

**आयकर अपीलीय अधिकरण, सूरत न्यायपीठ, सूरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER AND  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER  
आयकर अपील सं./**ITA No. 1270/SRT/2024** (AY 2017-18)  
(Hybrid hearing)

Sahaj Realty 1 <sup>st</sup> Floor Khushbu Mahal, Bechar Road Near ST Depot, Valsad-396 001 <b>[PAN : ABWFS 0507 M]</b>	बनाम Vs	Income Tax Officer, Ward-4, Valsad, Income Tax Office, Palak Arcade, Pali Hill, Santi Nagar, Tithal Road, Valsad-396 001
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Surji D Chheda, CA
राजस्व की ओर से /Revenue by	Shri Ajay Uke, Sr-DR
सुनवाई की तारीख/Date of hearing	24.07.2025
उद्घोषणा की तारीख/Date of pronouncement	08.08.2025

**Order under section 254(1) of Income Tax Act**

**PER DINESH MOHAN SINHA, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of Ld. Commissioner of Income-tax (Appeal Addl/JCIT(A)-9, Mumbai [for short, "Ld. CIT(A)"] dated 07.06.2024 for the assessment year 2017-18, which in turn arises out of an assessment order passed by the Assessing Officer (in short, "AO") under section 143(3) of Income Tax Act, 1961 ('the Act') on 23.12.2019. The assessee has raised the following grounds of appeal:-

*"1. The Learned CIT(A) has erred in law and in facts, has dismissed the appeal on the basis that "The appellant has not filed application under Rule 46A of the Income Tax Act for admission of other additional evidence to establish the creditworthiness of late Manilal D Patel. And merely rejecting the evidence filed without giving opportunity of filing an application under Rule 46A.*

*2. The Learned CIT(A) has erred in law and in facts, and confirm the addition of Rs.10,00,000/- u/s 68 of the Act.*

*3. The CIT(A) has erred in law and in facts not and confirm the addition without considering the loan confirmation of Shri Manilal D. Patel as it was signed by his wife as Shri Manilal D. Patel was expired and in his absence the same was duly signed and confirmed by his wife "Daxaben Manilal Patel" being a legal heir.*

*4. The appellant craves leave to add, amend alter or delete any or all the above grounds of appeal."*

3. Brief facts of the case that the assessee, a partnership firm, is stated to be in the business of building construction and e-filed its return declaring income of Rs.10,44,050/-for A.Y. 2017-18 on 30.10.2017. The case was selected for scrutiny assessment and notice u/s. 143(2) of the Act and notice was issued on 10.08.2018 and duly served upon the assessee. Subsequently notices u/s. 142(1) of the Act was issued requiring the assessee to file details. The notices were duly served upon the assessee. The AO has issued notice u/s 133(6) of the Act on 30.11.2017 and called for confirmations from loan lender Shri Manilal D Patel. A reply received through post whereby the ledger confirmation received signed by different persons. The AO issued a show cause to the assessee to prove the identity, creditworthiness of the loan lenders and genuineness of the loan transactions. The appellant furnished reply to show cause notice and the reply of the appellant considered and the unsecured loan from Maniiial D Patel amounting to Rs.10,00,000/- added in the income of the assessee as bogus tax liability.

4. That the assessee filed an appeal against the order of the Ld. AO dated 07.06.2024. In the office of the Ld. CIT(A), Surat. The appeal was dismissed with following observation:

*"6.1.4. At appellate stage also the Rules for admission creditworthiness of Late Manilal D Patel, the depositor/loan lender, to give the loan as well as details of repayment of the loan etc. This clearly indicate that the appellant has not availed the opportunity of appellate procedures to present their case before the undersigned. As such, the appellant failed to discharge the onus of fulfilling the three essential ingredients to establish the identity & creditworthiness of the loan lender and the genuineness of the loan transaction. Under the circumstances, the arguments of the appellant without any valid application u/R 46A of the Rules do not advance the case of the appellant. Hence, I am of the considered view that there is no infirmity in the action of the AO in treating the loan to the tune of Rs.10,00,000/- as unexplained cash credits u/s. 68 of the Act.*

*As a result, the appeal stands Dismissed. "*

5. That the assessee filed an appeal against the impugned order dated 07.06.2024 before the Tribunal.
6. During the course of hearing, the Ld. AR of the assessee stated that the assessee's tax consultant/ CA did not file the application under Rule 46A of the IT Rules, 1962 before the Ld. CIT(A) and informed the assessee that the task has completed in time, therefore, the assessee could not be penalized because of the wrong of the tax consultant. The Ld. AR of the assessee prayed for one more opportunity should be given to the assessee.
7. On the other hand, the Ld. Sr. DR has relied upon the order of the Ld. CIT(A) and not objected to the prayer of the Ld. AR.
8. We have heard both the parties and perused the documents available on record. We note that various notices have been issued by the Ld. CIT(A), but there was no compliance to the notice by the assessee, because the tax consultant/CA of the assessee has not moved an application under Rule 46A of the IT Rules, 1962. That the assessee was unaware about the online proceedings going on. The Ld.

CIT(A) disposed off the appeal by an order whereby it was considered that the assessee failed to discharge and established the identity and creditworthiness of the lenders. We deem it fit to give one more opportunity to the assessee to represent its case before AO for proper adjudication. Accordingly, we remand this matter back to the file of AO for a fresh adjudication after giving opportunity of hearing to the assessee. The assessee is also directed to ensure participation in the hearings as may be fixed by AO and do not seek unnecessary adjournments failing which the AO shall be at liberty to pass appropriate order in accordance with law.

9. In the result, the appeal of the is allowed for statistical purposes.

Order pronounced in under proviso to Rule 34 of the ITAT Rules, 1963

on 08/08/2025.

Sd/-  
(BIJAYANANDA PRUSETH)  
लेखा सदस्य/Accountant Member

Sd/-  
(DINESH MOHAN SINHA)  
न्यायिक सदस्य/Judicial Member

सूरत / Surat Dated: 08/08/2025

Dkp Outsourcing Sr.P.S\*

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

// True Copy //

सहायक पंजीकार  
आयकर अपीलीय अधिकरण, सूरत