायक पंजीकार

आयकर अपीलीय आधिकरण ,राजकोट