

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE MS SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER AND  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.816/SRT/2023**

**Assessment Year: (2014-15)**

Kanhaiyalal Labhubhai Narola, A/B/17, Nirmal Park Society, Katargam Road, Katargam, Surat – 395004	Vs.	ACIT, Circle – 3(2), Surat
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAJPN9673M</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri Shaunak K. Zaveri, CA
<b>Respondent by</b>	Ms. Jayashree Thakur, Sr. DR
<b>Date of Hearing</b>	09/06/2025
<b>Date of Pronouncement</b>	11/08/2025

**आदेश / ORDER**

**PER SHRI BIJAYANANDA PRUSETH, AM:**

This appeal by the appellant emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, the 'Act') by the Commissioner of Income Tax (Appeals) – 11, Ahmedabad, [in short "the CIT(A)",'], dated 29.09.2023 for the assessment year (AY) 2014-15.

2. The grounds of appeal raised by the appellant are as follows:

*“(1) That on the facts and in the circumstances of the case, the Ld. CIT(A)-11, Ahmedabad [hereinafter referred to as Ld. CIT (Appeals)] was not justified and grossly erred in dismissing the appeal which is bad in law and against principle of natural justice and equity, thereby, confirming the action of the A.O. for the order passed u/s.143(3) r.w.s. 147 of the Income tax Act, which is incomplete and also bad on facts.*

*(2) Without prejudice that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified and grossly erred in confirming the action of the A.O. wherein valid conditions for the reopening were not satisfied by A.O.*

*(3) Without prejudice that on the facts and in the circumstances of the case, the Ld. CIT (A) was not justified and grossly erred in confirming the action of the A.O. wherein A.O. was not justified because instead of the A.O. recording his satisfaction, initiated action at the behest of Investigation Wing, Surat.*

*(4) That on the facts and in the circumstances of the case, Ld. CIT(A) was not justified and grossly erred in indirectly confirming the action of the A.O. by accepting the addition on account of unexplained cash credit u/s.68 of the Act amounting to Rs.3,00,00,000/- received cash from Happy Home Corporation and Shri Shantilal Sutariya without considering the documents and evidences which is incorrect and bad in law and needs to be deleted in the interest of natural justice and equity.*

*(5) Without prejudice that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified and grossly erred in confirming the action of the A.O. wherein A.O. was not justified and has erred in not providing the appellant the opportunity of cross examination before jumping to the conclusion and A.O. solely relied on third party evidences for making the addition in question and AO failed to establish the cash transactions from Happy Home Corporation and Shri Shantilal Sutariya.*

*(6) That on the facts and in the circumstances of the case, the Ld. CIT(A) in indirectly confirming the action of the A.O. is not justified and erred in confirming the initiated penalty proceedings u/s.271(1)(c) r.w.s. 274 of the Act.*

*(7) That the appellant craves leave to add, to amend, modify, rescind, supplement or alter any of the grounds stated hereinabove, either before or at the time of hearing of this appeal."*

3. Facts of the case in brief are that the appellant filed his return of income for A.Y. 2014-15 on 18.10.2014, declaring total income at Rs.5,81,570/-. The appellant derived income from house property, income from partnership-firm and income from other sources during the year under consideration. The return was processed u/s 143(1) of the Act on 19.03.2013. Thereafter, the case was reopened u/s 147 of

the Act after recording the reasons by issuing notice u/s 148 of the Act on 28.03.2019. As per the information received, a search and seizure operation u/s 132 of the Act was conducted on 17.08.2016 at the premises of Milan Natverlal Sutariya, related to K Star group. During the search proceedings, many incriminating documents related to Shri Milan Natvarlal Sutariya and his concerns were found and seized. From the perusal of documents, it was revealed from Page No. 30 of Annexure A/4 that the appellant had received cash amounting to Rs.2,50,00,000/- (written in coded form as 25000) from M/s. Happy Home Corporation and Rs.50,00,000/- (written in coded form as 5000) from Shri Shantilal Sutariya on 09.09.2013, which was received as repayment of loan earlier advanced by Shri Milan to M/s. Happy Home Corporation and Shri Shantilal Sutariya. During search proceedings, a statement of Shri Milan Natvarlal Sutariya was recorded u/s 131 of the Act, who identified Shri Kanhaiyalal as Shri Kanaiyalal Labhubhai Narola (appellant herein), residing at 17 A-B, Nirmal Park Society, Near Arogya Kendra, Katargam, Surat. Since the assessee had received amount of Rs.3,00,00,000/- as repayment of loan but the same was not offered for taxation, the case of the appellant was reopened after recording reasons for reopening by issuing notice u/s 148 of the Act dated 28.03.2019. Subsequently, the appellant was issued statutory and show cause notices. In response to the same, assessee filed his submissions and requested for cross-examination. Accordingly, summons u/s 131 of the Act

were issued to Shri Milan Sutaria and Shree Shantilal Sutariya on 10.12.2019 and 13.12.2019 for cross-examination in respect of aforesaid transactions. However, Shri Milan Sutariya did not attend for cross-examination on the said date. According to AO, this proves that assessee received Rs.3,00,00,000/- but did not offer the same for taxation. Accordingly, the said amount of Rs.3,00,00,000/- was added to the total income of the assessee u/s 68 of the Act.

4. Aggrieved by the order of the AO, appellant filed appeal before the CIT(A). During the course of appellate proceedings, the appellant had filed written submissions contesting validity of re-opening u/s 147 of the Act as well as merit of the addition. The appellant also raised the contention that the AO had not provided opportunity of cross-examination of Shri Milan Natvarlal Sutariya. The ground regarding validity of re-opening was dismissed by the CIT(A) because the case of the assessee was processed u/s 143(1) of the Act and no assessment was made u/s 143(3) of the Act. Many incriminating materials were found during the search in case of K Star group of cases on 17.08.2016. It was found therefrom that assessee had received cash of Rs.3 crore from M/s Happy Home Corporation and Shri Shantilal Sutariya. Since the assessee received the amount but did not offer it for taxation, the case was rightly re-opened by the assessee because there was material on record to support the reasons to believe that income escaped assessment. The CIT(A) relied on the decision of the ITAT in case of Navratna

Developers and Organizer Pvt. Ltd., in ITA No.2143/Ahd/2009, dated 27.08.2014 wherein it was held that the stage of issue of notice u/s 148, the only question is whether there was relevant material on the basis of which a reasonable person could have formed the requisite belief. Whether the material would conclusively prove escapement of income is not the concern at that stage. The CIT(A) also relied on the decision of the Hon'ble Gujarat High court in case of Nishant Vilas Kumar Parekh, (2021) 129 taxmann.com 119 (Guj.), Kaushaliya Shampatlal Dudani, (2021) 129 taxmann.com 48 (Guj.), Vilas Vrajlal Parekh HUF, 129 taxmann.com 68 (Guj.), Bhanuben Mansukhlal Khimashia, 128 taxmann.com 229 (Guj.) and Sameeer Gulabchand Shah HUF, 131 taxmann.com 42 (Guj.). Accordingly, he dismissed the ground on re-opening of the assessment proceedings.

4.1 The other ground was regarding addition of Rs.3,00,00,000/- u/s 68 of the Act. The facts leading to the above addition has been discussed at para 5.1.1 of the appellate order. The appellant in the written submission had reiterated the contention before the AO. The contention of appellant regarding cross-examination was rejected by the CIT(A) by holding that when the Department had not relied upon any oral evidences (or statements of witnesses) and has independently correlated the seized material with books and/or bank accounts of the searched person and of the third party, then the affected party cannot demand it as right the cross-examination of those persons whose statements have not

been used against it. The CIT(A) has relied on the decision of the Hon'ble jurisdictional High Court in case of Amrapali Fincap Ltd. vs. ITSC, (2016) 73 taxmann.com 97 (Guj.). He also relied on the following decisions, viz., Smt. Kusum Lata Thakral vs. CIT, 150 ITR 714 (P & H), Motilal Padampat Udyog Ltd. vs. CIT, 293 ITR 565, GTC Industries Ltd. vs. ACIT, 65 ITD 380, CIT vs. Kuber Fibers Pvt. Ltd., 77 taxmann.com 345, Kanungo & Co. vs. Collector of Customs, (1983) ELT 1486 (SC) and rejected the plea of assessee regarding lack of cross-examination.

4.2 As regards plea of lack of the live-link between the impugned notings and statements and that the addition was made on the basis of surmises and conjectures, the CIT(A) has also rejected the above contention. He observed that the incriminating documents were seized during the search in case of K Star group, which revealed that the appellant received repayment of loan during the subject year. Statement of Shri Milan Natvarlal Sutariya, a key person of K Star group was recorded, who identified the appellant as recipient of Rs.3,00,00,000/- in cash. He placed reliance on the decisions in the following cases, viz., Smt. Urmila Gambhir vs. CIT, 325 ITR 171, Pravinbhai Patel, 45 taxmann.com 533 (Ahd – Trib.), Mahavar Woolen Mills vs. CIT, 111 Taxman 568 (Del.) and Shailash S. Patel, 97 taxmann.com 570 (Ahd – Trib.).

4.3 The CIT(A) further observed that the AO made addition u/s 68 of the Act, which was not correct as per law because, in this case, the appellant was found to

be the owner of unexplained money (cash) of Rs.3,00,00,000/- in the form of repayment of unaccounted loan and the appellant had not placed any evidence to show that the cash loan advanced had been given in the earlier year. He observed that merely quoting of wrong section in the assessment order did not suggest that the addition on account of unexplained cash could not be made. Therefore, it was observed that when the appellant was found to be owner of cash receipts of Rs.3 Crore which was not disclosed in books of account, the same should be treated as unaccounted income/money which was required to be taxed u/s 69A of the Act. Accordingly, the addition made by the AO was confirmed because the appellant failed to discharge the onus as per provision of section 69A of the Act.

5. Aggrieved by the order of the CIT(A), the appellant is in further appeal before this Tribunal. The learned Authorized Representative (Id. AR) of the appellant submitted paper book containing copies of submission filed before CIT(A), replies filed before AO, copies of ITRs and computation of income, copies of bank statements. The Id. AR has also filed written submission wherein he has argued against validity of re-opening u/s 147 of the Act and submitted that the AO should satisfy himself regarding escapement of income. He should not mechanically reopen the assessment based on the information supplied by any other person. The AO has not analyzed the transaction mentioned in the loose material and solely relied on information of DCIT, CC – 4, Surat. The Id. AR

submitted that the information in possession of the AO has no relationship with any income chargeable to tax. The re-opening proceedings were initiated only on general statement given by third party. The Id. AR also submitted that the addition was made without cross-examination of Shri Milan Natvarlal Sutariya. The addition was also made on the basis of data/information found from the premises of third party without there being any independent or corroborative material on record. The addition was made without establishing the cash transaction trail. Hence, he requested that the addition made u/s 68 of the Act be remanded back or quashed in the interest of justice.

6. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) relied upon the order of lower authorities. She submitted that there was no irregularity in re-opening the assessment. The addition was also made on appreciation of the facts and materials on record. The CIT(A) has also passed a detailed and speaking order confirming the action of AO. Hence, the order of CIT(A) may be upheld.

7. We have heard both the parties and perused the materials available on record. We have also deliberated upon the decision relied upon by both sides. In this case, assessee had filed original return of income on 18.10.2014, declaring income of Rs.5,81,570/-, which was processed u/s 143(1) of the Act on 19.03.2013. No assessment order u/s 143(3) of the Act was passed in the case. Subsequently,

based on the information received pursuant to the search operation u/s 132 of the Act on 17.08.2016 in case of K Star group, the case was re-opened after recording the reasons for re-opening. Notice u/s 148 of the Act was issued on 28.03.2019. This ground was also raised before the CIT(A), who has dismissed the ground after elaborately discussing the facts and relevant decisions on the subject issue. The same has been discussed at para 4 of this order. He has relied upon the decisions of the Hon'ble jurisdictional High Court in cases of Nishant Vilas Kumar Parekh (supra), Kaushaliya Shampatlal Dudani (supra), Vilas Vrajlal Parekh HUF (supra), Bhanuben Mansukhlal Khimashia (supra), and Sameeer Gulabchand Shah HUF (supra). We do not find infirmity in the decision of CIT(A). At the stage of re-opening, the AO should have *prima facie* belief regarding escapement of income. The Hon'ble Supreme Court in case of ACIT vs. Rajesh Javeri Stock Brokers Pvt. Ltd., 291 ITR 500 (SC) held that the expression 'reason to believe' would mean cause or justification and cannot be read to mean that the AO should have finally ascertained the fact by legal evidence or conclusion. Whether material would conclusively prove escapement of income is not the concern at that stage. In view of the facts discussed above and respectfully following the decision of Hon'ble Supreme Court and decisions of Hon'ble jurisdictional High Court (supra), the ground is dismissed.

8. The appellant has also raised grounds regarding (i) the denial of cross-examination of key witness (ii) the validity of addition of Rs.3,00,00,000 u/s 68/69A of the Act, (iii) the procedural irregularities and violation of natural justice and (iv) the initiation of penalty proceedings u/s 271(1)(c) of the Act. As discussed earlier, the AO made the addition of Rs.3,00,00,000/- u/s 68 of the Act towards the receipt of repayment of loan of Rs.3,00,00,000/- i.e., Rs.2,50,00,000/- from Happy Home Corporation and Rs.50,00,000/- from Shri Shantilal Sutariya on 09.09.2013. During the appellate proceedings, after considering the facts of the case and submission of the appellant, the CIT(A) at para 5.5 onwards held that addition u/s 68 was not correct as per law because the appellant was found to be the owner of unexplained money (cash) of Rs.3,00,00,000/- in the form of repayment of unaccounted loan and the appellant had not placed any evidence to show that the cash loan advanced had been given in the earlier years. He thereafter observed that merely quoting the wrong section does not make the addition invalid. He has relied on the decision of ITAT, Bangalore in case of Shri Arif vs. ACIT where the Tribunal held that unexplained bank deposits cannot be considered u/s 68 of the Act and it falls u/s 69A of the Act. Mentioning a wrong section by the AO is not fatal. The CIT(A) further relied on the decisions of Hon'ble Supreme Court in case of Chuharmal vs. CIT, 172 ITR 250 (SC), Smt. Srilekha Banerjee & Ors vs. CIT, 1964 AIR 697 (SC), Krishna Kumar vs. ITO, (2019) 107 taxmann.com 647 (SC), CIT-1 vs.

Shraban Kumar Sharma, 214 taxmann.com 101 (Guj.) and S. Muthukumar vs. ITO, (2014) 49 taxmann.com 44 (Chennai – Trib.) and held that the appellant failed to discharge its onus as per provisions of section 69A of the Act and the same was required to be taxed u/s 69A of the Act. It is, therefore, clear that the addition made by the AO u/s 68 of the Act has not been approved and the CIT(A) has confirmed the same addition under a different section i.e., u/s 69A of the Act. The appellant has submitted that the CIT(A) has erred in indirectly confirming the addition made by the AO in violation of the principles of natural justice. We find that no opportunity was granted to the appellant by the CIT(A) to explain as to why the addition should be made under a different section and as to whether the conditions needed for invoking section 69A of the Act are satisfied. Provisions of sub-section (2) of section 251 of the Act requires that the CIT(A) or the JCIT shall not enhance an assessment or penalty unless the appellant had a reasonable opportunity of showing cause against such enhancement. Therefore, the CIT(A) was statutorily required to grant opportunity of hearing to the assessee before making addition u/s 69A of the Act. In view of the above, we set aside the order of CIT(A) and remit the issue back to the file of CIT(A) for fresh adjudication after granting adequate and reasonable opportunity of being heard to the assessee. The assessee is also directed to file necessary details/explanations before the CIT(A). With this observation, the grounds are allowed for statistical purposes.

9. It is made clear that the ground on re-opening u/s 147 by issue of notice u/s 148 has been dismissed by us and does not require fresh adjudication by the CIT(A). Only the matter regarding the addition u/s 69A of the Act has been remitted back to the file of CIT(A) in the interest of natural justice and no opinion has been expressed by us on the merits of the issue.

10. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order is pronounced in accordance with Rule 34 of the ITAT Rules, 1963 on 11/08/2025 in the open court.

**Sd/-**  
**(SUCHITRA R. KAMBLE)**  
**JUDICIAL MEMBER**

Surat

**दिनांक** / Date: 11/08/2025

SAMANTA

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

By Order

**// TRUE COPY //**

Assistant Registrar/Sr. PS/PS  
ITAT, Surat