

**IN THE INCOME TAX APPELLATE TRIBUNAL JODHPUR BENCH, JODHPUR.**

**BEFORE: DR. MITHA LAL MEENA, ACCOUNTANT MEMBER &**

**DR. S. SEETHALAKSHMI, JUDICIAL MEMBER**

**I.T.A. No. 159/Jodh/2025**

**Assessment Year: 2019-20**

Chirag Murdia CPS School Road Towner Building , New Bhopalpur, Udaipur	Vs.	The DCIT Central Circle-1, Udaipur
PAN No.: AYSPM0007H		
Appellant		Respondent

<b>Appellant by</b>	Sh. Shrawan Kumar Gupta, Adv.
<b>Respondent by</b>	Sh. Karni Dan, Addl. CIT(Sr. DR)

<b>Date of Hearing</b>	06/05/2025
<b>Date of Pronouncement</b>	25/06/2025

**ORDER**

**PER: DR. S. SEETHALAKSHMI, J.M.**

This is an appeal filed by the assessee against the order of ld. CIT (A), Udaipur-2, dated 15.01.2025 passed under section 250 of the I.T. Act, 1961, for the assessment year 2019-20. The assessee has raised the following grounds of appeal

:-

“1.1 The impugned order u/s 143(3) of the I.T. Act, 1961 dated 04.05.2021 as well as the action taken u/s 143(2) and notices u/s 143(2) or other notices are illegal, bad in law and on the facts of the case for want of jurisdiction and various other reasons or bared

by limitation and further contrary to the real facts of the case, hence the same may kindly be quashed.

1.2 The search action taken u/s 132 and consequent proceedings are illegal, bad in law and on the facts of the case for want of jurisdiction and various other reasons, against the provisions and procedures as per law and further contrary to the real facts of the case hence all the consequent notices as well as the subsequent proceedings invalid, illegal, and bad in law hence liable to be quashed.

2. Rs11,90,000/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in sustaining the addition of Rs.11.90.000/- (before deduction Rs.17.00.000) on account of alleged unaccounted rent receipts also erred in ignoring the other material and facts available on record in their true perspective and sense. Hence the addition so made by the Id. AO and partly confirmed by the Id. CIT(A) is also contrary to the real facts of the case and not according to the provision of law hence the same is illegal, bad in law, against the principle of natural justice, hence the same may kindly be deleted in full.

3. The Id. AO has grossly erred in law as well as on the facts of the case in charging the interest u/s 234A, B, C. The interest so charged is being totally contrary to the provision of law and on facts of the case and hence same may kindly be deleted in full.”

2. Succinctly, the facts as culled out from the records are that the assessee earned rental and interest income during the year. In this case, a search and seizure action u/s 132 took place against the assessee and his group on 03.01.2019. The assessee filed return for the year u/s 139(1) on 24.07.2019 declaring an income of Rs.2,71,410/- The case being picked up for compulsory scrutiny, the AO issued notice u/s 143(2) on 17.01.2020. During the course of assessment proceedings, the Id. AO inquired about seized material in the form of loose papers and other details, to which the assessee submitted written replies and filed relevant documents. The Id. AO made addition of Rs.18,70,000/- on account of unaccounted rent receipts and completed the assessment u/s 143(3) at Rs.21,41,410/- .

3. Aggrieved from the order of Assessing Officer, the assessee preferred an appeal before the CIT(A) on legal grounds as well as on facts. He challenged the assumption of jurisdiction by the AO and addition made by him. The CIT(A) dismissed the appeal on legal grounds, however, he partly allowed the appeal on factual aspect, and restricted the addition of gross rent to Rs.17,00,000/- and further directed the AO to allow deductions u/s 24 out of the gross rent.

4. Now the assessee is in appeal before the ITAT. He has made the following submissions-

**“GOA-1-Invalid notice and assessment**

**GOA-2: Addition of Rs.11,90,000/- on account of alleged unaccounted rent receipts:**

**FACTS: 1.**For the brief facts of the case, kindly refer the assessment order and WS (PB 32-38) before the ld. CIT(A).

**2.** Further in first appeal we filed the detailed WS legal position. However the ld. CIT(A) has not considered the same in their true perspective and sense and partly confirmed the action of the ld. AO. As the ld. AO made the addition of Rs.18,70,000/-while the ld. CIT(A) after giving the benefit of deduction u/s 24 he restricted the addition to the Rs.11,90,000/-. The ld. CIT(A) has observed as under while deciding the appeal.

**3.1** The authenticity of the documents found and seized has been established independently also the explanation provided by the assessee during the course of search and post search is quite different from the present submission. Therefore, the present submission, is nothing but an story result of afterthought.

**3.2** The rent which is suppressed by the assessee as per the seized documents is Rs. 2,50,000/- per month. The tenant vacated the premise on 30-11-2018. However, the rent was collected upto 31-01-2019. Therefore, the actual rent collected by the assessee works out at Rs. 2,50,000 X 10 = 25,00,000/-. The AO made addition of Rs. 27,50,000/- which is not found to be correct. The

addition made by the AO is therefore restricted to Rs. 25,00,000/- in place of Rs. 27,50,000/-. The assessee has already declared rent of Rs. 8,00,000/-. Hence, the net amount of addition is sustained at Rs. 17,00,000/- in place of Rs. 18,70,000/- made by the AO.

**3.3** As per Written agreement between Sh. Abhishek Agrawal and Sh. Chirag Murdia, the entire building was rented from 01-02-2019 to 31-03-2019 to Sh. Abhishek Agrawal. The AO has calculated rent of Rs. 2,50,000/- for 11 months which is not found to be justified on the facts of the case as the building was not given on rent to the person which is mentioned in the seized documents.

**3.4** The assessee argued that the rent which was agreed at Rs. 2,50,000/- per month was again decreased to Rs. 80,000/- per month is not found to be acceptable in view of corroborative evidences brought on record by the AO which includes whatsapp chat discussed by the AO and AS Exhibit-32 Dell Laptop where an excel file named "Rent Details" was found & as per that excel sheet the amount against Harsh Bhavnani was written as Rs. 2,50,000/-. In view of above discussion, the addition of Rs. 18,70,000/- made by the AO is sustained to the extent of Rs. 17,00,000/- as gross rent received. Thereafter he has allowed the deduction u/s 24 and thus restricted the addition at Rs. 11,90,000/-.

Hence, this appeal before your honor.

## **SUBMISSIONS:**

**1.** Firstly, your honor, we relying upon our WS (PB32-38). Hence for the facts, figures, submissions and legal position the same may kindly be considered as our WS before your honor. Now we are submitting our further submissions on the observations given by the Id. CIT(A) ground wise as under:

**2.1** In this regard it is submitted that it is only observation of the Id. CIT(A) but he has not rebutted our contention without rebutting our contention with the help of any document evidences and also not made any independent inquiry.

**2.2** When the Id. CIT(A) has accepted that assessee had given the same building on rent to Sh. Abhishek Agrawal from 01.02.2019 to 31.03.2019 for Rs. 1,60,000/- i.e for Rs. 80,000/- Per Month, then how he has not accepted the earlier rent was only of Rs. 80,000/- per month. If earlier tenant was given rent of Rs. 2,50,000/- then why the assessee will later give the same on lesser rent at Rs. 80,000/- per month. It is the general thing that when a person is getting rent then he will not get vacate the property and the Id. CIT(A) has ignored these vital facts. Further, when assessee has produced details and explained all the things during the course of assessment proceedings as well during the course of appellate proceedings, then the same should be taken

into consideration in their true perspective and sense. Further, both the agreements, which have been reproduced in the assessment order and also in paper book were found during the course of search and seizure; the agreements are duly notarized and having evidentiary value. While other seized documents are of earlier date and on rough paper, which have no evidentiary value. The lower authorities have not disputed the rent received from Sh. Abhishek Agrawal from 01.02.2019 to 31.03.2019 for Rs.1,60,000/- i.e for Rs.80,000/- per Month and this supports our contention that earlier also the building was given on rent for Rs.80,000/- PM. The ld. lower authorities have only proceeded on the rough documents and whatsapp chat with other person, which is only marketing and there is no proof that the assessee has received excess rent. Further there is no evidence that the tenant have booked Rs.2,50,000/- in the books, also there was any evidence that any inquiry have been made from tenant. If the lower authorities were having any doubt, they could have made independent inquiry but they failed to do so and have not rebutted these by bringing any contrary evidence except the suspicion and presumption. Thus, the observation based on assumption, presumption and suspicion and his own guess work and it is the settled legal position of law that suspicion may be strong however cannot take the place of reality, are the settled principles. Kindly refer **Dhakeshwari Cotton Mills 26 ITR 775 (SC)** also refer **R.B.N.J. Naidu v/s CIT 29 ITR 194 (Nag)**, **Kanpur Steel Co. Ltd. v/s CIT 32 ITR 56 (All)**. Also refer **CIT v/s Kulwant Rai 291 ITR 36( Del)**. In **CIT v/s Shalimar Buildwell Pvt Ltd 86 CCH 250(All)** it has been held that the AO made the addition merely on **suspicion** which was not desirable in the eyes of law.

**2.3.** Further when the ld. AO was of the view and having information that the assessee has received excess unaccounted rent from the tenant, then why he has not taken any action in the hands of the tenant for paying the unaccounted rent, it shows the contradictory approach of the lower authorities. Thus, the observations of the lower authorities itself is baseless and has no force.

Hence in view of the above facts, circumstances and the legal position, the addition so made may kindly be deleted in full and oblige.

5. Ld. AR of the assessee in support of the contention so raised in the written submission, placed reliance on the following evidence / records :

<b>S.No.</b>	<b>Particulars</b>	<b>Page No.</b>
1.	Copy of IT return with Balance sheet & computation	1-5
2.	Copy of replies filed to AO	6-11
3.	Copy of Rent agreement dated 12.10.2017	12-20

4.	Copy of Seized paper	21
5.	Copy of Rent agreement dated 19.03.2018	22-30
6.	Copy of Certificate of Harsh Bhavnani	31
7.	Copy of written submission filed to CIT(A)	32-39
8.	Copy of Statement of assessee recorded u/s 131	40-46

6. The Id. DR is heard who relied on the findings of the lower authorities and more particularly advanced similar contentions as stated in the order of the Id. CIT(A).

7. We have heard the rival contentions and perused the material placed on record vide the paper book, as well as the relevant provisions of law and the case laws cited by the Ld.AR in support of his case.

8. Ground No.1 & 2 having not been pressed by the Ld.AR, the same are not being adjudicated upon. As regards Ground No.3, we note that the addition has been based on three seized documents, viz. (i) Page No.133 of Exhibit 11 which happens to be a loose paper alleged to be written and signed by Harsh Bhawnani (ii) Screenshot of Whatsapp chat between Shivraj Singh Chauhan and the assessee, and (iii) Exhibit 32 which is an Excel sheet named 'Rent details.' We further note that Rent deeds between the assessee and M/s Harsh Hospitality, also seized during the course of search, though mentioned in the assessment order, which go to disprove the stand taken by the AO and the CIT(A), have been conveniently ignored by the authorities. We also note that the Declaration dated 01.02.2021

given by Harsh Bhawnani, which was adduced as evidence before the AO has not been considered either by the AO or by the CIT(A). The reliance by the lower authorities on Page No.133 of Exhibit 11 is misplaced for the reason that the author of this note was never examined by the AO. Further, the explanation given in this regard by the assessee appears to be correct, when examined from the angle of preponderance of probability. Even otherwise, no prudent man would accept a rise in the rent of a property from Rs.80,000/- PM to Rs.2,50,000/- PM within a span of six months. We further note that Exhibit 32 is a printout of soft data as stated by the AO. A perusal of this exhibit shows that no details as to the date of receipt of the relevant amounts of rent is given in it. Both these documents can not be considered anything more than rough papers with no evidentiary value. As regards the whatsapp chat, it is a human tendency to exaggerate his income. It is also observed that there is no corroborative material to establish that the amount stated therein was actually received by the assessee. Therefore, these are nothing more than mere dumb documents. On the contrary, the Rent deeds found during search and reproduced by the AO in his order, clearly vouch the transaction of renting out the property in question on a rent of Rs.80,000/- per month. These deeds are duly notarised and evidenced by two independent witnesses. As such, these could not have been brushed aside or dislodged by lower authorities on basis of Exhibit 11 & 32 stated supra. Moreover, the evidence adduced by the assessee

in the form of declaration by Harsh Bhawnani asserting that he had taken the impugned building from Chirag Murdia on a monthly rent of Rs.80,000/-, has not been controverted by the lower authorities.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-  
**(Dr. Mitha Lal Meena)**  
**Accountant Member**

Sd/-  
**(DR. S. Seethalakshmi)**  
**Judicial Member**

Dated 25/06/2025

Santosh- Sr. P.S

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By order