

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.22/SRT/2025**

**Assessment Year: 2017-18**

**(Hybrid hearing)**

Shakti Developers 32, Avni Bunglows, B/h Saroli Gam, Bharat Cancer Hospital, Kadodara Road, Surat- 394 211	<b>बनाम/ Vs.</b>	Income Tax Officer Ward-2(3)(4), Surat, Room No. 613, 6 <sup>th</sup> Floor, Aaykar Bhawan, Majura Gate, Surat-395 001
<b>स्थायी लेखासं./जीआइआरसं./PAN/GIR No: ADEFS 0044 F</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी /Respondent)</b>

<b>निर्धारिती की ओर से /Appellant by</b>	Shri Sapnesh R Sheth, Advocate
<b>राजस्व की ओर से /Respondent by</b>	Shri Ajay Uke, Sr-DR
<b>सुनवाई की तारीख/Date of Hearing</b>	30/07/2025
<b>उद्घोषणा की तारीख/Date of Pronouncement</b>	27/08/2025

**आदेश / O R D E R**

**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 08.08.2024 by the National Faceless Appeal Centre, Delhi/Commissioner of Income-tax (Appeals) [in short, 'Ld. CIT(A)'] for the Assessment Year (AY) 2017-18, which in turn arises out of assessment order passed by Assessing Officer (in short, 'AO') u/s 144 of the Act dated 15.12.2019. Grounds of appeal raised by the assessee are as under:

1. *On the facts and in the circumstances of the case as well as the law on the subject, the learned CIT(A), NFAC has erred in confirming the action of Assessing Officer of passing ex-parte order u/s 144 of the I.T. Act, 1961.*

2. *On the facts and in the circumstances of the case as well as the law on the subject, the learned CIT(A), NFAC has erred in confirming the action of Assessing Officer in making huge addition of Rs.2,52,24,075/- as unexplained investment u/s 69 of the I.T. Act, 1961.*
3. *On the facts and in the circumstances of the case as well as the law on the subject, the learned CIT(A), NFAC has erred in confirming the action of Assessing Officer in invoking provisions of Section 115BBE of the Act and in thereby taxing entire unexplained investment and unexplained credit at 60 percentage and levying surcharge at 25 percent which is not applicable on above amount.*
4. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal."*

3. Facts of the case in brief are that appellant filed return of income Nil on 30.03.2018 for the year under consideration for the year 2017-18. The case was selected for scrutiny and notices u/s 143(2) and 142(1) were issued to the assessee, which were not complied with. The AO issued show cause notice requiring assessee to explain as to why the capital introduction of Rs.2,52,24,075/- be not added as unexplained income. Further, the AO also proposed to treat the unsecured loan of Rs.3,00,000/- as undisclosed income. The assessee did not file any reply to the show cause notice. Hence, AO added Rs.2,52,24,075/- as unexplained investment u/s 69 of the Act. He also added unsecured loan of Rs.3,00,000/- u/s 68 of the Act. Aggrieved by the above order of AO u/s 144 of the Act, the assessee filed appeal before CIT(A).

4. Before CIT(A), assessee submitted that he could not file reply because physical copy of the notices were not received by the assessee during assessment proceedings. It was submitted that the assessee is a builder and property developer and it was incorporated as a partnership firm with effect

from 04.10.2016. All partners of the firm are assessed to tax and the capital introduced by them are duly reflected in their bank statements. All payments were received through proper banking channels. The capital introduction was used for purchase of land. The assessee submitted that capital introduced by the partners cannot be added in the name of the firm in view of decision of Hon'ble jurisdictional High Court in case of CIT vs. Pankaj Dyestuff Ind. Ltd. [IT Reference No.241 of 1993, dated 06.07.2005]. The assessee filed written submission before the CIT(A) and requested him to admit additional evidence in the interest of justice because the same is vital for establishing genuineness of transactions. The additional evidence was admitted by the CIT(A) and the same was forwarded to the AO for his comments. The AO submitted remand report, which is at pages-8 and 9 of the appellant order. In the remand report, the AO stated that assessee submitted copy of return of income of all four partners of the firm, copy of bank statements along with ledger of partners in support of the claim that the source of capital introduced by the partners are fully explained. The AO observed that the income declared by the partners are not commensurate with the amount of capital introduced by them. After considering the remand report of the AO and reply of the appellant, the CIT(A) has given his findings at para-6.5 of the appellate order. He has reproduced relevant part of the remand report and observed that the AO did not find sufficient evidence in the submission of the appellant to prove the creditworthiness and genuineness of the transactions of capital introduction

during the year under consideration. The appellant submitted balance sheet of the firm but did not produce partners' capital account. He observed that payment from the bank account and copy of ITR of the partners do not prove the genuineness and creditworthiness of the transactions during the year under consideration. He agreed with the finding of AO that appellant has not been able to fully prove the genuineness and creditworthiness of the capital contribution of Rs.2,52,24,075/- by the partners of the firm. Hence, addition of the above amount u/s. 69 of the Act, was upheld.

5. Aggrieved by the order of Ld.CIT(A), appellant has filed present appeal before the Tribunal. The Ld. AR submitted that the a paper book giving various details including the written submission before the CIT(A), copy of partnership deed, copy of ITR acknowledgements along with computation of income, confirmation and bank statements of all the four partners and ledger account of the partners in the books of the appellant. The Id. AR also relied on the decisions of Hon'ble jurisdictional High Court in cases of (i) PCIT vs. Vaishnodevi Refoils & Solvex (2018) 89 taxmann.com 80 (Guj), (ii) PCIT vs. Vaishnodevi Refoils & Solvex (2018) 96 taxmann.com 469 (SC) and (iii) Pankaj Dyestuff Industries (supra) and submitted that similar addition deleted by the ITAT was upheld by the Hon'ble High Court. He submitted that the SLP filed against the decision of Hon'ble High Court by the department in case of Vaishnodevi Refoils & Solvex (supra) was dismissed by the Hon'ble Supreme

Court. Therefore, the addition made by the AO and confirmed by the CIT(A) is not valid.

6. On the other hand, Ld. Sr. DR for the Revenue supported the order of lower authorities.

7. We have heard both the parties and perused the materials on record carefully. We have deliberated on the decisions relied upon by Ld. AR for the appellant. On perusal of the evidences filed on record and the submissions of the both sides, it is seen that the appellant had filed complete details in respect of the introduction of funds by the partners. In the submission dated, 12/07/2022 filed before the CIT (A), the appellant gave the details in a tabular form (page 11 to 13 of the PB) depicting introduction of capital by partners along with nature of evidences enclosed in support of the same. The AO made the disallowance on the ground that during the assessment proceedings, the assessee failed to furnish the details. However, it is seen that during the appellate proceedings before the CIT(A), the appellant had furnished complete details of capital introduction by the partners i.e., ITR, computation of Income, bank statement etc. of all 4 partners. As these details were not filed before the AO, the CIT (A) called for a remand report from the AO but the AO observed that credit worthiness of the partners was not proved.

7.1 The Id. AR placed reliance upon the decisions of the Hon'ble jurisdictional Gujrat High Court in case of Vaishnodevi Refoils and Solvex

(supra) and Pankaj Dyestuff Industries (supra). In the above decisions, it was held that when amount received by assessee firm has been duly reflected in the books of account and the partners have confirmed the introduction of capital, addition of partner's capital u/s 68 of the Act cannot be made in the case of firm. If the AO is not convinced about creditworthiness of the partner who made the capital introduction, inquiry has to be made in case of the partner and not against the firm. The relevant portion of the decision in the case of Vaishnodevi Refoils and Solvex (Supra), is reproduced hereunder for ready reference and clarity :

*“7. In revenue's appeal, the Tribunal placed reliance upon the decision of this High Court in Pankaj Dyestuff Industries rendered in Income tax Reference No. 241 of 1993 for the proposition that no addition can be made with regard to the partner's capital introduction in the hands of the partnership firm and dismissed the appeal.*

*8. In the facts of the present case, when the assessee has furnished the details with regard to the source of the capital introduced in the firm and the concerned partner had confirmed such contribution, the assessee had duly discharged the onus cast upon it. Thereafter, if the AO was not convinced about the creditworthiness of the partner who had made the capital contribution, the inquiry had to be made at the end of the partner and not against the firm. The controversy involved in the present case, therefore, stands squarely covered by the decision of this court in the case of CIT vs. Pankaj Dyestuff Industries in Income tax Reference No. 241 of 1993.”*

7.2 In view of the above, it is clear that the issue of the instant appeal is covered by the above decision. It is further seen that the SLP filed by the

Revenue against the order in case of Vaishnodevi Refoils and Solvex (Supra), was dismissed by the Hon'ble Supreme Court. Hence, addition made by the AO by treating the source of investment in land out of partners' capital as unexplained investment is not tenable. The order of the CIT(A) is accordingly set aside and the grounds are allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963 on 27/08/2025 in the open court.

**Sd/-**  
**(DINESH MOHAN SINHA)**  
**न्यायिक सदस्य/JUDICIAL MEMBER**  
सूरत /Surat  
दिनांक/ Date: 27/08/2025  
Dkp Outsourcing Sr.P.S\*

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

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- **अपीलार्थी/** The Appellant
- **प्रत्यर्थी/** The Respondent
- **आयकर आयुक्त/** CIT
- **आयकर आयुक्त (अपील)/** The CIT(A)
- **विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/** DR, ITAT, SURAT
- **गार्ड फाईल/** Guard File

By order/आदेश से,

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**सहायक पंजीकार**  
**आयकर अपीलीय अधिकरण, सूरत**