

**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.1154/SRT/2024**

**Assessment Year: (2015-16)**

**(Hybrid hearing)**

Shree Salasar Sarees D-1401, Raghukul Textile Market, Ring Road, Surat – 395002	<b>vs.</b>	ITO, Ward – 1(2)(6), Surat
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ABQFS5653Q</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri Mehul Shah, CA
<b>Respondent by</b>	Shri Ajay Uke, Sr. DR
<b>Date of Hearing</b>	07/08/2025
<b>Date of Pronouncement</b>	04/11/2025

**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') passed by the Commissioner of Income-tax (Appeals), dated 16.09.2024 [in short, "the CIT(A)"] for the assessment year (AY) 2015-16.

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

*“(1) On the facts and circumstances of the case as well as law on the subject, the Ld. CIT(A) has erred in confirming the action of the AO in disallowing the transfer expense of Rs.4,00,000/- claimed against the Long-Term Capital Gain of Rs.3,98,171/- and thereby not allowing the assessee to carry forward Long Term Capital Loss of Rs.1,839/- on account of sale of land.*

*(2) On the facts and circumstances of the case as well as law on the subject, the Ld. CIT(A) has erred in confirming the action of AO in disallowing the transfer expense*

of Rs.2,25,000/- and cost of improvement of Rs.7,00,000/- claimed against the Short-Term Capital Gain of Rs.23,23,512/- on account of sale of Building.

(3) It is, therefore, prayed that the assessment u/s.143(3) may please be quashed and/or that the above addition made by the AO and confirmed by Ld. CIT(A) may please be deleted.

(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. The additional ground of appeal raised by the assessee is as follows:

*“On the facts and circumstances of the case as well as law on the subject, the Ld. AO has erred in law in not applying the concessional rate of tax as per Section 112 of the Income tax Act, 1961 on capital gains computed under section 50, despite the fact that the deeming fiction under section 50 is limited only to the mode of computation under sections 48 and 49 and does not affect the nature of the asset for the purpose of determining applicable tax rates under other provisions of the Act.”*

4. Let us first decide as to whether the additional ground raised by the appellant could be admitted by us. The Rule regarding grounds of appeal to be considered by ITAT is Rule 11 of Income Tax (Appellate Tribunal) Rules, 1963. The same is reproduced below:

**“Grounds which may be taken in appeal. –**

*11. The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal, but the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal under this rule:*

**Provided** that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground.”

4.1 The learned Senior Departmental Representative (Id. Sr. DR) for the revenue has not raised any objection to admission of the additional ground raised by the assessee.

4.2 We note that the additional grounds primarily pertain to failure of the AO in not applying the concessional rate of tax as per section 112 of the Act, 1961 on capital gains computed u/s 50 of the Act, despite the fact that the deeming fiction u/s 50 of the Act is limited only to the mode of computation u/s 48 and 49 of the Act and does not affect the nature of the asset for the purpose of determining applicable tax rates under other provisions of the Act. It is seen that no additional facts are necessary to adjudicate this additional ground of appeal. It also goes to the root of the matter. The Hon'ble Supreme Court in case of National Thermal Power Co. Ltd. vs. CIT, 229 ITR 283 (SC) held that the power of the Tribunal in dealing with appeals is expressed in the widest possible terms. The Hon'ble Court did not find any reason as to why the assessee should be prevented from raising a question before the Tribunal for the first time so long as the relevant facts are on record in respect of that item. It further observed that the power of the Appellate Assistant Commissioner in permitting assessee to raise an additional ground in accordance with law, as held in case of Jute Corporation of India Ltd. vs. CIT, 187 ITR 688 (SC), is also available to ITAT in respect of appeals pending before it.

4.3 In light of the above facts and settled legal position, we are of the considered opinion that the additional ground raised by the assessee deserves to be admitted for adjudication.

5. Brief facts of the case are that the assessee had filed its return of income for the year under consideration on 27.09.2015 declaring total income to be Rs.1,17,630/-. The case of the assessee was selected for scrutiny and notices u/s 143(2) and 142(1) of the Act were issued, requesting the assessee to submit information/details on the relevant issues. In their compliance, assessee furnished the relevant details and submissions.

6. The AO on verification of the balance sheet noticed that the assessee had shown total current liabilities of Rs.42,53,327/- for the year under consideration. The AO, further observed that the assessee had shown an amount of Rs.37,94,806/- under the head creditors for goods for the year under consideration. The AO during the assessment proceedings requested the assessee to furnish the name, address and copy of accounts of all the creditors. In compliance, assessee vide his reply dated 17.10.2017, furnished the list of all the creditors alongwith the confirmation of the said creditors. On perusal of the reply, the AO observed that out of total current liabilities of Rs.42,53,327/-, an amount of Rs.36,82,626/-, which was approximately 86% of total current liability, was shown in the names of Shri Amit Kumar Sharma, Smt. Subodhradevi H. Sharma and Shri

Hanuman R. Sharma. Therefore, AO issued a show cause notice requesting the assessee to show cause as to why the amount of Rs.36,82,626/- should not be added back to the total income of the assessee for the year under consideration. In compliance, assessee furnished various details of the creditors in question; however, the AO did not find the reply of the assessee to be tenable and treated the amount of Rs.36,82,626/- as unexplained cash credits and added the same to the total income of the assessee for the year under consideration.

7. The AO further observed that the assessee had sold a land situated at Shed No.319, Survey No. 79/P, Block No.80/P, Pandesara, GIDC, Surat for an amount of Rs.80,00,001/- on 03.02.2015 vide the deed no. 1378/2015 out of which the assessee claimed Rs.23,80,000/- towards the sale of the land and Rs.56,20,000/- towards the sale of building. The land was purchased by the assessee in the FY 2010-11 for a consideration of Rs.13,76,055/- and the assessee had claimed indexed cost of construction u/s 48 of Rs.19,81,829/- and expenses towards transfer of Rs.4,00,000/- against the sale consideration of land of Rs.23,80,000/-, thereby claimed a long-term capital loss of Rs.1,820/- in the return of income. Since the assessee failed to substantiate his claim of expense of Rs.4,00,000/- incurred on account of transfer of land; therefore, the AO disallowed the aforesaid transfer expense of Rs.4,00,000/- claimed by the assessee against the long-term capital gain on the sale of land.

8. The AO further observed that in respect of sale consideration received on account of transfer of building, i.e., Rs.56,20,000/-, the assessee had claimed long-term capital loss of Rs.3,18,016/- after taking into consideration indexed cost of construction of Rs.52,38,016/-, indexed cost of improvement of Rs.7,00,000/- and expenses towards transfer of Rs.2,25,000/-. It was also observed by the AO on perusal of returns of income filed by assessee for AY 2011-12 to AY 2014-15 that the assessee had claimed building as business asset and claimed depreciation accordingly. Thereafter, the AO issued a show cause notice as to why provisions of section 50 of the Act be not applied and treated the transfer of building as short-term capital gain instead of long-term capital loss claimed by the assessee. In addition to this, the AO also requested the assessee to furnish the evidence of expenses claimed amounting to Rs.9,25,000/- towards the cost of improvement and transfer expenses claimed. The AO subsequently, made the disallowance of transfer expenses of Rs.2,25,000/- and cost of improvement of Rs.7,00,000/- claimed by the assessee against the short-term capital gain on the sale of land. Accordingly, the AO passed the assessment order u/s.143(3) of the Act on 22.12.2017 wherein the total income of the assessee was determined at Rs.65,21,940/-.

9. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). In the appellate proceedings, the CIT(A) deleted the addition of Rs.36,82,626/- made

by the AO as unexplained cash credits but confirmed the additions made by the AO on account of computation of LTCG in respect of sale of land of Rs.3,8,171/- and STCG of Rs.23,23,512/- in respect of building portion. The CIT(A) partly allowed the appeal of the assessee, vide its order u/s.250 of the Act dated 16.09.2024.

10. Aggrieved by the order of CIT(A), assessee filed present appeal before the Tribunal. The learned Authorized Representative (ld. AR) of the assessee submitted the paper book containing acknowledgement of return of income along with the computation of total income, copy of replies filed by the assessee before the AO and the CIT(A), confirmation of accounts of vendors for substantiating cost of improvement expenses and vouchers of vendors of cost of improvement expenses. The Ld. AR submitted that every fixed asset is subjected to wear and tear and requires some cost of improvement to be made and in the instant case also, the assessee has incurred expenses on cost of improvement of Rs.7,00,000/- and expenses on transfer of Rs.4,00,000/- on sale of land and building which had been disallowed by the AO. The Ld. AR further stated that the assessee was able to command almost double consideration, i.e., Rs.80,00,000/- of the cost/WDV of the land and building of Rs.46,72,543/- (Rs.13,76,055/- (Land) + Rs.32,96,488/- (Building)). This clearly shows that the asset cannot fetch such huge sale price without incurring such cost of improvement. The Ld. AR stated that the vouchers and confirmation from vendors pertaining to cost of improvement of Rs.7,00,000/-

has been furnished in the paper book submitted by him before the Tribunal. Besides, the Ld. AR submitted that notwithstanding to the submission made, 20% of the cost of improvement of Rs.7,00,000/- may be disallowed for the want of verification and remaining amount may be allowed.

11. The learned Senior Departmental Representative (ld. Sr. DR) supported the orders of lower authorities. He submitted that the assessee failed to substantiate the expenses and cost of improvement through verifiable documentary evidence.

12. We have heard both the parties and perused the materials available on record. The assessee claimed transfer expenses of Rs.4,00,000/- on sale of land and Rs.2,25,000/- on sale of building. The AO disallowed both for want of evidence. On perusal of the material on record, we note that the documentary evidence furnished by the assessee is not sufficient to establish complete veracity of these expenses. The CIT(A) has rightly observed that the assessee failed to substantiate the claim fully; therefore, we see no reason to disturb the finding of CIT(A). Hence, the disallowance of Rs.4,00,000/- and Rs.2,25,000/- is upheld.

12.1 The assessee claimed Rs.7,00,000/- as cost of improvement on building, supported by vouchers and confirmations from vendors. The AO disallowed the same entirely, citing lack of verifiable evidence. Having perused the paper book, we note that some of the vouchers and confirmations are available, though not supported by bills or invoices in all cases. The fact that the assessee was able to

realize a significantly higher sale consideration substantiates that improvements were indeed made to the property. Considering the totality of circumstances and the concession given by the assessee before us that some percentage of the claim may be disallowed for want of complete verification, we find it fair and reasonable to allow Rs.2,50,000/- towards the cost of improvement. Accordingly, the AO is directed to allow Rs.2,50,000/- and disallow the remaining Rs.4,50,000/-. The ground is partly allowed.

12.2 The additional ground pertains to whether concessional rate u/s 112 of the Act applies to capital gains computed under section 50 of the Act. Section 50 of the Act creates a deeming fiction only for the purpose of computing capital gains on transfer of depreciable assets forming part of a block of assets. As per provisions of sub-section (1) of section 50 of the Act, if the full value of consideration exceeds the aggregate of the amounts mentioned in Clause (i), (ii) and (iii) u/s 50(1) of the Act, the excess shall be deemed to be capital gains arising from transfer of short-term capital asset. Provisions of section 112 of the Act is in relation to tax on long-term capital gains, which arises from transfer of long-term capital asset. In the present case, due to operation of section 50 of the Act, the asset is to be treated as short-term capital asset. The AO is, accordingly, directed to levy tax applicable for short-term capital gain as per law. This ground is allowed for statistical purpose.

13. In the result, the appeal of the assessee is partly allowed for statical purpose.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 04/11/2025.

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

Surat

दिनांक/ Date: 04/11/2025

SAMANTA

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**// TRUE COPY //**

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

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat