

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

आयकर अपील सं./ITA No.206/SRT/2025

Assessment Year: 2011-12

(Hybrid hearing)

Shri Vikramsinh Thakorbbhai Ravat 117/Ravat Falia/ Bhutsar/ Taluka/ Dist. Valsad-396 005	बनाम/ Vs.	Assistant Commissioner of Income-tax, Circle-Valsad, 208 Palak Arcade, Shantinagar, Tithal Road, Valsad-396 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ALCPR 4584 K		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Rajesh Upadhyay, AR
राजस्व की ओर से /Respondent by	Shri Ajay Uke, Sr-DR
सुनवाई की तारीख/Date of Hearing	22/07/2025
उद्घोषणा की तारीख/Date of Pronouncement	26/09/2025

आदेश / ORDER

PER BIJAYANANDA PRUETH, 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 12.02.2024 by the Commissioner of Income-tax Appeal, Addl/JCIT(A)-2 Coimbatore [in short, the 'CIT(A)'] for the assessment year (AY) 2011-12, which in turn arises out of assessment order passed by the Assessing Officer (in short, 'AO') u/s 143(3) r.w.s. 147 of the Act on 21.12.2018.

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

1. Ld. CIT(A) and ACIT has erred in law and on facts to reopen appellant's assessment u/s.147 and issue of a notice u/s.148 of the Act by ignoring the settled law that reopening cannot be made for rowing inquiry and investigation.

2. *Ld. CIT(A) has erred in law and on facts to direct the AO to allow development expenses incurred by the appellant after date 23.07.2010 though he has accepted the fact that the appellant gets legal holding of the property w.e.f. date 24.06.2009. Further, he had not disputed the fact that the total development cost of Rs.28,90,000/- were incurred by three joint owners of the land."*

3. The appeal filed by the assessee is barred by limitation by 316 days in filing of this appeal and an application for condonation of the delay was filed supported by an affidavit. In the aforesaid application, it is stated by the assessee that the delay occurred on account of misguidance of assessee's regular tax advisor, Shri Arshabhai F. Nanabhai of Valsad. Subsequently, on the advice of his present tax consultant, Shri Rajesh Upadhyay, appeal has been filed by the assessee immediately. It is stated by the assessee that delay in filing appeal before the Tribunal was unintentional and that assessee is in no way benefitted on account of the delay in filing appeal. Ld. Sr. DR for revenue submitted that the Bench may decide the preliminary issue as it thinks fit.

3.1 After hearing both the parties, we note that delay in filing appeal by the appellant is not deliberate and intentional. The revenue has also no objection if the application for condonation is favourably considered. Hence, the request for condonation of delay is allowed and the appeal is admitted for hearing.

4. Facts of the case in brief are that the assessee did not file his return of income for AY 2011-12. As per the information available with the department, the assessee had invested Rs.5,00,000/- in Mutual Funds. The assessee alongwith other two Co-owners namely, Shir Dineshbhai V. Patel and Shri

Abdulmanan Hasambhai Belam had also purchased immovable property of Rs.35,50,000/- from Narmada International Pvt. Ltd. Thereafter, the said immovable property was sold during the year amounting to Rs.67,51,000/- to Shrimad Rajchandra Adhyatmik Satsang Sadhna Kendra, Mohangarh, Dharampur. Since the assessee had not filed return of income, source of investment in mutual funds and the property and capital gain on sale of said immovable property could not be verified regarding taxability of income. Therefore, the case was reopened and notice u/s.148 of the Act was issued on 28.03.2018. In response to the same, assessee filed his return of income on 25.07.2018 declaring total income at Rs.93,790/-. The reasons for reopening were provided to the assessee on his request, vide letter dated 14.09.2018.

4.1 During assessment proceedings, notices u/s. 143(2) and 142(1) of the Act, were issued to the assessee for seeking details on the relevant issues. In response to these notices, the AR of the assessee filed replies and submitted various details. The assessee along with two co-owners had purchased immovable property of Rs.35,50,000/- from M/s. Narmada International Pvt. Ltd. vide sale deed dated 23.07.2010 and sold the property during the year itself for a consideration of Rs.67,51,000/- to Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra, Mohangarh, Dharampur, Valsad vide sale deed dated 29.07.2010, i.e., within a week time. The assessee's share therein was 40%. The AO noticed on perusal of the computation of income filed by the assessee

that the assessee had declared the capital gain from the sale of the aforesaid land of Rs.40,400/-. The details of the same are as under :

	Sale consideration being assessee's share	Rs.27,00,400/-
Less :	Cost of acquisition	Rs.26,60,000/-
	Capital gain	Rs.40,400/-

4.2 On being asked by the AO to furnish the details of capital gains with documentary evidences, the assessee submitted that he received Rs.27,00,400/- being 40% of the sale consideration of the said land. It was further submitted that the total cost of acquisition of the land was Rs.37,59,900/- including stamp, registration and other expenses and cost of acquisition for the assessee (as per his share at 40%) came to Rs.15,03,960/-.

4.3 It was further submitted that the aforesaid land was practically purchased by him in the year 2007 and part payment was also made at that time. At that time, the land was an industrial N.A. land having defective titles. Assessee stated that he along with co-owners took the possession of property, on the basis of an agreement and thereafter, they put their joint efforts to make the title of the land clear and marketable. In doing all these development work, they had incurred Rs.28,90,100/- towards development cost and assessee share in such development expenses came to Rs.11,56,040/- (@40% of Rs.28,90,100/-). Assessee submitted following computation of STCG

	Sale proceeds of land @ 40%	Rs.27,00,400/-
Less	Purchase cost of land (@40)	Rs.15,03,960/-

Less	Development cost including title clearance, additional stamp duty, other government levies, etc. [40%]	Rs.11,56,040/-
	STCG	Rs.40,400/-

4.4 The AO further noticed that the assessee did not furnish the details/documentary evidence in support of development expenses made and also failed to substantiate the source of purchase/development expenses. Therefore, the AR of the assessee was show caused as to why the purchase cost and development charges should not be treated as unexplained and disallowed accordingly. In response, the assessee submitted that he had made payment of his share in the purchase of the land amounting to Rs.15,03,960/- from the period ranging from 29.06.2009 to 23.07.2010. Out of the total payment of Rs.15,03,960/-, the assessee had paid an amount of Rs.1,03,960/- during the year and balance amount was paid in the preceding year. As regarding the claim of incurring development expenses of Rs.11,56,040/- (as per his 40% share), it was seen by AO that the aforesaid expenditure was incurred by M/s. Narmada International Pvt. Ltd. and not the assessee and his co-owners from the period from 29.12.2008 to 25.05.2010. It was further seen that the land development expenses were incurred prior to 25.05.2010, i.e., before the date of purchase of the above property, i.e., 23.07.2010.

4.5 Assessee, however, claimed that the land was practically purchased by them in the year 2007 and part payment was also made at that time. However,

due to defective titles, the same was not registered and thereafter co-owners had put their joint efforts to make the title of the land clear and marketable. They had incurred certain expenses on development and the purchase deed was made on 23.07.2010. On perusal of the payment schedule, it was, however, noticed by the AO that the first payment was made on 26.06.2009, thereby clearly negating the assessee's claim that they had purchased the property in the year 2007. It was also noticed by the AO that the assessee failed to furnish any documentary evidence in support of his claim that he had taken possession prior to the date of purchase and incurred development expenses thereupon. In view of the same, the claim made by the assessee towards development expenses amounting to Rs.11,56,040/- was disallowed and short-term capital gain was worked out accordingly. The AO passed assessment order u/s.143(3) r.w.s 147 of the Act on 21.12.2018 and total income of the assessee was determined at Rs.12,49,830/-.

5. Aggrieved by the order of AO, assessee filed appeal before CIT(A). On perusal of the submissions furnished by the assessee, CIT(A) observed that the assessee had submitted details of the developmental expenses incurred by him. It was noted by the CIT(A) that the date of agreement was signed on 09.07.2008 and the first payment was made on 24.06.2009. Besides, the date of purchase of land was 23.07.2010. The CIT(A) agreed with the observation of the AO that the expenses were incurred much before the date of purchase, some expenses were incurred even before the payment of first sum on

24.06.2009, on which date the assessee got some legal right on the property. It was further noted that the assessee failed to furnish any evidence for possession of the property. Therefore, CIT(A) held that expenses incurred before the date of purchase cannot be said to be incurred for the development of property. CIT(A), vide its order dated 12.02.2024, directed the AO to allow the expenses incurred by the assessee after the date of purchase of property (i.e., 23.07.2010) as developmental charges incurred in connection with computation of capital gains.

6. Further, aggrieved by the order of Ld.CIT(A), assessee has filed present appeal before the Tribunal. The Ld. AR of the assessee filed a paper book containing copy of submission made before the CIT(A), copy of ITR and computation of income, copy of notice u/s.148 and reasons recorded for reopening, submissions made before the AO, copy of purchase deed dated 23.07.2010, copy of agreement to sale dated 09.07.2008, copy of power of attorney dated 14.11.2009, details and evidence of development expenses of Rs.28,90,100/-. The Ld. AR made the same submission which has been made before the lower authorities. He also submitted that the assessee has produced complete list of expenses along with name and address of persons to whom the payments were made, however, the AO had not carried out any inquiry from the seller of the property or from the persons/entity to whom payment of expenses have been made.¹² On the other hand, Ld. Sr. DR for the Revenue supported the findings of the lower authorities and submitted

that the onus to prove the expenditure lies with the assessee, which he failed to discharge.

7. We have heard both the parties and perused the materials on record. The primary dispute relates to allowability of development expenses amounting to Rs.11,56,040 (assessee's share) claimed to have been incurred for clearing title and improving the land prior to its sale within one week of formal purchase. The CIT(A), while allowing partial relief, accepted the genuineness of post-purchase expenses but disallowed pre-purchase expenditure on the reasoning that legal ownership was acquired only on 23.07.2010. However, it is evident that the assessee had entered into an agreement to purchase the land on 09.07.2008 and the first payment was made on 24.06.2009. The Power of Attorney was executed on 14.11.2009 and the land was ultimately registered in assessee's name on 23.07.2010 and sold on 29.07.2010. The assessee has also furnished a list of expenses with names and addresses of payees. However, the AO did not conduct any independent verification of such expenses nor summoned any person to confirm the same. Disallowance was made purely on assumptions that the expenses were incurred by the seller and not the assessee, without verifying the assessee's claim. In our considered view, such a summary disallowance without conducting basic inquiries into factual details submitted by the assessee is not correct. In view of the foregoing, we deem it proper to set aside the order of the CIT(A) and remit the matter back to the file of the AO to make necessary

verification regarding the claim of development expenses incurred by the assessee in relation to the said property after giving adequate opportunity of being heard to appellant. The appellant is directed to furnished all details and evidence required by the AO by not seeking adjournment without valid reason.

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

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963
on 26/09/2025 in the open court.

Sd/-
(DINESH MOHAN SINHA)
न्यायिक सदस्य/JUDICIAL MEMBER
सूरत /Surat
दिनांक/ Date: 26/09/2025
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**

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By order/आदेश से,
सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत