

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No.321/RJT/2024

निर्धारणवर्ष /Assessment Year: 2012-13

Shailesh Maganlal Ramani Star Shopping Centre 20 New Jagnath, Jugatram, Raval Marg, Rajkot-360001 PAN : ABUPR7272G	बनाम Vs.	The ITO, Ward-1(2)(5), Rajkot
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri R. D. Lalchandani &
Ms. Monica Patva, Ld. Ars.

राजस्व की ओर से/Revenue by : Shri Dheeraj Kumar Gupta, Sr-DR

सुनवाई की तारीख/Date of Hearing : 15/07/2025

घोषणा की तारीख/Date of Pronouncement : 29/09/2025

ORDER

Per, Dr. Arjun Lal Saini, Accountant Member:

By way of this appeal, the assessee has challenged the correctness of the order dated 21-03-2024 passed by the Learned Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [in short 'Ld. CIT(A)/NFAC'], in the matter of assessment under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred as "the Act") for the Asst. Year 2012-13.



2. The grounds raised by the assessee are as follows:

1. *The CIT(A) erred in upholding the reopening of the Assessment. The Reopening after 4 years was not justified.*
2. *The CIT(A) erred in upholding the addition of Rs. 84,04,625/-. The upholding of the addition is not justified.*

3. The additional grounds raised by the assessee are as follows:

"1. The assessing officer erred in making an order u/s 143(3). The order u/s 143(3) is invalid. The order was based upon material and information found during the course of search, hence provisions of section 153C are applicable and order u/s 143(3) could not be passed.

2. The Reopening of the assessment is invalid as the sanction of the Principal Commissioner of Income tax was received on 30.03.2019 while the notice for reopening was issued on 29.03.2019.

3. The order of the assessing officer passed u/s 143(3) is invalid as it does not contain the mandatory DIN as per the CBDT circular no. 19/2019.

4. The notice issued under section 148 of the Income tax Act, 1961 is invalid ab initio as it has not been authenticated in accordance with the mandatory requirement prescribed under section 282A of the Income tax Act and Rule 127A of the Income tax Rules, 1962. Section 282A(1) of the Act explicitly provides that any notice or official communication issued under the Income tax Act must be duly authenticated by the designated income tax authority. In the present case, the notice under section 148 is not approved by the Principal Commissioner of the Income tax (PCIT) by affixing his signature on proposal either in electronic manner or in physical manner, nor does the order sheet relied upon by the assessing officer as evidence of approval contain the name or signature of the PCIT. This lack of authentication renders the approval itself legally defective and invalid. Furthermore, as per rule 127A of the Income tax Rules, 1962, any electronic record issued under the Act must clearly bear the name and designation of the issuing authority. The impugned approval, which forms the basis of the section 148 notice, fails to meet this statutory requirement, making the approval itself unauthenticated and without any legal force. Since the approval is invalid approval is invalid in law, the notice issue under section 148 based on such approval is without jurisdiction and liable to be quashed."

4. At the outset, Learned Counsel for the assessee submitted that additional ground nos. 2, 3 & 4, above, raised by the assessee are not pressed by the assessee. The Ld. Counsel for the assessee also informs the Bench that assessee does not wish to press ground no. 1 raised by the assessee, along with Form No.36, which relates to reopening of assessment after 4 years. We have heard



both the parties, and dismiss additional ground nos. 2, 3 & 4, above, raised by the assessee, as not pressed and we also dismiss ground no. 1 raised by the assessee along with appeal memo, as not pressed.

5. Now, the effective grounds of appeal, before us, are as follows:

(i) Ground No. 2 raised by the assessee, along with Form No. 36, which reads as follows:

“2. The CIT(A) erred in upholding the addition of Rs. 84,04,625/-. The upholding of the addition is not justified.”

(ii) Ground No.1 of additional grounds, raised by the assessee, which reads as follows:

“1. The assessing officer erred in making an order u/s 143(3). The order u/s 143(3) is invalid. The order was based upon material and information found during the course of search, hence provisions of section 153C are applicable and order u/s 143(3) could not be passed.”

6. First, we shall adjudicate, ground No. 2 raised by the assessee, along with Form No. 36, which is reproduced below for ready reference:

“2. The CIT(A) erred in upholding the addition of Rs. 84,04,625/-. The upholding of the addition is not justified.”

7. Brief facts of the issue in dispute, qua ground No. 2 above, raised by the assessee, along with Form No. 36, are stated as under. In this case the assessment proceedings u/s 147 of the Income Tax Act, was initiated by issuing a notice u/s 148 to the assessee on 29.03.2019, after recording the reasons for reopening and with the prior approval of the Pr. Commissioner of Income Tax - 1, Rajkot, to verify the financial transactions made by the assessee regarding that the assessee has booked property at Rs.1,68,09,250/-. The assessee have made jointly payment through cheque of 87,70,000/- and through cash of Rs.57,00,500/- and rest of the amount was to be paid as per ledger account of



the project builder. The assessing officer had received information from the ACIT, Central Circle - 2(4), Ahmedabad, that the assessee, along-with his wife Bina Ramani, had booked a property with M/s JP Iscon Group, for total consideration of Rs. 1,68,09,250/-. It was further informed that out of this amount, the assessee along-with his wife had paid cheque amount of Rs. 87,70,000/- and cash amount of Rs 57,00,500/-, as on money, as per details/ information gathered during the course of Search & Seizure operation carried out on the premises of the M/s JP Iscon Group. Till 26.11.2011 relevant to the assessment year, the assessee had invested total amount of Rs. 72,35,250/- (Cheque amount Rs. 43,85,000/- and cash amount of Rs. 28,50,000/-). In view of the above facts, the case of the assessee was reopened as per provision of Section 147 of the Act, after recording necessary reasons and obtaining approval of the competent authority. During the course of the assessment proceeding, instead of justifying the source of above investment, the assessee resorted challenging the validity of information, legality of reassessment proceeding, approval of the competent authority, by filing the objections and so on. The assessing officer, after allowing, ample opportunity of being heard, disposed of the objections and also allowed reasonable opportunity to explain the source of above investment, by filing credible documents. During the assessment proceedings, the assessing officer has issued notice to the assessee dated 28-11-2019, to explain the transaction.

8. In response to the notice of the assessing officer, the assessee submitted, before assessing officer, the reply through ITBA system dated 02-12-2019, along with documentary evidences. The assessee submitted the details in regard to the transaction of the property, as discussed above.

9. However, the assessing officer observed that the assessee, could not produce any valid credible documents in support of source of above investment,



therefore, the assessing officer taxed 50% of the total investment, that is, Rs. 84,04,625/- (1/2 of Rs.1,68,09,250/-) in the hand of the assessee.

10. Aggrieved by the order of the assessing officer, the assessee carried the matter, in appeal, before Ld. CIT(A), who has confirmed the action of the assessing officer. During the course of appellate proceedings, the assessee challenged the reopening of the reassessment, however, the ld.CIT(A) held that reopening of assessment was valid. On merit, the ld.CIT(A) held that the assessee had no evidence in support of source of investment of Rs. 84,04,625/-, therefore, liable to be taxed in the hand of the assessee, as per the provision of the Act. Accordingly, the addition made by the assessing officer was sustained by ld.CIT(A).

11. Aggrieved by the order of the ld.CIT(A), the assessee is in further appeal before us.

12. Shri R. D. Lalchandani, Ld. Counsel for the assessee, argued that addition was made by the assessing officer to the tune of Rs.84,04,625/-, based on the search conducted in JP Iskon Group. The ld.Counsel stated that the documents were not the incriminating material, so far, the assessee is concerned. The learned Counsel further submitted that based on the same facts and circumstances, as that of the assessee, the addition was deleted by the Co-ordinate Bench of ITAT Ahmedabad, in the case of Rolesh Somchandbhai Shah in ITA No. 782/Ahd/2023, vide dated 30-04-2024, wherein Co-ordinate Bench held as follows:

“7. We have heard the rival contentions and perused the material on record. In our considered view, the Department has not brought forth any concrete evidence to substantiate that the assessee had made payment in cash towards purchase of property in JP Iskon group. From the documents placed on record, it is seen that the name of the assessee has not been specifically mentioned in any of the documents, no document has been found containing the handwriting of the assessee, there is no allotment letter in the name of the assessee which would show that the assessee had



paid advance towards booking of flat, the amount advanced by way of cheque to JP Iskon group had also been returned back to the assessee etc. all substantiate that the Department had no concrete/corroborative evidence to come to the conclusion that the assessee had in fact made any unaccounted cash payments for purchase of flat. In the recent case of PCIT v. Kaushik Nanubhai Majithia in Tax Appeal No. 20 of 2024, on similar facts, the Gujarat High Court, while ruling in favour of the assessee observed as under:

“1. Having noted the findings of the facts returned by the Commissioner of Income Tax (Appeals) (CITA, in brief) and the Income Tax Appellate Tribunal (ITAT, herein after), we may record that, essentially, the proceedings under Section 153C of the Income Tax Act, 1961 (in short, 'IT Act of 1961) were initiated against the Respondent assessee on the basis of an excel sheet found from the computer of a person, associated with the Company, namely Navratna Organizers and Developers Private Limited (in short as 'the Developer', in the premises of whom the search was conducted.

2 The excel sheet, according to the learned Counsel for the Revenue, contained the details of payment made by the assessee to the developer, with respect to which tax had been paid by the developer before the Settlement Commissioner. The findings returned by the CITA and ITAT on the issue is sought to be assailed on the ground that the payment of tax by the developer, in whose premises search was conducted, before the Settlement Commissioner, with respect to the amount entered in the excel sheet found from the possession of the assistant working with the developer, is sufficient proof of the transaction between the assessee and the developer.

3. We find inherent fallacy in this submission, inasmuch as, there is no basis for conducting proceedings against the assessee merely for the fact that the developer had paid tax on the amount shown in the excel-sheet. There is no adjudication with regard to the payment, which has shown in the excel-sheet to the effect that the same was actually paid by the assessee to the developer. Even otherwise, the concurrent findings returned by the CIT(A) and ITAT are that the document found from the premises of the third party namely excel sheet, which is the basis of the proceedings was without any signature and there is no corroborative material to substantiate the said document. The nature of the document has not been explained by the Assessing Officer while proceeding against the assessee. The statements of the persons recorded during search with reference to the alleged, seized material, was not provided to the assessee and hence, the entire proceedings under Section 153C of the IT Act of 1961 stood vitiated.

4. Learned Counsel for the petitioner could not successfully demolish the facts, which are recorded concurrently by the CITA and ITAT

5. No question of law much less any substantial question of law arises to entertain this appeal. The same is accordingly, dismissed.”

8. Accordingly, looking into the instant facts and the observations made by Hon'ble Gujarat High Court, as reproduced above, we are of the considered view that the Ld. CIT(Appeals) erred in sustaining the aforesaid additions made in the hands of the assessee.9. In the result, the assessee succeeds in the present appeal.”



13. Therefore Ld. Counsel for the assessee, submitted that assessee's issue, on merit, is squarely covered in his favour by the above noted order of the Coordinate Bench of ITAT, in the case of Rolesh Somchandbhai Shah, therefore the appeal of the assessee should be allowed.

14. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

15. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that issue under consideration, is no longer *res-integra* and the said issue is covered in favour of the assessee by the Judgment of the Co-ordinate Bench in the case of Rolesh Somchandbhai Shah in ITA No. 782/Ahd/2023 dated 30-04-2024(supra).As the issue is squarely covered in favour of the assessee by the decision of the Coordinate Bench (supra) and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings of the Coordinate Bench (supra). We find no reason to interfere in the said order of the Coordinate Bench, therefore, respectfully following the binding judgment of the Coordinate Bench (supra) we delete the addition Rs. 84,04,625/-. Therefore, grounds raised by the assessee, on merit, is allowed.

16. As the assessee's appeal is allowed on merit, therefore, all other issues on technical ground/ ground No.1 of additional grounds, of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.



17. In the result, appeal filed by the assessee, is allowed.

Order is pronounced in the open court on 29/09/2025

**Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER**

**Sd/-
(DR. ARJUN LAL SAINI)
ACCOUNTANT MEMBER**

राजकोट /Rajkot

दिनांक/ Date: 29/09/2025

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)/(NFAC), Delhi.
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेशसे,

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot