

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

आयकरअपीलसं./ITA No.1121/SRT/2024

Assessment Year: (2016-17)

(Hybrid hearing)

Priyal Gautamkumar Sihora, 5, Harishnagar b/h TapsilSociety, Varachha Road,Surat-395 006	Vs.	Income Tax Officer, Ward-3(3)(5), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: APHPM2646E		
(Appellant)		(Respondent)

Appellant by	Shri P.M. Jagasheth, CA
Respondent by	Ms. Jayshree Thakur, Sr-DR
Date of Hearing	09/06/2025
Date of Pronouncement	11/08/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 ('in short, the Act') dated 26.07.2024 by the Commissioner of Income-tax (Appeals)/Addl/JCIT(A)-9, Mumbai[in short "the CIT(A)"] for the assessment year (AY) 2016-17.

2. Grounds of appeal raised by the assessee for the appeals are as under:

"1. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of Assessing Officer in making addition of Rs.3,54,228/- on account of deduction of withdrawal of deduction claimed u/s 54B of the Act.

2. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of Assessing Officer in making addition of Rs.10,79,250/- on account of credit entry in bank account during the year treated as alleged unexplained credit u/s 68 of the Income-tax Act, 1961.

3. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of Assessing Officer for not considered explanation given by the assessee regarding source of investments in new land at Dumas.*

4. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of Assessing Officer for not accepted that part amount had been invested in above said land from routine business transaction.*

5. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of Assessing Officer for not taken into consideration bank statements, bank book of the assessee explanations given on investment of the property and other documents and details submitted for the same.*

6. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of Assessing Officer for not considered the transaction as genuine not considered the documents submitted.*

7. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of Assessing Officer for without going through the facts of the case is injustice to the assessee.*

8. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of Income Tax (Appeals) has not offered adequate opportunities to hear, hence, the case may please be set aside and restored back to the CIT(A) or AO for sake of the interest of natural justice.*

9. *It is therefore prayed that the above addition may please be deleted as learned Member of the Tribunal may deem it proper.*

10. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal."*

3. The appeal filed by the assessee is late by 35 days in terms of provisions of section 253(3) of the Act. The assessee has filed an affidavit for condonation of delay in filing of appeal before the Tribunal. It has been stated that the assessee had no knowledge about the online Income-tax proceedings and time limit of filing of appeal. The order of CIT(A) was uploaded to the online portal and sent on her e-mail id, but the assessee had failed to check it on time. The

learned Authorized Representative (Id. AR) of the assessee submitted that the delay was neither intentional nor deliberate. He requested that in the interest of justice, the delay may be condoned and may be admitted for hearing. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue did not have any objection, if the delay is condoned.

4. We have heard both the parties and perused the materials available on record. We find that the delay in filing the appeal was not deliberate and intentional on the part of assessee. Moreover, the assessee is not going to be benefitted by filling appeal belatedly. It is now fairly settled that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice may be preferred. Hence, delay in filing the appeal is condoned and we proceed to decide the case on merit.

5. At the outset, the learned Authorized Representative (Id. AR) of the assessee informs the Bench that assessee does not wish to press ground No. 1; therefore, we dismiss ground No.1 as not pressed.

6. Brief facts of the case are that the appellant filed her return of income for A.Y. 2016-17 declaring total income at Rs.4,92,690/- on 17.03.2017. The case of the appellant was selected under CASS for "limited scrutiny" assessment. The reasons for selection for scrutiny were: "(i) Whether capital gains/loss on sale of property has been correctly shown in the return of income, (ii) Whether investment and income relating to properties are duly disclosed and (iii) Whether value of consideration for computation of capital gains has been

correctly shown in the return of income” with the reason description being “(i) Value of property transferred as reported in AIR is higher than the value of property transferred as reported in Return of Income, (ii) large investment in property as compared to total income and (iii) sale consideration of property in ITR is less than sale consideration reported in Form 26QB.”

6.1 During the course of assessment proceedings, it was noted that appellant had purchased an immovable property situated at Block No. 310/5/2/1, T.P. – 78, F.P. 109/A-1/A, Village – Dumas, Taluka – Majura, Surat, registered at Serial No. 0258/2016 with Sub Registrar Rander, for document value of Rs.2,80,00,000/- on 02.03.2016. The appellant had 10% share in the property. Therefore, she had made total investment of Rs.29,39,340/- including all expenses in this property for her share of the property. Regarding the source of investment, it was stated that the payment of Rs.8,00,000/- was made out of the unsecured loan taken from sister concern, M/s. Shihora Narrow Fabrics, Rs.6,00,000/- was paid from the unsecured loans obtained from Dhameliyas’s, Rs.5.84 lacs was paid from opening bank balance and Rs.10.79 lac was paid from routine business activity.

6.2 The appellant had sold an 70% of an immovable property situated at Block No. 362/A, 362/B, Karmala, Taluka - Olpad, Surat for total value of Rs.55,09,000/- on 01.09.2015 in which share of appellant was 25%. The appellant had claimed deduction u/s.54B in regard to sales of above said plot, however, the AO held that deduction u/s.54B of the Act of Rs.3,54,228/- was

not an allowable. The appellant subsequently offered the capital gains on the above plot of Rs.3,54,228/- for taxation by stating that the deduction was claimed by mistake. Therefore, an addition of Rs.3,54,228/- was made to the total income of the appellant.

6.3 According to AO, the appellant had failed to justify the amount of Rs.10.79 lacs as her savings/investment from routine business activities. Further, considering the income of Rs.4.9 lacs for the whole year, it was also not possible for the appellant to save so such funds for investment. On verification of bank book, source of the funds was not clear. Since the unsecured loans obtained had been taken into account separately, such funds could also not be treated as for routine business activity. Similarly, the opening cash balance claimed for Rs.5.84 lakhs was found the opening balance as on 01.01.2016, therefore, the same was also a part of the routine business activity. Hence, appellant could not be given double benefit for the funds shown from routine business activities. Thus, it was observed by the AO that the amount of Rs.10,79,250/- was obtained from unexplained sources for which appellant had offered no proper explanation and that the appellant had tried to suppress the actual source of funds utilized for investment in property. Accordingly, the aforesaid amount of Rs.10,79,250/- was added to the total income of the appellant after treating the same as unexplained credit u/s 68 of the Act.

7. Aggrieved by the above additions made by AO, the appellant filed appeal before the CIT(A). As regards the addition of Rs.10,79,250/- u/s 68 of the Act, it

was observed by the CIT(A) that during the stage of appellate proceedings, the appellant had not bothered to bring any documentary evidence in support of her claim to controvert the findings of the AO. Also, appellant had failed to file any application under Rule 46A of the Income-tax Rules, 1962. It was, therefore, observed that source of investment in property to the tune of Rs.10,79,250/- remained unexplained. In the result, the appeal of the appellant was dismissed by the CIT(A).

8. Further, aggrieved by the order of CIT(A), the appellant filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the appellant submitted a paper book containing acknowledgement of return and computation of income for AY 2016-17 along with profit and loss account, balance sheet and capital account, the bank statement and bank book, ledger account of agricultural land purchase at Dumas, table showing source of investment in land at Dumas, relevant pages of purchase deed and its translation. He submitted that source of investment of the land has been given at page 22 of the paper book. The same includes accumulated bank balance, loans from Dhamelias, loans from the sister concern and proceeds from regular business activity. The Id. AR submitted that the appellant had also received sale consideration of Rs.19,00,000/- from sale of agricultural land. The appellant received unsecured loans from Dhamelias and sister concerns, namely, Shilhora Narrow Fabrics. The Id. AR submitted that the remaining amount of Rs.10,79,250/- was from routine business activities. The Id. AR submitted that

the assessee is regularly filing return of income showing business income. In support, he has filed the return of income for AY 2016-17 where the gross sale was Rs.40,34,916/- and income declared was Rs.4,92,690/-. Hence, it was claimed that source of the amount of Rs.10,79,250/- was duly explained.

9. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of lower authorities.

10. We have heard both the parties and perused the materials available on record. The AO and CIT(A) have accepted the source of investment of Rs.19,84,148/- out of Rs.30,63,398/-. The appellant submitted that Rs.5,84,148/- was the accumulated balance, Rs.6,00,000/- was unsecured loans from Dhameliya family and Rs.8,00,000/- was unsecured loan from sister concern M/s Shilhora Narrow Fabrics. These claims were accepted by AO. However, claim of assessee that Rs.10,79,250/- was from routine business activities was not accepted and the same was added u/s 68 of the Act. In this regard, the appellant has filed acknowledgement of return and computation of income for the preceding AY 2016-17, in which appellant had declared total income of Rs.4,92,690/-. The assessee has shown business income of Rs.6,34,005/-, being 15.71% of gross turnover of Rs.40,34,913/-, as against 8% deemed profit u/s 44AD of the Act. During the subject AY, the assessee has also filed return of income declaring Rs.4,92,690/-. It is, therefore, clear that the appellant is engaged in regular business activity and, hence, claim of Rs.10,79,250/- as source of investment from business activities cannot be totally

rejected. However, the appellant has not furnished complete details regarding accumulation of income to the extent claimed above. Considering all these facts, we are of considered view that the source of investment from business activities can fairly be taken at Rs.8,00,000/-. The AO is accordingly directed to delete addition of Rs.8,00,000/- and the remaining addition of Rs.2,79,250/- is confirmed. The ground Nos. 2 to 7 are partly allowed.

11. The ground Nos.8 to 10 are general in nature and do not require adjudication.

12. In the result, the appeal of the assessee is partly allowed.

Order is pronounced in accordance with Rule 34(3) of the ITAT Rules, 1963 on 11/08/2025 in the open court.

Sd/-
(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

सुरत/Surat

दिनांक/ Date: 11/08/2025

SAMANTA

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Copy of the order forwarded to:

- The Appellant
- The Respondent
- The PCIT
- The CIT(A)
- DR, ITAT, SURAT
- Guard File

By order

// TRUE COPY //

Assistant Registrar/Sr.PS/PS
ITAT, Surat Bench