

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ " B", अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
" B " BENCH, AHMEDABAD

श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA Nos. 635 to 637/Ahd/2025
निर्धारण वर्ष /Assessment Years : (2015-16 to 2017-18)

Dwarkadhish Developers, Plot No. H-3066/4, Dwarkadhish Residency, ESIC Hospital Road, GIDC Ankleshwar, Bharuch-393002. (Gujarat)	<u>बनाम/</u> <u>v/s.</u>	The Deputy Commissioner of Income Tax, Central Circle-2, Vadodara.
स्थायी लेखा सं./PAN: AAKFD8537F		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Adjournment Application filed
Revenue by :		Shri Abhijit, Sr-DR

सुनवाई की तारीख/Date of Hearing : 09/06/2025
घोषणा की तारीख /Date of Pronouncement: 10/06/2025

आदेश/ORDER

PER BENCH:

These three appeals by the assessee, filed against separate orders of the Commissioner of Income-tax (Appeals)-12, Ahmedabad [hereinafter referred to as "CIT(A)"], pertaining to Assessment Years 2015-16, 2016-17, and 2017-18. The said appellate orders arise out of reassessment proceedings initiated under section 147 of the Income-tax Act, 1961

[hereinafter referred to as “the Act”], culminating in the assessment orders passed by the Assessing Officer under section 147 read with sections 144/144B for the respective years. Since all three appeals involve a common factual background, being based on similar additions made under section 69A of the Act and raise identical legal issues, they were heard together and are being disposed of by this consolidated order for the sake of convenience and judicial economy.

Facts of the Case

2. The assessee is engaged in the business of real estate development and construction. For the Assessment Years 2015-16, 2016-17, and 2017-18, the assessee had filed returns of income declaring income from business and other sources. Subsequently, the assessments for these years were reopened under section 147 of the Income-tax Act, 1961, on the basis of information emanating from survey proceedings under section 133A conducted on 23.02.2018 in the case of M/s. Krishna Developers, a third-party real estate concern. During the course of the said survey, certain loose documents were found and impounded, including a handwritten “Red Diary” and a bound “Register,” which allegedly recorded details of unaccounted cash transactions involving various parties. Consequently, notices under section 148 were issued, and reassessment orders were passed under section 147 read with section 144/144B, wherein the AO made additions under section 69A of the Act on account of unexplained money allegedly received by the assessee. The assessee challenged the reassessments and the additions before the learned Commissioner of Income-tax (Appeals)-12, Ahmedabad. In the appellate proceedings, the CIT(A) passed separate orders for each

year, exercising powers under the amended provisions of section 153(3) and the newly inserted proviso to section 251(1)(a), and set aside the assessments to the file of the Assessing Officer for fresh adjudication after affording reasonable opportunity to the assessee. A consolidated summary of the relevant details pertaining to all three years is set out in the table below:

Particulars	A.Y. 2015-16	A.Y. 2016-17	A.Y. 2017-18
Original Return filed on	18/11/2016	18/11/2016	13/01/2018
Returned Income (Rs.)	Nil	Nil	1,05,300/-
Return filed in response to sec. 148 notice	03/11/2021	03/11/2021	13/11/2021 (e-verified on 12/02/2022)
AO's Order Date	30/03/2022	30/03/2022	30/03/2022
Order passed by AO under section of the Act	147 r.w.s.144 read with section 144B		
Assessed Income (Rs.)	70,00,000/-	80,00,000/-	31,05,300/-
Additions Made by AO (Rs.) u/s 69A of the Act	70,00,000/-	80,00,000/-	30,00,000/-
CIT(A) Order Date	30/01/2025	30/01/2025	30/01/2025

3. Aggrieved by the orders of CIT(A), the assessee is in appeal before us raising following **common** grounds of appeal:

1. *The Ld. Commissioner of Income Tax (Appeals)-12, Ahmedabad has erred in law and in facts in setting aside the matter to the file of the Ld. A.O. for making fresh assessment without adjudicating the following technical and legal issues raised by the appellant before him:*

i. *The Ld. AO has erred in law and in facts in making the assessment without having proper jurisdiction over the case of the appellant in terms of CBDT instruction no. 187/3/2020 dated 18.09.2020. The assessment made u/s. 147 r.w.s. 144 of the Act is bad in law and is prayed to be quashed.*

- ii. *Without prejudice to the other grounds of appeal, the Ld. AO has erred in law-and in facts in making the assessment without providing the documents based on which he has formed a belief that the appellant firm has received cash of Rs. 70,00,000/- The addition, thus made by making ex-parte order, though the appellant has made specific request well in advance, is bad in law and the order so made is prayed to be quashed.*
- iii. *Without prejudice to the other grounds of appeal, the Ld. AO has erred in law and in facts in passing the order us. 147 r.w.s. 144 of the act without issuing draft assessment order as required u/s. 144B of the Act. Thus, the assessment order so passed without following the procedure as required u/s. 144B is bad in law and in facts, which deserves to be quashed.*

The Ld. CIT(A) ought to have adjudicated the above grounds on the basis of the submissions made by the appellant and the relevant case laws relied upon by the appellant and quashed the assessment order passed by the Ld. A.O. treating the same as illegal and bad in law instead of setting aside the matter to the Ld. A.O. It is prayed that the orders passed by the Ld. CIT(A) and the Ld. A.O. be treated as illegal and bad in law and are liable to be quashed.

- 2. *Without prejudice to the above, the Ld. CIT(A)-12, Ahmedabad ought to have adjudicated the following grounds of appeal raised before him on merits based 3. on the submissions / documents / evidences furnished during the course of appellate proceedings.*
 - i. *Without prejudice to the other grounds of appeal, the Ld. AO has erred in law and in facts in treating the alleged amount received of Rs. 70,00,000/- to be the receipt of the appellant, though it is specifically submitted that the appellant is merely a construction contractor, and the amounts received from the customers are received by the Society, only. Thus, the addition made in the hands of the appellant firm is bad in law and is prayed to be deleted.*
 - ii. *Without prejudice to the other grounds of appeal, the Ld. AO has erred in law and in facts in applying the provisions of Sec. 115BBE, specifically when the source of credit is identified. The application of provisions of Sec. 115BBE is bad in law and it is prayed to direct the Ld. AO accordingly.*

It is prayed that the order passed by the Ld. CIT(A), being bad in law, may please be set aside and he may be directed to adjudicate the above grounds on merits.

3. *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

4. We have carefully considered the material available on record, including the reassessment orders passed by the Assessing Officer, the appellate orders of the learned CIT(A) and the grounds of appeal raised before us. At the time of hearing, an adjournment application was placed on behalf of the assessee; however none appeared on behalf of the assessee. The appeals were passed over and taken for hearing. Perusal of records shows that the CIT(A) has already remanded the matter back to the Assessing Officer, the adjournment request was rejected, and the matter was taken up for disposal on the basis of the material on record.

4.1 It is not in dispute that in all three assessment years under appeal A.Ys. 2015-16, 2016-17, and 2017-18 the reassessment proceedings were initiated under section 147 of the Act, on the basis of documents impounded during a survey in the case of M/s. Krishna Developers. The Assessing Officer made additions under section 69A of the Act treating the amounts reflected in the impounded "Red Diary" and "Register" as unexplained cash received by the assessee outside its books of account by way of ex-parte orders.

4.2 The assessee has raised several legal and factual grounds before us, including the challenge to jurisdiction of the Assessing Officer in terms of

CBDT Instruction No. 187/3/2020 dated 18.09.2020, violation of natural justice due to non-furnishing of incriminating material, and procedural infirmity in failing to follow section 144B. The assessee has also contested the addition on merits, stating that it is only a construction contractor and not the recipient of the alleged cash. However, we find from the appellate orders that the learned CIT(A) has exercised powers under the amended section 153(3) and the proviso to section 251(1)(a) of the Income-tax Act, 1961, both of which were amended by the Finance Act, 2023. These provisions empower the CIT(A) to set aside the assessment and direct fresh assessment by the Assessing Officer in appropriate cases. The amended section 153(3) clarifies that where an order is set aside or cancelled by the appellate or revisional authority, the Assessing Officer shall proceed to make a fresh assessment in accordance with the directions so issued. Simultaneously, the proviso to section 251(1)(a) now explicitly authorizes the first appellate authority to remand the matter back to the Assessing Officer, thereby legislatively overriding earlier judicial restrictions which precluded the CIT(A) from issuing set-aside directions. This amendment serves a curative and facilitative purpose, recognizing that certain deficiencies, whether procedural or substantive, are best addressed at the assessment stage rather than burdening the appellate fora with premature or incomplete records.

4.3 In this backdrop, the CIT(A)'s decision to remand the assessments for de novo consideration cannot be faulted. The impugned remand orders fall squarely within the statutory jurisdiction now conferred upon the CIT(A) and are not shown to be perverse, excessive, or in disregard of any binding

judicial principle. The Department has also accepted the remand orders and has not preferred any cross-appeals. The learned Departmental Representative has raised no objection to the dismissal of the present appeals on the ground that the issues are already restored for fresh examination before the Assessing Officer.

4.4 However, we note with concern that the assessee, having failed to participate meaningfully in the remand proceedings before the Assessing Officer, has now approached us seeking appellate relief. This is despite the fact that the assessee has not exhausted the opportunity granted to it under the remand orders. In our considered view, such an approach is procedurally misconceived and jurisprudentially unsound. The appellate hierarchy under the Act is structured to ensure progressive adjudication, with adequate opportunity for the assessee to present its case at each stage. Where the first appellate authority has remanded the matter specifically for fresh determination on facts and law, the assessee is expected to fully cooperate with the Assessing Officer and place on record all evidence and submissions. Seeking to bypass that stage and obtain relief from the second appellate forum amounts to circumventing the appellate process and renders the appeals premature. The scheme of section 253 read with section 250 of the Act does not contemplate intervention by the Tribunal in a matter where the assessment itself has ceased to exist and is yet to be redetermined by the AO in compliance with remand directions. Relief at the second appellate level can be meaningfully considered only after the assessee has availed of and exhausted the remedy before the AO, unless there is an exceptional jurisdictional defect in the remand itself, which is not the case

here, otherwise to say the assessee is not at all aggrieved against the appellate orders. Moreover, non-cooperation by the assessee during the reassessment proceedings pursuant to remand dilutes the claim to equitable or discretionary relief. It is trite law that a litigant cannot be permitted to approbate and reprobate, or to claim grievance at a higher forum while deliberately abstaining from participation at the lower level.

4.5 Therefore, we find no merit in the present appeals. The assessee's grievances, both jurisdictional and substantive, can and must be raised in the remanded proceedings, where a comprehensive factual record can be built, and findings recorded. If the outcome of such proceedings is adverse, the assessee will retain the statutory right to challenge it on all available grounds.

5. In light of the foregoing discussion and considering that the learned CIT(A) has already remanded the assessments for A.Ys. 2015-16, 2016-17, and 2017-18 to the Assessing Officer under the amended provisions of section 153(3) and the proviso to section 251(1)(a), we are of the view that the present appeals are premature and do not warrant adjudication on merits at this stage.

6. Accordingly, the appeals filed by the assessee are dismissed as infructuous, with a direction to the assessee to fully co-operate in the fresh assessment proceedings and furnish all material evidence and submissions in support of its case. The Assessing Officer shall, in turn, provide due opportunity and complete the reassessments in accordance with law, uninfluenced by the earlier assessment orders.

7. We make it clear that we have not expressed any opinion on the merits of the additions or on the legal contentions raised by the assessee. All issues are left open to be adjudicated afresh, as per law.

8. In the result, all three appeals are dismissed.

Order pronounced in the Open Court on 10th June, 2025 at Ahmedabad.

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V.MAHADEOKAR)
ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad, Dated 10/06/2025

Manish, Sr. PS

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(Exemption)-Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad