



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

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
(Hybrid Hearing)**

**ITA No.745/RJT/2025
Assessment Year: (2012-13)**

LaxmanbhaiNathubhai Zora Rameshwari Krupa, Nr.Railway Pata Thakkar Plot, Porbandar. PAN : AAKPZ 1087 E (Appellant)	Vs.	ITO, Ward-2(3) Rajkot, Porbandar. (Respondent)
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निर्धारितीकीओरसे/Assessee by : Shri Gaurang Khakhkhar, Ld. AR
राजस्वकीओरसे/Revenue by : Shri Abhimanyu Singh Yadav, Ld. Sr.DR

सुनवाईकीतारीख/Date of Hearing : 11/03/2025
घोषणाकीतारीख/Date of Pronouncement : 06/06/2025

आदेश / O R D E R

Dr. A. L. Saini AM

Captioned appeal filed by the assessee, pertaining to Assessment Year 2012-13, is directed against the order passed by the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi, vide order dated 02.08.2024, which in turn arises out of an order passed by the Assessing Officer dated 22.11.2019, u/s.143(3) read with section 147 of the Income Tax Act, 1961.

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

- (1) *The Learned assessing officer has erred in law as well as on facts in initiating reassessment procedure and Passing of assessment order without communication of Reason for reopening.*
- (2) *On the facts and circumstances of the case, the assessment order is null and void as the same is in violation of CBDT Circular No. 19/2019 requiring mandatory DIN.*



(3) *The Honorable Commissioner of Income tax (A) has erred in law as well as on facts in upholding addition on account of unexplained Investment of Rs.18,34,000/- being investment made in property.*

(4) *The Honorable Commissioner of Income tax (A) has erred in law as well as on facts in upholding addition on account of cash deposit of Rs.7,17,400/- being treated as unexplained cash deposit*

(5) *That the order passed by the Ld. CIT u/s.250 of the I.T. Act, 1961 was arbitrary, bad in law and unjust.*

(6) *That the assessee craves leave to urge such other ground or grounds before or at the time of hearing of appeal.*

3. Learned Counsel for the assessee, informed the Bench that assessee does not wish to press ground no.1 raised by him, therefore, I, dismiss ground no.1 raised by the assessee.

4. Succinctly, the factual panorama of the case is that assessee before me is an Individual. The assessee's case, was re-opened, as per the information available with assessing officer that the assessee has deposited cash during financial year (F.Y.) 2011-12, relevant to assessment year(A.Y.) 2012-13, as under:

<i>Sr. No.</i>	<i>Date of Transactions</i>	<i>Amt. (Rs.)</i>	<i>Remarks</i>
1.	18.10.2011	7,17,400	Deposited Cash in HDFC Bank Ltd., Porbandar.
2.	At Various Dates as per Deed.	60,27,344/-	Five Properties Sold and Five Properties Purchased at various dates during the year.

The assessee has not filed his return of income u/s 139 of the Income Tax Act for Assessment year(A.Y) 2012-13. Necessary Approval from Pr. Commissioner



of Income Tax, Jamnagar was obtained for re-opening proceedings. Accordingly, notice u/s 148 of the Income tax Act, 1961 was issued by the Income-tax Officer, Ward 2(3), Porbandar, on 27.03.2019 and served upon assessee on 28.03.2019. But the assessee has not submitted her return of income within 30 days against notice issued u/s 148 of the Act. Further, reminder letter was issued to the assessee on 12.07.2019 for filing of return of income but no Return of Income filed by the assessee for A.Y. 2012-13. Further, a notice u/s 133(6) of the Income Tax Act was issued to HDFC Bank Ltd, Porbandar and Sub-registrar Office, Ranavav, on 16.07.2019, for calling of information related to cash deposit and Property Sold/Purchased made by the assessee during the year under consideration.

5. During the assessment proceedings, the assessee submitted its reply on dated 15.11.2019, before the assessing officer and submitted cash book for F.Y. 2011-12. The assessing officer noticed that opening cash balance of Rs.11,52,181/- is because of the reason that you have taken a gold loan of Rs. 7,13,000/-, from HDFC Bank Ltd, on 29.03.2011 and remaining amount of Rs.4,40, 181/- is from routine business activity as stated by the assessee.

6. However, the assessing officer, on going through cash book of the assessee, it was noticed that assessee has shown sales income on regular basis, however no corresponding business expenses are booked. However, a business, income cannot be earned without corresponding business expenses. The assessing officer also noticed that assessee has shown purchase of properties in cash and entry made in cash book with basic of amount of property. However, stamp duty and registration charges for the same are not shown. This clearly indicates that assessee's cash book is defective and cannot be accepted, hence rejected by the assessing officer. As the cash book is not reliable, therefore the source of



four immovable properties purchased of Rs. 18,34,000/- (Rs. 4,24,000/- + 4,90,000/- + 4,60,000/- + 4,60,000/-) remains unexplained, hence, assessing officer made addition to the tune of Rs. 18,34,000/-.

7. The assessing officer also noticed that the source of cash deposited of Rs. 7,17,400/- on 18.10.2011 in assessee's HDFC Bank Ltd, is also remains unexplained, therefore the same was added in assessee's total income.

8. Therefore, the assessing officer made total addition of Rs.25,51,400/- (Rs.18,34,000 + Rs. 7,17,400), in the hands of the assessee.

9. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Ld. CIT(A) who has dismissed the appeal of the assessee.

The Ld. CIT(A) noticed that the assessing officer, based on information available with him re-opened the assessment proceedings to test the cash deposits of Rs.7,17,400/-, and purchase of property for Rs.60,27,344/-. During the assessment proceedings, the assessee filed cash book and claimed that all his business sales are made in cash and out of said cash he had purchased properties as well. The assessing officer has brought out shortcoming in the cash book and thus it was not found to be reliable. Accordingly, the addition of Rs. 18,34,000/- was carried out being stamp duty paid on four properties but not reflected in cash book and addition of Rs.7,17,400/- was carried out on account of cash deposited into bank account. During the appellate proceedings, the assessee contested that he has not made any payment to creditors/ his supplier because he had received all material on credit and sold on cash basis. The said cash sales proceeds was partly deposited into bank account and partly utilized for purchase of properties. The assessee also filed following summary of his cash movement during the year.



1	Opening Cash Balance (A)			11,32,181.00
	Add:			
2	Withdrawals from Bank A/c - HDFC Bank	6,25,000.00		
			6,25,000.00	
3	Agriculture income Agriculture Land - Sales	2,25,500.00 20,25,000.00		
			22,50,500.00	
4	Cash Sales	20,50,500.00		
			20,50,500.00	
	Subtotal (B)			49,26,000.00
	Less:			
5	Deposited in Bank A/c - HDFC Bank	7,54,360.00		
			7,54,360.00	
6	Agriculture Land - Purchase Property Purchase	18,41,500.00 14,10,000.00		
			32,51,500.00	
7	Agriculture Expense	49,520.00		
			49,520.00	
8	Cash Expense			
	Misc. Exps	18,520.00		
	Mobile Telephone Exps	12,320.00		
	Salary	1,20,000.00		
	Shop Exps	6,250.00		
	Transportation Exps	6,780.00		
	Travelling Exps	12,350.00		
			1,76,220.00	
9	Withdrawal by Proprietor	1,80,000.00		
			1,80,000.00	

The Id CIT(A) noticed that assessee has claimed that he sold property in cash and earned agricultural income in cash. The assessee didnot file even single document to support of sale of property and earning agricultural income. Further, in respect to cash sale of Rs. 20,50,500/- also, the assessee did not file any documentary evidence. Further, the assessee filed month wise purchase details before Id. CIT (A), which is as under:



Sr. No	Name of Creditors	Date of Transaction	Nature of Transaction	Debit	credit
1	Kamal Agencies	10-May-11	Purchase	1,70,500	-
		10-Jul-11	Purchase	1,40,635	
		10-Oct-11	Purchase	1,84,750	
		05-Jan-12	Purchase	1,72,855	
		-	Payment in cash	-	3,23,400
2	Satyanaran Agencies	02-Apr-11	Purchase	1,85,400	-
		02-Aug-11	Purchase	1,95,800	
		04-Nov-11	Purchase	1,78,900	
		-	Payment in cash	-	3,37,663
3	Suresh Agencies	10-May-11	Purchase	1,90,360	-
		12-Sep-11	Purchase	1,93,200	
		02-Dec-11	Purchase	1,97,800	
		-	Payment in cash	-	3,02,200

The Id. CIT(A) noticed that during the assessment proceedings, the assessee had stated that it had received goods on credit and no payment was made to creditors but in the above statement, the assessee has claimed to have paid Rs.9.63 lakhs to creditors. In view of this and in absence of documentary evidences, the cash flow statement is not found to be reliable and hence Id CIT(A) rejected, the same.

The Id CIT(A) noticed that onus is upon the assessee to prove genuineness of each and every transactions entered into and relied on the judgement of Hon`ble Supreme Court in the case of Kale Khan Mohammad Hanif v CIT[1963] 50 ITR 1 (SC), Roshan Di Hatti v CIT [1977] 107 ITR (SC) wherein it had been held that the law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee, is on him. Where the nature and source thereof cannot be explained satisfactorily, it is open to the revenue to hold that it is the income of the assessee and no further burden is on the revenue to show that the income is from any particular source. In view of the above, the learned CIT(A) confirmed the action of the assessing officer.



10. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before this Tribunal.

11. 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 Ld. CIT(A) and other materials brought on record. Learned Counsel for the assessee argued before me that DIN number has not been mentioned by the assessing officer in the assessment order. The Ld. Counsel for the assessee took me through the assessment order and explained that there is no DIN number mentioned in the assessment order. However, when the assessee made a separate application before the Department through RTI application, asking the explanation about DIN Number, then the assessing officer replied to the assessee as follows:

“In the intimation order there is reference of document no. 20121048510 and it has categorically mentioned that this document no. may be treated as common DIN for relevant order and all its annexure. The computation sheet has been generated from system and the DIN has duly been mentioned in computation of income. The relevant part of computation income is as under:”

12. However, the Ld. Counsel for the assessee contended that in the assessment order, there should be a separate DIN number and in show-cause notice and other notices, there should be separate DIN number. Since this is a common DIN issued by the Department, therefore, the assessment order is bad in law and the assessment order on this score may be quashed. For that, the Ld. Counsel for the assessee relied on the judgement of Hon'ble Calcutta High Court in the case of Pr. CIT Vs. Tata Medical Centre Trust, Kolkata, in ITAT/202/2023 dated 26.9.2023 wherein the Hon'ble High Court held as follows:

“We have heard Ms. Smita Das De, learned standing Counsel appearing for the assessee/revenue and Mr. Abhratosh Majumder, learned senior Advocate, assisted by Mrs. Akshara Shukla, learned Advocate, for the respondent/assessee.



The short issue which falls for consideration is whether the DIN was mentioned in the order passed under [Section 263](#) of the Act. The learned Tribunal upon examining the facts held that the order does not incorporate the DIN number and it is in violation of the Circular No. 19 of 2019, dated 14th August, 2019. In the said Circular, in paragraph 4 it has been stated that any communication which is not in conformity with Para 2 and Para 3 of the said Circular shall be treated as invalid and shall be deemed to have never been issued. The Tribunal on examination of the facts held that the requirement as mentioned in the Circular namely, quoting of the Document Identification Number, has not been followed and therefore allowed the assessee's appeal.

The learned counsel for the assessee submitted that the intimation letter should be treated as part and parcel of the substantive order. However, in the intimation letter there is nothing mentioned as to why in the substantive order the Document Identification Number was not mentioned as mandated in the Circular.”

13.The Ld. Counsel for the assessee, also relied on the judgement of the Hon'ble Bombay High Court,reported in (2024) 464 ITR 0430 wherein Bombay High Court held as follows:

Reassessment- Notice under section 148 - Validity - Notice issued without DIN—Legality of assessment order issued without DIN in terms of CBDT Circular No. 19, dated 14-8-2019, assessing officer issued notice under section 148 dated 27-8-2022 in which there was no mention of DIN. However, a separate intimation letter of even date was also issued informing assessee that notice is having DIN as mentioned therein. Assessee challenged the validity of aforesaid notice.Held: The letter dated 27-8-2022 cannot validate the notice issued under section 148 on 27-8-2022. The reason is firstly, the intimation letter refers to a DIN with respect to some notice under section 148 of dated 26-8-2022. The impugned notice issued to petitioner is dated 27-8-2022 and not 26-8-2022 for which the DIN is generated. Secondly, the procedure prescribed in Circular No. 19 of 2019 dated 14-8-2019 for non-mention of DIN in case letter/notice/order has nor been complied with by Revenue. It is settled proposition of law that if DIN is not mentioned in the letter/notice/order, the reason for not mentioning the DIN and the approval from specified authority for issuing such letter/notice/order without DIN has to be obtained and mentioned in such letter/notice/order. In the present case, in the impugned notice dated 27-8-2022, no such reference is there. Therefore, as held in Ashok Commercial Enterprise's case and Tata Medical Center Trust's case, the impugned notice was clearly invalid and bad in law. Therefore, the



impugned notice dated 27-8-2022 issued under section 148 was invalid and bad in law as the same had been issued without a DIN.

14. Therefore, the Ld. Counsel for the assessee submitted that the DIN should be mentioned on the body of the assessment order, and common DIN does not serve the purpose. The Ld. Counsel also submitted that the judgments relied on him in the case of Tata Medical Centre Trust (supra) has been challenged before the Hon'ble Supreme Court and operation of this judgment has been stayed by the Hon'ble Apex Court stating that the finding of the judgment would not be applicable till the judgment of the Hon'ble Supreme Court in respect of the issue of DIN, is delivered.

15. Learned DR for the Revenue submitted that since the judgment relied on by the Ld. Counsel for the assessee has been stayed by the Hon'ble Apex Court, and the matter relating to the DIN (mentioning DIN in the assessment order) has been pending, as on date, before the Hon'ble Supreme Court, and there is no finality about the mentioning of the DIN on the body of the assessment order/issue of separate intimation letter for DIN on the same date along with assessment order. The assessing officer has issued the common DIN, which is applicable to the assessment order as well as other notices also. The Ld. DR also pointed out that in respect of notice issued by the assessing officer, no doubt, separate DIN was mentioned in each notice and soon after making the assessment, DIN was also issued on the same date, which is mentioned in the assessment order, therefore, this being a frivolous claim by the assessee, hence the appeal of the assessee should not be allowed, based on DIN issue.

16. On merit, the Ld. Counsel for the assessee submitted that there are two additions made by the assessing officer, which are in ground no.3 at Rs.18,34,000/- and in ground no.4 at Rs.7,17,400/-. Since the issue relates to



the both grounds are common and identical, therefore, the Ld. Counsel submitted that during the assessment proceedings, the assessee submitted required documents and evidences like cash book, profit & loss account, balance sheet and the opening balance of cash book. The Ld. Counsel submitted that during the previous year i.e. AY 2011-12, the assessment order was framed by the assessing officer and in that assessment order, the assessee has submitted various documents, such as cash book, bank statement, gold loan statements, and bank statement etc. were submitted, and which was accepted by the assessing officer in the assessment order. Since, the assessing officer during the assessment year 2011-12 accepted the cash book, therefore, the opening balance mentioned in that cash book should also be accepted in the subsequent year, and therefore, both the additions should be deleted.

17. On the other hand, the Ld. DR for the Revenue submitted, on merit, that each assessment year is a different assessment year, and the principle of *res judicata* is not applicable to the assessment proceedings. If in any particular assessment year by mistake, the assessing officer did not make the addition or accepted the documents wrongly, it does not mean that the same documents and evidences should be accepted by the assessing officer in subsequent assessment years. Each assessment year is a separate unit of tax, and therefore, the documents related to the previous assessment year should not be relied on, in this current assessment year, under consideration. Besides, the assessee is not required to get the accounts audited, therefore, since the books of accounts are not audited, therefore, the cashbook submitted by the assessee is self-serving document, and therefore, the same should not be relied upon.

18. I note that in assessee's case, the assessment order was framed on 22.11.2019, for the assessment year 2012-13. On the same date, the assessing



officer issued an intimation letter along with, assessment order, under section 143 (3) r.w.s. 147 of the Act, stating as follows.

स्थायीलेखासंख्या / PAN: AAKPZ1087E	निर्धारणवर्ष / AY: 2012-13	प्रपत्राकसंख्या / Document No.: 20121048510	दिनांक/ Dated: 22/11/2019
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Intimation Letter for Order u/s 143 (3) r.w.s 147 of the Income-tax Act, 1961

महोदय/महोदया / मेसर्स,
Sir/Madam/ M/s,

DIN 20121048510 is generated in respect of computation sheet of Order u/s 143 (3) r.w.s 147 dated 22/11/2019 passed in ITD/AST application of Income Tax Department in the case of LAXMANBHAI NATHUBHAI ZORA, PAN AAKPZ1087E for the AY 2012-13. This DIN may be treated as common DIN for the relevant order and all its annexures.

This is a system generated document and does not require any signature.”

I note that the assessment order was framed on 22.11.2019, and on the same date that is, on 22.11.2019, the assessing officer, along with assessment order sent the above intimation, which fulfils the requirement of DIN, on the part of the revenue authorities, hence there is no mistake in quoting the DIN in the assessment order.

19. I note that in respect of DIN, the Ld. Counsel for the assessee relied on the judgment of Hon'ble Calcutta High Court in the case of Tata Medical Centre Trust (supra). This judgment has been stayed by the Hon'ble Supreme Court, therefore, till the final decision by the Hon'ble Supreme Court on the issue of DIN, I cannot express my view on this issue. Therefore, whether the DIN is to be mentioned on the body of the assessment order, and if it is communicated by the assessing officer specifically to the assessee along with the assessment order, soon after the completion of the assessment order, whether it is a sufficient compliance or not, on this, there is no finality, and the matter is pending before the Hon'ble Apex Court, as noted above. The Ld. Counsel for the assessee, also admitted that the judgment relied upon by him in respect of



Hon'ble Calcutta High Court in the case of Tata Medical Centre Trust (supra) has been stayed by the Hon'ble Apex Court, besides, the judgement of Hon'ble Bombay High Court, reported in (2024) 464 ITR 0430, has been delivered by the Hon'ble Court, after relying on the judgement of Hon'ble Calcutta High Court in the case of Tata Medical Centre Trust (supra), which has been stayed by the Hon'ble Apex Court. Moreover, the Hon'ble Bombay High Court, judgement reported in (2024) 464 ITR 0430, wherein, the Hon'ble Court held that where Assessing Officer issued a reopening notice under section 148, which was without a DIN, same was invalid and bad in law. However, in the assessee's case under consideration, the issue pertains to mentioning of DIN in the assessment order, which was completed by the revenue authorities, by issuing a separate intimation letter along with assessment order on the same date, therefore the facts of this judgement, do not applicable squarely to the assessee's case under consideration. Therefore, the ground No.2 raised by the assessee is dismissed.

20. Now coming to the ground Nos. 3 and 4 raised by the assessee, on merit. I find that in the quantum, the assessee has raised two grounds – one relates to the addition of Rs.18,34,000/-, which is made by the assessing officer in respect of immovable property purchased, and the second ground, regarding the addition of Rs.7,17,400/- made by the assessing officer, on account of cash deposited in the bank account, which was stated, by the assessing officer, as unexplained cash deposit in the bank account. So far, addition of Rs.18,34,000/- is concerned, I find that Ld. Counsel for the assessee, has himself pointed out that the books of accounts of the assessee were not subjected to audit, and the assessing officer, during the assessment proceedings, pointed out that self-made cash book was submitted by the assessee, which is not reliable. Therefore, I find that assessee



has miserably failed to prove the genuineness of the investment made in property, **in cash**, to the tune of Rs.18,34,000/-.

21. In respect of second addition of Rs.7,17,400/-, the assessee did not explain the source of **cash deposit**, in the bank account therefore, the assessing officer made the addition. The assessee also failed to explain with documentary evidence during the appellate proceedings, about both the transactions, hence, Ld. CIT(A) confirmed the addition made by the assessing officer.

22. I find that both the additions made by the assessing officer pertain to **cash, and total of both additions come to Rs.25,51,400/-** (Rs.18,34,000+Rs.7,17,400). Learned Counsel for the assessee, alternatively, also argued before me, that an ad-hoc addition may be made in the hands of the assessee, because after all, the cash deposit in the bank account and investment made in cash, cannot be the income of the assessee and therefore profit element embedded in these two transactions may be added in the hands of the assessee. I find force in the alternative argument advanced by the learned Counsel for the assessee. I note that when concerned evidences were not submitted by the assessee, but there is unexplained investment made by the assessee in the property and assessee also deposited cash in the bank account, whose sources were not explained by the assessee, in these circumstances, at best, only profit margin embedded in such transactions/ cash deposit in bank account would be subjected to tax (disallowances) and not the entire unexplained investment and cash deposit in the bank account. I find that the assessee's own records are one of the factors which has to be considered and kept in mind while estimating the profit as has been held in the case of Delta Engineering Co. reported in 186 ITR 383. Similar view have been taken in the case of Action Electricals (Delhi) reported in 258 ITR 188. However, I note that assessee under consideration is



not maintaining books of accounts, therefore, net profit ratio/ gross profit ratio is not available from the assessee's books of account. However, I note that it is the net profit and net income which has to be added and not the gross profit since indirect expenses are also incurred in the business. Lord Macnaghten, in the case of London County Council v Attorney-General 1901 AC 26, 35-6 (HL), 4 TC 265, 293, stated as follows:

“Income Tax, if I may be pardoned for saying so, is a tax on income. It is not meant to be a tax on anything else. It is one tax, not a collection of taxes essentially distinct.”

Therefore, net profit is taxable income. Hence, considering the facts and circumstances of the case, and taking into account, the fact that assessee has not submitted any document to prove the source of Rs. Rs.25,51,400/-. Hence, I direct the assessing officer to compute the net profit @ 30% of Rs.25,51,400/-, which comes to Rs. 7,65,420/-. Therefore, the assessing officer is directed to make the addition to the tune of Rs. 7,65,420/-, in the hands of the assessee.

23. Since I have adjudicated the issue involved in assessee's case, taking into account, the peculiar facts and circumstances, as narrated above, therefore, it is made clear that instant adjudication shall not be treated as a precedent in any preceding or succeeding assessment year.

24. In the result, the appeal of the assessee is allowed, partly in above terms.

Order pronounced in the open court on 06/06/2025.

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

Rajkot

दिनांक/Date: 06/06/2025

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

Date

11.03.2025

1. *Draft dictated on*
2. *Draft placed before author*
3. *Draft proposed & placed before the second member*
4. *Draft discussed/approved by Second Member.*
5. *Approved Draft comes to the Sr.PS/PS*
6. *Kept for pronouncement on*
7. *File sent to the Bench Clerk*
8. *Date on which file goes to the AR*
9. *Date on which file goes to the Head Clerk.*
10. *Date of dispatch of Order.*
11. *Draft dictation sheets are attached*