

**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.580/SRT/2024

Assessment Year: (2017-18)

(Hybrid hearing)

Pramod Ramabhai Tandel O Kusum Niwas, Sarvodaya Society, Tin Batti, Nani Daman, Daman-396 210	बनाम/ Vs.	Assistant Commissioner of Income- tax, Central Circle-1, 7 th , 8 th & 9 th Floor, Fortune Square, Vapi-396 210
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AARPT 2989 E		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri P.M. Jagasheth, CA
राजस्व की ओर से/Respondent by	Shri Ajay Uke, Sr-DR
सुनवाई की तारीख /Date of Hearing	31/07/2025
उद्घोषणा की तारीख /Date of Pronouncement	16/10/2025

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 22.03.2024 by the Commissioner of Income-tax (Appeals)-4, Surat [in short, 'CIT(A)'] for the assessment year (AY) 2017-18, which in turn arises out of assessment order passed by the Assessing Officer (in short, 'AO') u/s. 147 r.w.s. 143(3) of the Act on 17.02.2022.

2. The grounds of appeal raised by the assessee are as under:

"1. On the facts and circumstances of the case and in law on the subject, the Ld. CIT(A) has erred in confirming the action of the AO in reopening the assessment u/s.147 of the Act and issuing notice u/s.148 of the Income tax Act, 1961.

2. On the facts and in the circumstances of the case as well as the law on the subject, the Ld. CIT(A) has erred in confirming the action of the AO in making addition of Rs.10,00,000/- on account of alleged cash payment to Shri Saukat Anwar Mithani on account of purchase of property treated as alleged Unexplained money u/s.69 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 Ld. CIT(A) has erred in confirming the action of the AO in invoking the provisions of section 69 and 69A of the Act and taxed on income assessed u/s.115BBE of the Act.

4. On the facts and in the circumstances of the case as well as the law on the subject, the Ld. CIT(A) has erred in confirming the action of the AO in initiating the penalty proceedings u/s 271(1)(c) of the Income tax Act, 1961.

5. On the facts and in the circumstances of the case as well as the law on the subject, the Ld. CIT(A) has not offered adequate opportunities to hear the case and passed ex-parte order and hence the case may please e set aside and restored back to the CIT(A) or AO.

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

3. Brief facts of the case are that in the instant case, the assessee is a partner in two firms, namely, M/s. S B Liquor Unlimited and M/s. K W Enterprise, which were engaged in the business of wholesale and retail trading of liquors. The assessee had e-filed his return of income for the AY 2017-18 on 31.03.2018 declaring total income at Rs.43,87,100/-. Further, a survey u/s 133A of the Act was conducted on 03.05.2017 and 04.05.2017 and various incriminating documents were found and impounded. On verification of the same, the AO noticed that the assessee had made cash payment of Rs.10,00,000/- to Shri

Saukat Anwar Mithani on account of purchase of property. However, it was seen that assessee had not declared such transaction of Rs.10,00,000/- in his return of income. Therefore, case of the assessee was reopened u/s.147 and notice u/s.148 of the Act was issued on 26.03.2021. During the assessment proceedings, notices u/s142(1) of the Act were issued to the assessee for furnishing the details/explanation to complete the assessment proceedings. In response thereto, assessee furnished online submissions and other details.

4. As stated supra, the on verification of the impounded material, the AO noticed that the assessee had made cash payment of Rs.10,00,000/- to Shri Saukat Anwar Mithani on account of purchase of property, however, such transaction was not declared by the assessee in his return of income for the relevant AY. Moreover, as per the survey report, the aforementioned amount was admitted as cash receipt by the seller, Shri Saukat Anwar Mithani in his statement recorded on oath u/s 131 of the Act. Therefore, assessee was show caused as to why the aforementioned amount of Rs.10,00,000/- should not be treated as his unexplained income but no compliance was made by the assessee to aforesaid show cause notice inspite of multiple opportunities. In absence of any reply/response from the assessee, the AO added the amount of Rs.10,00,000/- to the total income of the assessee by invoking the provisions of section 69 of the Act. Accordingly, assessment order u/s 147 r.w.s. 143(3) of the

Act was passed by the AO on 17.02.2022, determining total income at Rs.53,87,100/-. Aggrieved by the additions made by AO, assessee preferred appeal before CIT(A). During appellate proceedings, CIT(A) issued several notices to the assessee; however, no details/submissions were furnished by the assessee in their compliance. Therefore, CIT(A) proceeded to adjudicate the appeal on the basis of material available on records, *i.e.*, after considering the grounds of appeal, statement of facts and the assessment order. After considering the material available on records, CIT(A) upheld the order of the AO and dismissed the appeal of the assessee.

5. Aggrieved by the order of CIT(A), assessee has filed present appeal before the Tribunal. The Ld. AR for the assessee submitted that there is no evidence on record that assessee had made any cash payment in excess of sale consideration to seller of property namely, Shri Saukat Anwar Mithani. It is further contended that the AO made addition merely on the basis of impounded material and statement of seller of the property and there is no corroborative evidence for making such addition. The AR furnished copy of sale deed dated 29.11.2016, as per which the assessee paid amount of Rs.7,00,000/- to seller, vide cheque bearing no. 339739 dated 01.11.2016 of Axis bank, in consideration of purchase of property. No other payment was made for the aforesaid purchase of property. In view of the same, Ld. AR requested to delete the addition of Rs.10,00,000/-

made by AO u/s.69 of the Act. Notwithstanding to the above, Ld. AR also contended that AO is wrong in invoking provisions of Section 115BBE and taxing the income at enhanced rate of tax @ 60% u/s.115BBE of the Act, since the same was not applicable for AY 2017-18. Ld. AR further contend that sufficient opportunities of being heard were not provided by CIT(A) during appellate proceedings, which is gross violation of principles of natural justice. The Ld. AR also submitted that relevant evidences, including the registered sale deed showing cheque payment, were not considered. To substantiate his claim, Ld. AR furnished copy of sale deed dated 29.11.2016 and relied upon several decisions, including (i) CBI vs. V.C. Shukla [1998] 1998 taxmann.com 2155 (SC); (ii) CIT Vs. Godlen Finance [2013] 40 taxmann.com 329 (Guj);(iii) CIT vs. Prakash Chand Lunia (D) Thr. Lrs. &Anr. (Civil appeal no. 7689-90 of 2022 (SC) and (iv) ITO vs. Oghadbhai Arjanbhai Der (MA No. 37/SRT/2024 (arising out ITA No. 183/SRT/2024) (ITAT, Surat).

6. On the other hand, Ld. Sr. DR for the Revenue supported the order of lower authorities and submitted that sufficient opportunities of being heard were provided by CIT(A) to assessee during appellate proceedings; therefore, allegation of assessee is wrong that he was not provided reasonable opportunity to make submissions. Ld. Sr. DR, therefore, requested to uphold the order of CIT(A).

7. We have heard both the parties and have gone through order of lower authorities carefully. The appellant filed paper book including various decisions containing pages 1 to 199. The record shows that the CIT(A) passed the order *ex parte*, without the benefit of any written submissions or personal appearance from the assessee. It is a settled position of law that no person should be condemned unheard (*audi alteram partem*). Adjudication without adequate opportunity violates the principles of natural justice and such orders cannot be sustained.

7.1 We find merit in the contention of the Ld. AR that the matter requires a fresh adjudication by the CIT(A) after providing reasonable and adequate opportunity of hearing. In the interest of justice, therefore, we are inclined to restore the matter back to the file of the CIT(A) for *de novo* adjudication after allowing the assessee to submit all relevant documents and evidences. However, due to repetitive failure of appellant to comply with the notices of the CIT(A), we deem it appropriate to impose a nominal cost of Rs.5,000/- by the assessee, to be deposited in the Prime Minister's Relief Fund, as a token for past non-compliance within 30 days from receipt of this order.

7.2 In view of the above, the order of the CIT(A) is set aside and the matter is restored to the file of the CIT(A) for fresh adjudication in accordance with law. The CIT(A) shall provide adequate opportunity of hearing to the assessee and

pass a speaking and reasoned order after considering all submissions and evidence placed on record. We make it clear that we have not expressed any opinion on the merits of the case, which shall be decided by the AO independently in accordance with law.

8. In the result, the appeal of the assessee is allowed for statistical purposes in terms indicated above.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963
on 16/10/2025 in the open court.

Sd/-
(DINESH MOHAN SINHA)
न्यायिक सदस्य/JUDICIAL MEMBER
सूरत /Surat
दिनांक/ Date: 16/10/2025
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 अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

// True Copy //

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत