

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, AM  
AND  
MS. KAVITHA RAJAGOPAL, JM

ITA No. 3424/Mum/2025  
(Assessment Year: 2020-21)

<b>Jagdish Ghusabhai Kachhdiya legal heir of the Late Shri Ghusabhai Khodabhai Kachhadiya</b> A-203, Bhairavi Apartment, Barucharoad, Dahisar (East), Mumbai – 400068.	Vs.	<b>Dy. CIT Central Circle-2(1)</b> Room No. 804, 8 <sup>th</sup> Floor, Pratishta Bhavan, Old CGO Bldg., M. K. Road, Mumbai – 400 020.
<b>PAN/GIR No. AABPK3508Q</b>		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

<b>Assessee by</b>	:	Shri Ajay R. Singh
<b>Respondent by</b>	:	Shri Vivek Perampurna (CIT DR)

<b>Date of Hearing</b>	:	14.07.2025
<b>Date of Pronouncement</b>	:	16.07.2025

**ORDER**

**Per Kavitha Rajagopal, J M:**

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) 48, Mumbai ('ld. CIT(A)' for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2020-21.

2. The assessee has raised the following grounds of appeal:

*I. Principle of Natural Justice: Exparte Order*

*1. The assessee submits that present appeal was filed by one of the Legal heir of the deceased assessee it is submitted that due to family related issues that appeal remained to be represented by the family members. The assessee humbly submits*



*that after considering the consequences of the impugned order, the family members request for one more opportunity of hearing.*

*II. Notice u/s 153C bad in law.*

*2. The Ld. CIT(A) erred in upholding the issuance of notice u/s 153C of the Act dt 27/1/2024 without there being any incriminatory documents/data which pertains or relates to the deceased assessee.*

*3. Without prejudice to above the alleged incrimination material relied on by the AO is full of errors and mistake which has led to incorrect recording of satisfaction by the AO while issuing the notice u/s 153C, without application of mind.*

*4. The impugned notice u/s 153C of the Act dated 27/01/2024 is issued belatedly beyond reasonable time limit almost after 4 years from the date of search in case of third person i.e. on 06/02/2020.*

*5. The Id CIT(A) failed to appreciate that the Id. Assessing Officer erred in not providing the copies of incriminating document and statement recorded which are extracted by the AO in the assessment order however same are not complete nor legible and cannot be read, therefore without providing the complete statement copy and the alleged material /documents, the assessment order passed is in violation of principle of natural justice, liable to be quashed.*

*III. Addition u/s 69A of the Act of Rs. 1,29,64,592/-*

*6. The Id. CIT(A) erred in upholding the addition of Rs. 1,29,64,592/- on presumption and assumption that on money has been paid on the alleged purchase of 3 shops, without considering at the basic facts and calculation, the assessing officer being a quasi-judicial authority ought to have applied his mind to the alleged incriminating documents / data before taking any adverse conclusion against the assessee.*

*7. The CIT(A) failed to appreciate that the AO applied the rate of 5800/-per square ft for working out the alleged on money of Rs 1,29,64,592/-which is factual and logically incorrect as no where in the assessment order the Id AO has specified for which period the rate pertains, thus without any application of mind on facts of assessee case, arbitrarily applied the rate of 5800/- per sq ft which is incorrect.*

*8. The Id CIT(A) failed to apply his mind on the chart extracted at para 6 page no 4 of the assessment order wherein firstly a standard rate of 5800 per sq ft is applied and multiplied by incorrect area of 1920 (actual carpet area is 960.79 square feet), secondly Assessing Officer has calculated the addition on presumption that assessee*



*is owner of three shops i.e. G17-18 & G26A which is factually incorrect, the assessee had brought only G-17 & G-18, thirdly the booking of the two shop was made by first cheque payment on 15/05/2018 at the prevailing rate of Rs.3,035/- sq. ft. built-up area at the relevant time, lastly the Id AO failed to consider the cheque payments made for purchase of two shops, thus the whole calculation is apparently incorrect, therefore the alleged addition worked out at Rs. 1,29,64,592/- ought to be deleted.”*

3. Brief facts of the case are that the assessee is an individual and had filed his return of income dated 26.12.2020, declaring total income at Rs. 8,28,160/-. Pursuant to a search and seizure action carried out in the case of the Shree Kuberji Group, Surat, dated 06.02.2020, u/s. 132 of the Act, incriminating documents pertaining to the assessee were found. Accordingly, after satisfaction note was drawn, a notice u/s. 153C of the Act, dated 29.03.2023 was issued and served upon the assessee. In response to same, it was informed that the assessee had demised on 24.06.2021, vide letter dated 03.07.2023 filed by the Shri Jagdishbhai Ghusabhai Kachhdiya son of Late Ghusabhai Khodabhai Kachadiya, thereby, the proceedings initiated u/s. 153C were dropped and fresh proceedings u/s. 153C were initiated in the name of Shri Jagdishbhai Ghusabhai Kachhdiya being the legal heir of Late Ghusabhai Khodabhai Kachadiya. The Id. AO issued notice u/s. 153C of the Act dated 27.01.2024, which was duly served upon the assessee. Notices u/s. 143(2) and 142(1) were also issued and served upon the assessee. In response to notice u/s. 153C of the Act, the assessee declared the same income as that of the returned income. It was observed that the assessee had purchased three properties during the year under consideration for which assessee had paid Rs. 76,40,176/- for two shops and had also purchased one more shop where the total consideration was Rs. 1,29,64,592//- by cash for all the three shops purchased from



Shree Kuberji Group which was not declared in the return of income filed by the assessee. The Id. AO then passed the assessment order u/s. 153C of the Act dated 20.03.2024, determining total income at Rs. 1,37,92,750/-, after making an addition on unexplained money u/s. 69A r.w.s 115BBE of the Act, amounting to Rs. 1,29,64,592/- for the reason that the assessee had failed to substantiate the source.

4. Aggrieved the assessee was in appeal before the first appellate authority, challenging the assessment order.
5. The Id. CIT(A) vide an ex parte order dated 21.03.2025, upheld the order of the Id. AO for the reason that inspite of several opportunities, the assessee has failed to substantiate his claim and has been non-compliant throughout the appellate proceedings.
6. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).
7. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that due to the demise of the assessee there were certain family issues due to which there was no compliance before the first appellate authority. The Id. AR further stated that the non-compliance was neither wanton nor recalcitrant but had reasonable cause for the assessee's non-compliance. The Id. AR prayed that the assessee has got a good case on the merits and prayed that the assessee may be given one more opportunity to present his case before the Id. CIT(A).
8. The learned Departmental Representative ('Id. DR' for short) vehemently opposed to setting aside the issue to the file of the Id. CIT(A) for the reason that the assessee was given several opportunities by the Id. CIT(A) which was not availed by the assessee.



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9. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has challenged the addition made by the Id. A.O. before the first appellate authority but has been non-compliant throughout the appellate proceeding.
10. On the above facts of the case, we are of the considered view that the assessee may be given one more opportunity to present his case before the first appellate authority by adhering to the principles of natural justice. We, therefore, remand this issue back to the file of the Id. CIT(A) for *de novo* adjudication. The assessee is directed to comply with the proceedings without any undue delay on his side and needless it is to say that sufficient opportunity of hearing is to be given to the assessee.
11. In the result, the appeal filed by the assessee is allowed for statistical purpose.

*Order pronounced in the open court on 16.07.2025*

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated: 16.07.2025

Karishma J. Pawar (Stenographer)

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai