

**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.329 & 330/SRT/2025**

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

**(Physical hearing)**

Sathaiya Ganapathy, TS No.4114, South 3 <sup>rd</sup> Street, Pukukottai, Tamil Nadu - 622001	<b>Vs.</b>	ITO, Ward – 1, Bardoli
<b>स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AHBPG2414Q</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>

<b>Appellant by</b>	Shri Mayank A. Ogrwala, CA
<b>Respondent by</b>	Shri Ajay Uke, Sr. DR
<b>Date of Hearing</b>	02/09/2025
<b>Date of Pronouncement</b>	26/11/2025

**आदेश / ORDER**

**PER BIJAYANANDA PRUSETH, AM:**

These two appeals by the assessee emanate from separate orders passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), both dated 06.02.2025 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short, 'CIT(A)'] for the Assessment Year (AY) 2015-16. ITA No.329/SRT/2025 pertains to the quantum appeal whereas ITA No. 330/SRT/2025 is in respect of the consequential penalty order u/s 271(1)(c) of the Act. Since the matter pertains to the same assessee for the same AY, with consent of both parties, they were heard together and are decided by a common order for the sake of convenience and brevity. ITA No.329/SRT/2025 is taken as 'lead' case.

2. The grounds of appeal raised by the assessee in ITA No.329/SRT/2025 are as under:

*"1. On the facts and in the circumstances of the case, and in law, the learned Commissioner of Income Tax (Appeals) erred in sustaining the addition of Rs.23,41,300/- u/s 69A of Income Tax Act on account of cash deposit in Bank Account.*

*2. On the facts and in the circumstances of the case, and in law, the learned Commissioner of Income Tax (Appeals) as well as learned Assessing Officer have erred in not allowing deduction of housing loan interest of Rs.2,00,000/- as per section 24 of Income Tax Act while assessing the total income of the assessee.*

*3. On the facts and in the circumstances of the case, and in law, the learned Commissioner of Income Tax (Appeals) as well as learned Assessing Officer have erred in not allowing deduction under chapter VIA of Rs.1,50,000 while assessing the total income of the assessee.*

*4. On the facts and in the circumstances of the case, and in law, the learned Commissioner of Income Tax (Appeals) as well as learned Assessing Officer have erred in not allowing deduction allowable from Salary Income of Rs.2,400/- as professional tax u/s. 16 of Income Tax Act while assessing the total income of the assessee.*

*5. On the facts and in the circumstances of the case, and in law, the learned Assessing Officer has erred in charging 30% tax rate on short term capital gain from share transaction instead of 15% applicable rate u/s. 111A of Income Tax Act.*

*Your appellant further reserves his right to add, alter or to amend any of the aforesaid grounds at the time of hearing of an appeal and all the above grounds are without prejudice to each other.*

3. The grounds of appeal raised by the assessee in ITA No.330/SRT/2025 are as under:

*"1. On the facts and in the circumstances of the case, and in law, The Learned Commissioner of Income Tax (Appeals) erred in disposing of the penalty appeal immediately after deciding the quantum appeal, without affording the assessee an opportunity to present his case in light of the quantum relief granted. This is in violation of the principles of natural justice.*

2. On the facts and in the circumstances of the case, and in law, The Learned Commissioner of Income Tax (Appeals) erred in confirming the penalty u/s 271(1)(c) on the addition of ₹23,41,300/- u/s 69A, without appreciating that the assessee had furnished an explanation along with documentary evidence. The addition was made under a deeming provision, and no deliberate concealment of income was established. Hence, the penalty is unjustified.

3. On the facts and in the circumstances of the case, and in law, the learned CIT(A) erred in confirming the penalty u/s 271(1)(c) on the disallowance of deductions & addition on STCG on sale of shares, without appreciating that the assessee had no mens rea or malafide intention. The disallowance or such addition arose due to non-filing of the return, not due to concealment of income.

4. On the facts and in the circumstances of the case, and in law, The Learned Commissioner of Income Tax (Appeals) has erred in not mentioning the reduction of penalty amount by TDS Credit of ₹22,48,515/- already allowed in the quantum proceedings. Further, the AO failed to correctly compute the penalty in the appeal effect order by not considering the TDS credit, resulting in excess penalty.

5. On the facts and in the circumstances of the case, and in law, the AO failed to correctly reduce the penalty in the appeal effect order, as the tax impact of the deleted addition of ₹70,50,000/- was not fully considered.

Your appellant further reserves his right to add, alter or to amend any of the aforesaid grounds at the time of hearing of an appeal and all the above grounds are without prejudice to each other.”

**ITA No.329/SRT/2025 (AY 2015-16):**

4. Brief facts of the case are that the assessee did not file his return of income for the impugned AY 2015-16. In this case, information was received indicating that the appellant had deposited cash of Rs.23,41,300/- in his savings account maintained with the HDFC Bank, received sale consideration on sale of an immovable property of Rs.71,50,000/-, earned salary income of Rs.82,12,480/- from Piramal Glass Ltd., purchased equity shares of Rs.14,22,715/-. Since the appellant did not file the return of income for the relevant AY, hence,

aforementioned transactions remained undisclosed. The case of the assessee was, therefore, reopened u/s.147 of the Act and notice u/s.148 of the Act was issued on 29.03.2022. However, assessee did not file any return of income in its response. Subsequently, notices u/s.142(1) of the Act were issued with questionnaire, calling for information/details/documents in respect of relevant issues. In their compliance, assessee furnished his submissions from time to time.

5. On perusing the submissions furnished by the assessee and other material available on record, the AO observed that the assessee confirmed cash deposits of Rs.23,41,300/- during the year, however, he could not substantiate the nature and source of such cash deposits by furnishing cogent documentary evidence. Therefore, the same was treated as unexplained money and added to the total income of the assessee u/s.69A of the Act.

5.1 Regarding the sale consideration on sale of immovable property, the AO noticed that assessee did not enter into sale transaction but had purchased immovable property for Rs.71,50,000/- from Rajhans Infra Project. Out of the aforesaid purchase consideration of Rs.71,50,000/-, payment of Rs.70,50,000/- was made during the year under consideration. Regarding, the source of such investment, the appellant submitted that same was funded through housing loan, however, the appellant failed to furnish any cogent documentary evidence in support of his submission. The AO, therefore, treated the same as unexplained

investment and added the amount of Rs.70,50,000/- u/s.69 of the Act, to the total income of the assessee.

5.2 AO further noticed that even though the assessee had received the salary income and due TDS had been deducted thereupon, but the assessee failed to file the return of income/computation of income. Therefore, the salary income of Rs.82,12,480/- was added to the total income without allowing deductions u/s.24(b) and Chapter VIA therefrom.

5.3 With regard to purchase of equity shares, AO on perusal of P & L statement furnished by the assessee, noticed that assessee purchased equity shares of Rs.14,42,043/- and sold equity shares of Rs.14,09,031/- during the FY 2014-15. Assessee earned short-term capital gains of Rs.35,543/- and long-term capital loss of Rs.68,556/-. However, aforesaid short-term capital gain of Rs.35,543/- was not offered to tax, therefore, AO added the amount of Rs.35,543/- as undisclosed short-term capital gain of the assessee. Accordingly, assessment order was finalized u/s.144 rws 147 rws 144B of the Act, determining total income of the assessee at Rs.1,76,39,323/-.

6. Aggrieved by the order of the AO, the assessee preferred appeal before CIT(A). During appellate proceedings, CIT(A) observed that investment in immovable property was funded by a housing loan from HDFC Bank, therefore, directed the AO to delete the addition of Rs.70,50,000/- made u/s.69 of the Act. Regarding the addition of Rs.23,41,300/- made on account of unexplained cash

deposit, the CIT(A) rejected the explanation of the assessee that the same were made from past withdrawals on the ground that the time gap between withdrawal and redeposit was too long, thereby, sustaining the addition of Rs.23,41,300/- made u/s.69A of the Act. The CIT(A) sustained the disallowance of housing loan interest deduction u/s.24(b) of the Act and disallowance of chapter VI A deductions and deduction u/s.16(iii) of the Act on the ground that no return of income was filed by the assessee for the relevant AY. Accordingly, order u/s.250 of the Act was passed by the CIT(A).

7. Aggrieved by the order of CIT(A), assessee filed present appeal before the Tribunal. The Ld. AR of the assessee submitted that the CIT(A) erred in sustaining the addition of Rs.23,41,300/- made on account of unexplained cash deposit u/s.69A of the Act, since assessee furnished a detailed cash withdrawal and deposit details along with documentary evidence in the form of bank statement which sufficiently explained the source of funds. However, the CIT(A) upheld the addition made by the AO solely on the basis of time gap between cash withdrawals and subsequent deposits. The Ld. AR further submitted that the assessee withdrew substantial amounts of cash of Rs.45,27,000/- from the bank account during the preceding year as well as Rs.60,95,030/- during the year under consideration. It is further submitted that the assessee deposited Rs.17,75,000/- into the bank account on 05/05/2014 which was duly reconcilable from earlier withdrawals of Rs.21,00,000/- on 17.09.2013 and Rs.9,00,000/- on

16.09.2013. The Ld. AR submitted that even though there was a time gap of about nine months but such lapse of time, by itself, does not render the explanation invalid, particularly in the absence of any evidence that the funds were used elsewhere. Besides, no material had been brought on record by the AO and the CIT(A) to show that these withdrawn funds were not available for redeposit. The Ld. AR further submitted that the assessee deposited Rs.2,00,000/- on 15.09.2014 and Rs.25,000/- on 20.10.2014, corresponding to withdrawals of Rs.2,00,000/- on 06.09.2014 and Rs.5,00,000/- on 16.08.2014. Further, deposits of Rs.2,88,500/- in December'2014, Rs.50,000/- in Jan'15 and Rs.2800/- in Feb'15 were fully matched against the withdrawals of Rs.2,00,000/- on 06.12.2014 and Rs.7,00,000/- on 03.12.2014. According to Ld. AR, this transaction trail clearly establishes a direct nexus between the bank withdrawals and the subsequent deposits. The Ld. AR further submitted that the assessee earned salary income aggregating to more than Rs.2.57 Crore over the last five years which were offered to tax, which amply demonstrates the appellant's financial capacity to accumulate and retain sufficient cash balances. The Ld. AR submitted that these facts sufficiently corroborate that the earlier cash withdrawals, which originated entirely from accounted salary income, were well within the appellant's lawful financial capacity and having been retained in cash, fully explain the subsequent deposits in the bank account. The Ld. AR relied on following case laws: (i) Kiranlata Agamprasad Agarwal Vs. ITO, ITA No.

773/Ahd/2025 dated 18.06.2025, (ii) Vijaykumar Vithaldas Prajapati Vs. ITO, ITA No. 1536/Ahd/2019, dated 05.09.2023), (iii) Rajan Gupta Vs. ACIT, ITA No. 3309/Del/2023 dated 15.02.2024, (iv) Radhe Developers (India) Ltd. Vs. ACIT, ITA No. 237/Ahd/2023 dated 16.11.2023, (v) CIT vs. Manoj Indravadan Chokshi, Tax Appeal No. 821 of 2014 dated 11.08.2014 & others.

8. Regarding the disallowance of housing loan interest deduction u/s.24(b) of the Act and disallowance of chapter VI A deductions and deduction u/s.16(iii) of the Act, the Ld. AR submitted that the assessee is a regular filer of income tax returns in earlier and subsequent years, however, due to circumstances beyond control, the assessee could not file the return of income for the year under consideration. The Ld. AR further submitted that the assessee had submitted all necessary documentary evidence, viz., the home loan certificate, Form No.16 issued by the employer, detailed computation of income for claim of deduction, etc. The Ld. AR stated that the CIT(A) was presented with relevant supporting documents and factual matrix supporting the deduction claims was already part of the record, however, the CIT(A) did not exercise his appellate powers to adjudicate and allow these genuine claims. The Ld. AR relied upon decision of the Hon'ble Gujarat High Court in the case of PCIT Vs. Zydus Wellness Ltd. [2017] 44 ITCD 51 (Guj) and the coordinate bench of this Tribunal in the case of Wanka Vividh Karyakari Seva Sahkari Mandli Ltd. Vs. ITO in ITA No. 470/SRT/2023 dated

13.10.2023 in support of his contention and requested to allow the deductions claimed by the assessee.

9. The Ld. AR further submitted that during the relevant AY, short term capital gains from share transactions amounting to Rs.35,543/- were earned, however, the AO while assessing the STCG, erroneously applied tax rate of 30% (maximum marginal rate) instead of the concessional 15% rate as prescribed u/s.111A of the Act. The Ld. AR further stated that the aforesaid STCG arose from transactions in listed equity shares, executed through a recognized stock exchange and STT was paid on all such transactions, thereby satisfying all the eligibility conditions for concessional taxation u/s.111A of the Act. The Ld. AR, therefore, requested that STCG tax liability may be computed at the rate of 15% u/s.111A of the Act.

10. The Ld. Sr. DR for the revenue supported the orders passed by the lower authorities and requested to uphold the order of the CIT(A).

11. We have heard both sides and perused the materials available on record. We have also deliberated on the decisions relied upon by the Ld. AR. The first issue is whether the assessee has satisfactorily explained the source of cash deposits aggregating to Rs.23,41,300/- in his HDFC Bank account during the relevant previous year. Mere time gap between withdrawal and redeposit cannot, by itself, be a ground to reject the explanation, unless the Revenue brings material to show that the cash withdrawn was utilized elsewhere for expenses or

investments and was not available with the assessee at the time of redeposit. From the paper book and material on record, it is seen that the assessee had withdrawn substantial cash of Rs.45,27,000/- from the bank account during the preceding year and Rs.60,95,030/- during the year under consideration. The total withdrawals were Rs.1,06,22,030/-. These withdrawals were made from the same HDFC Bank account in which the impugned deposits of Rs.23,41,300/- were subsequently made. The assessee has demonstrated specific one-to-one nexus, which have not been controverted by the AO and CIT(A). Their only objection is the "time gap", which, as observed earlier, by itself, cannot be the ground for making the addition. Further, the Revenue has not brought any material on record to show that the withdrawn funds were utilized elsewhere or that the assessee lacked the capacity to retain cash. Be that as it may, the assessee also earned salary income exceeding Rs.2.57 crore in the preceding five years and he is regularly assessed to tax. In view of the same, we are of the considered view that the assessee has satisfactorily the nature and source of cash deposit of Rs.23,41,300/-. Hence, the order of the CIT(A) is set aside and the AO is directed to delete the addition. The ground is allowed.

12. Regarding the disallowance of deductions u/s.24(b), Chapter VI-A and Section 16(iii) of the Act, we find that the CIT(A) has dismissed the relevant grounds because the assessee did not file his return of income u/s 139 or in response to notice u/s 148 of the Act. The Id. AR has relied on the decision in case

of PCIT vs. Zydus Wellness Ltd., 44 ITCD 51 (Guj.) and Wanka Vividh Karyakari Seva Sahkari Mandali Ltd. vs. ITO, ITA No.470 (SRT) of 2023, dated 13.10.2023. In the case of Zydus Wellness Ltd. (supra), the assessee had filed return of income but did not claim depreciation on goodwill. It had claimed depreciation during the assessment proceedings, which was rejected because assessee did not make the claim in the original return nor did it file revised return. The CIT(A) and Tribunal allowed the issue in favour of assessee, which was upheld by the Hon'ble High Court by relying upon the decision of Hon'ble Bombay High Court in case of CIT vs. Pruthvi Brokers and Shareholders Pvt. Ltd., 349 ITR 336 (Bom.). It was held that the decision of Hon'ble Supreme Court in case of Goetz (India) Ltd. vs. CIT is confined to powers of AO and accepting claim without revised return. The same is not applicable to the powers of CIT(A) or the Tribunal. The facts in the instant appeal are different because the appellant has not filed any return either u/s 139 or u/s 148 of the Act. When the return itself is not filed, the question of allowing deduction u/s 16(iii), 24(b) and Chapter VI-A would not arise. Therefore, the ratio of the decisions relied upon could not be applied to the facts of the instant case. Hence, the ground is dismissed.

13. Regarding the issue of tax rate applicable on short-term capital gain (STCG), we find that the material placed on record shows that all transactions were routed through recognized stock exchanges and STT was duly paid. The AO has not disputed the genuineness of the transactions; but he has applied an

incorrect rate of tax. It is pertinent to mention that the concessional rate u/s.111A of the Act is a statutory mandate, not a discretionary relief. We, therefore, hold that the AO was not justified in applying normal rate of tax @30% instead of tax @15% on the STCG of Rs.35,543/-. The AO is directed to recompute the tax liability on STCG of Rs.35,543/- accordingly. This ground is accordingly allowed.

14. In the result, the appeal of the assessee is partly allowed.

**ITA No.330/SRT/2025 (AY 2015-16):**

15. Brief facts of the case are that in the case of assessee, assessment order u/s.144 r.w.s. 147 r.w.s. 144B of the Act was passed on 21.03.2023, determining the total income of the appellant at Rs.1,76,39,323/- after making the following additions: (i) Rs.23,41,300/- u/s.69A of the Act towards unexplained cash deposits, (ii) Rs.70,50,000/- u/s.69 of the Act on account of unexplained investment, (iii) salary income of Rs.82,12,480/- assessed without allowing deductions u/s.24(b) and Chapter VIA and (iv) Rs.35,543/- on account of undisclosed short-term capital gains (STCG) from share transaction. Besides, the AO initiated penalty proceedings u/s.271(1)(c) of the Act for concealment of income. Subsequently, after providing reasonable opportunity of being heard to the assessee, which were not responded to, the AO passed the penalty order on 05.09.2023, imposing minimum penalty of Rs.54,22,616/- u/s.271(1)(c) for concealment of particulars of income.

16. Aggrieved by the aforesaid penalty order, assessee preferred appeal before the CIT(A). The CIT(A) partially allowed the appeal of the assessee by deleting the penalty on the addition of Rs.70,50,000/- made u/s.69 of the Act since the addition itself was deleted in the quantum appeal of the assessee. The CIT(A) sustained penalty on the remaining additions made by the AO. However, the CIT(A) has mentioned that the appellant has furnished inaccurate particulars of his income of Rs.1,05,89,323/-, which appears to be an inadvertent mistake because he has not reduced the relief granted by him in his appellate order.

17. Aggrieved by the order of CIT(A), assessee filed present appeal before the Tribunal. The Ld. AR of the assessee submitted that in the appellate order, the CIT(A) did not make any mention of the TDS credit of Rs.22,48,515/- which was granted as relief in the quantum appeal order, therefore, the AO failed to consider the reduction based on the TDS credit and wrongly computed the penalty demand in the appeal effect order dated 18.02.2025. The Ld. AR contended that the CIT(A) erred in deciding the penalty appeal without affording the appellant an opportunity to present his case after the quantum appeal was concluded. He further contended that penalty is not justified on deemed income u/s.69A of the Act as it did not involve deliberate concealment. The Ld. AR submitted that penalty should not be levied on disallowance of deductions as there was no malafide intention or concealment. He also submitted that the AO had incorrectly computed the penalty amount in the appeal effect order by not

considering the TDS credit of Rs.22,48,515/- and not computing the tax effect of deleted addition properly. In view of the same, the Ld. AR requested to delete the penalty demand of Rs.33,94,995/-.

18. The Ld. Sr. DR relied on the orders of the lower authorities.

19. We have heard both the sides and perused the material placed on record.

The grounds raised revolve around (i) violation of principles of natural justice, (ii) sustainability of penalty under section 271(1)(c) on surviving additions and (ii) erroneous computation of penalty by the AO while giving effect to the appellate order due to failure to consider TDS credit and the tax effect of deleted additions.

20. In the quantum appeal decided by this Tribunal (in the connected quantum appeal), the addition made u/s.69A of the Act has been deleted. Once the addition itself stands deleted, there remains no basis to levy penalty on such addition. Thus, penalty on addition of Rs.23,41,300/- cannot be sustained. We, therefore, delete the penalty on this addition.

21. Regarding the issue of penalty on disallowance of deductions u/s. 24(b), Chapter VIA and u/s. 16(iii) as well as addition of STCG, which have been confirmed in this order, we find that the appellant has not been granted adequate opportunity of hearing. We find that the appellate orders against both the quantum as well as the penalty order were passed on the same day, i.e., 06.02.2025 by the CIT(A). Hence, we find merit of the contention of the Id. AR that the penalty order was passed without granting the appellant opportunity to

present his case in the light of quantum relief allowed by the CIT(A). This is clearly in violation of the principles of natural justice. Therefore, without delving more into the merits of the case, the matter is remanded back to the file of CIT(A) for fresh adjudication after granting adequate and reasonable opportunity of hearing to the assessee. This ground is allowed for statistical purposes.

22. In the result, the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963 on 26/11/2025 in the open court.

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

Surat

दिनांक/ Date: 26/11/2024

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