

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

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA Nos.14, 15 & 16/Ahd/2025
Assessment Years: 2010-11 & 2011-12**

Mohammedaarif Yunusbhai Patel, A/24, Ayesha Park, Opp. Patrakar Colony, Tandalja Road, Vadodara – 390 010. (Gujarat) [PAN – ALHPP 1455 A] (Appellant)	Vs.	Income Tax Officer, Ward – 1(2)(1), Vadodara, Aayakar Bhavan, Race Course Circle, Vadodara – 390 007 (Gujarat) (Respondent)
Assessee by	Shri Hemant Suthar, AR	
Revenue by	Shri B.P. Srivastava, Sr. DR	
Date of Hearing	29.04.2025	
Date of Pronouncement	05.05.2025	

ORDER

PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:

These three appeals are filed by the assessee against the separate orders of National Faceless Appeal Centre (NFAC), all dated 05.11.2024, for the Assessment Years (A.Y.) 2010-11 and 2011-12. While ITA No.14/Ahd/2025 pertains to A.Y. 2010-11, ITA Nos.15 & 16/Ahd/2025 both pertain to A.Y. 2011-12. All the three matters were heard together as the facts and issues involved in these appeals were identical and are being disposed of vide this common order for the sake of convenience.

2. We will take the ITA No.16/Ahd/2025 for the A.Y. 2011-12 as the lead case.

ITA No.16/Ahd/2025 for the A.Y. 2011-12

3. The brief facts of the case are that the assessee did not file his return of income for the A.Y. 2011-12. An information was received by the Assessing Officer that the assessee had sold immovable property, in which he was one third co-owner, for a consideration of Rs.91,00,000/-. The assessee had also deposited cash of Rs.57,85,000/- in his Bank account maintained with Royal Bank of Scotland. On the basis of these informations, the case was reopened by the AO by issue of notice under Section 148 of the Income Tax Act, 1961. ("the Act' hereafter) after recording proper reason. In the course of assessment, no compliance was made by the assessee. The Assessing Officer had treated one third sale consideration of the immovable property of Rs.30,33,333/- as Long Term Capital Gain in the hands of the assessee. Further the stamp duty value adopted for this property was found to be Rs.1,82,04,081/- as against sale deed amount of Rs.91,00,000/- only. Therefore, the one third amount of difference between the sale consideration and the stamp duty value, amounting to Rs.30,34,694/-, was considered as income of the assessee under Section 50C of the Act. In the course of assessment, the Assessing Officer also made enquiry from the Bank and in the absence of any explanation about the cash deposits, the entire cash receipt of Rs.57,85,000/- was treated as unexplained income of the assessee under Section 69A of the Act. The assessment was completed under Section 144 read with Section 147 of the Act on 10.12.2018 at the total income of Rs.1,18,53,027/-

4. Aggrieved with the order of the Assessing Officer, the assessee had filed an appeal before the First Appellate Authority which was decided vide the impugned order and appeal of the assessee was partly allowed.

5. The assessee is now in second appeal before us. The following grounds have been taken in this appeal: -

- “1. The Ld. CIT (Appeals) National Faceless Appeal Centre (NFAC). Delhi has grossly erred in law and in facts in not providing opportunity of being heard, post obtaining the remand report from the Ld. AO. The Ld. CIT(A) ought to have provided the copy of the remand report to the appellant for his comments and thus, the order is prayed to be set-aside.*
- 2. The Ld. CIT (Appeals), National Faceless Appeal Centre (NFAC), Delhi has grossly erred in law and in facts in confirming the action of the Ld. A.O. in the addition of an amount of Rs.30.34,694/- being the difference between the declared sale consideration and the value assessable for the levy of stamp duty of the immovable property above mentioned without being referring the matter to the Ld. DVO for the purpose of valuation once the appellant has objected to the valuation adopted by the Ld. AO. The addition of Rs.30,34,694/- being bad in law and in facts is prayed to be deleted.*
- 3. The Ld. CIT (Appeals), NFAC has erred in law and in fact in applying the profit percentage on the receipt @ 3% as against 2.50% requested by the appellant. Thus, the addition is requested to be restricted to the extent of 2.50% as requested in the appeal by the appellant.*
- 4. Your appellant craves liberty to add, alter, amend substitute or withdraw any of the ground(s) of appeal hereinabove contained”*

6. The first ground taken by the assessee was not pressed in the course of hearing. Hence, the same is dismissed.

7. The **second ground pertains to addition of Rs.30,34,694/- under Section 50C of the Act.** Shri Hemant Suthar, Ld. AR of the assessee submitted that the assessee had made a request before the Ld. CIT(A) to refer the matter to the DVO to determine the Fair Market Value of the property sold by the assessee. According to the Ld. AR, the Stamp Duty

Value of the property was much in excess of Fair Market Value and, therefore, the assessee had made a request to refer the matter to the DVO. He submitted that the Ld. CIT(A) was not correct in rejecting the request of the assessee on the ground that no such request was made by the assessee before the Assessing Officer. The Ld. AR submitted that the power of the CIT(A) was concurrent with the power of the Assessing Officer. Further the additional evidences filed by the assessee in respect of other additions was duly admitted and taken into cognisance. The Ld. AR submitted that action of the CIT(A) in rejecting the request of the assessee for referring the matter to the DVO was not correct and, therefore, the addition as made by the Assessing Officer under Section 50C of the Act should be deleted.

7.1 Per contra, Shri BP Srivastava, Ld. Sr. DR supported the orders of the Assessing Officer and the Ld. CIT(A).

7.2 We have considered the rival submissions. There is no dispute to the fact that no compliance was made by the assessee before the Assessing Officer. However, before the Ld. CIT(A) the assessee had made compliance and furnished additional evidences as well. On the basis of the additional evidence, the Long Term Capital Gain of the property sold was re-worked taking into account the cost of the acquisition of the property. As regards the request of the assessee to refer the matter to the DVO, the Ld. CIT(A) had rejected the request for the reason that no such contention was raised by the assessee before the Assessing Officer. When the additional evidences filed by the assessee before the Ld. CIT(A) was forwarded to the Assessing Officer for his comments, it tantamount that the request of the assessee for referring the matter to the DVO was made to the Assessing Officer as well. Otherwise also, the powers of the

Ld. CIT(A) are co-terminus with the powers of the Assessing Officer. Merely because the assessee could not make compliance before the Assessing Officer and no such request was made before the Assessing Officer, it does not mean that the opportunity available to the assessee under the provisions of the Act should be denied. As per the provisions of Section 50C(2) of the Act, if the assessee claims before the AO that the value adopted or assessed by the stamp valuation authority exceeded the fair market value of the property as on the date of transfer, then the Assessing Officer was required to refer the valuation of the capital asset to the Valuation Officer. Such request was made by the assessee before the AO in the course of remand proceeding. In view of these facts, we are of the considered opinion that the matter is required to be **set aside to the file of the Assessing Officer with a direction to refer the matter to the Valuation Officer for determining the Fair Market Value of the property and, thereafter, re-work the disallowance under Section 50C of the Act on the basis of his report.** The ground taken by the assessee is allowed for statistical purpose.

8. **Ground no.3 pertains to applying profit percentage on the cash deposits in the bank account.** In the Assessment Order, the Assessing Officer had treated the entire cash deposit of R.57,85,000/- as income of the assessee. The Assessing Officer in his remand report had informed the Ld. CIT(A) that the original assessment order under Section 144 read with Section 147 of the Act dated 10.12.2008 was set aside by the Ld. PCIT vide order under Section 263 of the Act to consider the additional cash deposit of Rs.1,51,70,500/-, which was not considered in the original order. Thereafter, the assessment was completed in pursuance to order under Section 263 of the Act on 31.03.2022, wherein the income on the

additional cash deposit of Rs.1,51,70,500/- was quantified by applying net profit rate of 3%. Following the same basis, the Ld. CIT(A) had restricted the addition in respect of cash deposits of Rs.57,85,000/- to 3% of the said amount.

8.1 Shri Hemant Suthar, Ld. AR submitted that the profit percentage of 3% as applied by the Ld. CIT(A) was excessive and that it should be reduced to 2.5%.

8.2 Per contra, the Shri B.P. Srivastava, Ld. DR submitted that the assessee had himself admitted that he was earning commission at the rate of 2 to 3% of his turnover. Therefore, the profit rate of 3% as applied by the Ld. CIT(A) was reasonable and correct.

8.3 We have considered the rival submissions. In the remand report, the Assessing Officer had submitted that the assessee did not produce the books of account related to his tour and travel business. In view of this fact, the income disclosed by the assessee at the rate of 2.5% of the turnover was found not reliable and, therefore, the Ld. CIT(A) had directed to consider the income at the rate of 3% of the cash deposits. Considering the fact that the assessee had himself admitted that he was earning commission at the rate of 2 to 3% of the turnover and that no books of account were produced in support of profit arrived @ 2.5% of the turnover, the income as estimated by the Ld. CIT(A) @ 3% of the cash deposits was reasonable. **We do not find any reason to interfere with the order of the Ld. CIT(A) on this issue.** Therefore, the ground taken by the assessee is dismissed.

9. In the result, appeal of the assessee is allowed in part.

ITA No.15/Ahd/2025 for A.Y. 2011-12

10. The only ground taken by the assessee in this appeal is regarding estimation of income at the rate of 3% instead of 2.5% in respect of cash deposits. This issue is squarely covered by our decision in ITA No.16/Ahd/2025 for A.Y. 2011-12 and, therefore, the ground of the assessee is dismissed.

11. In the result, this appeal of the assessee is dismissed.

ITA No.14/Ahd/2025 for A.Y. 2010-11

12. The assessee has taken following grounds in this appeal: -

- “1. *The Ld. CIT (Appeals), NFAC has erred in law and in fact in not applying the net profit percentage on the receipt which is allowed by the Ld. AO in the assessment for the AY 2011-12 and thus, the addition of the entire income in the hands of the appellant is bad in law and deserves to be deleted and it is to be restricted to the extent of 2.50% as requested in the appeal filed for the A.Y. 2011-12.*
2. ***Without prejudice to the Ground no.1, the Ld. CIT(Appeals), NFAC has grossly erred in law and in facts in confirming the action of the Ld. A.O. in-***
 - a) *holding that the entire amount of deposits in the bank accounts maintained represents undisclosed investment ignoring the fact that there are large number of withdrawals and payments from such bank accounts and only a peak balance could have been assessed.*
 - b) *assessing an amount of Rs.2,61,68,000/- as unexplained investment of the appellant. The addition so made is prayed to be deleted.*
3. *Your appellant craves liberty to add, alter, amend substitute or withdraw any of the ground(s) of appeal hereinabove contained.”*

13. In this year cash deposit of Rs.2,61,68,000/- was found in the Bank account of the assessee with ABN Amro Bank, Royal Bank of Scotland

and ICICI Bank. The entire cash deposits were treated as income of the assessee under Section 69A of the Act which was upheld by the Id. CIT(A).

13.1 Shri Hemant Suthar, Ld. AR of the assessee submitted that the Ld. CIT(A) was not correct in confirming the addition for the entire cash deposits as income of the assessee without taking into account the cash withdrawals. He submitted that the income out of cash deposits in the bank account should be estimated by applying net profit rate of 2.5%, as done in the A.Y. 2011-12.

13.2 Per contra, Ld. Sr. DR supported the order of the lower authorities.

13.3 We have considered the rival submissions. Identical fact of cash deposits in the bank account was involved in A.Y. 2011-12 wherein the Revenue had estimated the income by applying net profit rate of 3%. Considering this fact, we do not find any reason to treat the entire cash deposits in the bank account as income of the assessee, in the current year. Following our decision in ITA No.16/Ahd/2025 for A.Y. 2011-12, the Revenue is directed to work out the income out of cash deposits in the bank account by applying net profit rate of 3%, as adopted by the Revenue itself in A.Y. 2011-12. Therefore, the ground taken by the assessee is partly allowed.

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

15. In the final result, ITA No.16/Ahd/2025 for A.Y. 2011-12 & ITA No.14/Ahd/2025 for A.Y. 2010-11 are partly allowed whereas ITA No.15/Ahd/2025 for A.Y. 2011-12 is dismissed.

Order pronounced in the open Court on this 5th May, 2025.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Ahmedabad, the 5th May, 2025

*PBN/**

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

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By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad