

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER
&
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1301/Ahd/2024
(निर्धारण वर्ष / Assessment Year : 2011-12)

Harshit Indravadan Talati 1, Kotyark Society, B/h. Zaver Nagar Bus Stop, Waghodia Road, Baroda, Gujarat - 390019	बनाम/ Vs.	ACIT Circle-2(1)(1), Vadodara
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABIPT6038Q		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri S N Soparkar, Sr. Advocate & Ms. Urvashi Sodhan, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Rameshwar P Meena, Sr. DR

Date of Hearing	02/12/2025
Date of Pronouncement	01/01/2026

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’), dated 10.05.2024 for the Assessment Year 2011-12 in the proceedings under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short ‘the Act’).

2. Brief facts of the case are that on the basis of information received by the AO, the case of the assessee was reopened by issue of notice u/s.148 of the Act on 30.03.2018. The AO has

recorded in the assessment order that on the basis of information disseminated through ITBA portal, the assessee had sold shares of scrip M/s. Splash Media Ltd. for a consideration of Rs.1,29,23,931/-. In the course of assessment, the AO was not satisfied with the explanation of the assessee in respect of this sale transaction and LTCG of Rs.1,04,25,763/- derived thereon was held as accommodation entry and added to the income. Further, addition of Rs.5,21,288/- on account of commission paid in this transaction was also added. The assessment was completed u/s.143(3) r.w.s. 147 of the Act on 28.12.2018 at total income of Rs.1,13,49,471/-.

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority, which was decided by the Ld. CIT(A) vide the impugned order and the appeal of the assessee was dismissed.

4. Now, the assessee is in second appeal before us. The following grounds have been taken in this appeal:

- “1. The order passed by lower authorities is bad in law and required to be quashed.*
- 2. The reopening of assessment u/s 148 is bad in law as same has been done for verification purpose only for making fishing and roving inquiries.*
- 3. Ld. NFAC erred in law and on facts in confirming addition of Rs. 1,04,25,763/-by treating long term capital gain as unexplained credit u/s 68 of the Act ignoring submission & documentary evidence submitted by the appellant.*
- 4. Ld. NFAC erred in law and on facts in confirming addition of Rs. 5,21,288/- of unexplained expenditure u/s 69C of the Act without any tangible evidence.*

5. *Ld. NFAC erred in law and on facts in confirming addition ignoring fact that the material relied on by AO was not provided and thus violated the principle of natural justice.*
6. *Both lower authorities erred in law and on facts in passing orders without providing statements of the persons relied on and consequential cross examination.*
7. *Ld. NFAC upholding erred in invocation of section 115BBE of the Act.*
8. *Charging of Interest u/s 234A,234B,234C & 234D are unjustified.*
9. *Initiation of penalty proceedings u/s 270A is unjustified.”*

5. Shri S. N. Soparkar, Ld. Sr. Advocate appearing for the assessee submitted that the case was reopened u/s.148 of the Act to examine the transaction of the assessee in respect of purchase and sale of immovable property and also to examine the transaction (sale/purchase) in scrips amounting to Rs. 72,73,743/-. He explained that the assessee did not sell any property during the year but had purchased three properties and the transaction of Rs.72,73,743/- in scrips was also denied. The Ld. Sr. Counsel submitted that the reopening was bad and illegal as the same was based on incorrect facts and, therefore, the notice u/s.148 of the Act was ex facie bad and illegal. He explained that the AO had accepted this fact as no addition was made on any of the issues on which the case was reopened by the AO. The Ld. Sr. Counsel contended that when the AO did not make addition on the issues on which the case was reopened, it was not open for the AO to make addition on altogether different ground which was not part of the reason as recorded by the AO. In this regard, reliance was placed on the following decisions:

- i. *CIT vs. Mohmed Juned Dadani, [2014] 355 ITR 172 (Gujarat)*
- ii. *FIVES India Engineering & Projects (P.) Ltd., [2024] 161 taxmann.com 79 (Madras)*
- iii. *Bhagwati Construction Co. vs. ITO, [1986] 26 TTJ 254 (Ahmedabad-ITAT)*
- iv. *Neetu Bhoi vs. ITO, [2024] 163 taxmann.com 190 (Raipur-Trib.)*

6. Per contra, Shri Rameshwar P Meena, Ld. Sr. DR submitted that the information regarding transaction in the shares of M/s. Splash Media Ltd. was disseminated on ITBA portal which was accessible to the AO in the course of assessment proceeding. Therefore, the AO had rightly examined the transaction of the assessee in this scrip and accordingly, made the addition. He, therefore, supported the order of the lower authorities.

7. We have considered the rival submissions. A copy of the reason recorded by the AO has been brought on record in the paper book filed by the assessee. The AO had intimated the reason for reopening to the assessee vide letter dated 30.07.2018 which is reproduced below:

"2. Vide your letter dated. 26.04.2018, a request has been made to furnish the reasons for reopening of assessment for A.Y. 2011-12. In accordance with your request, the reason for reopening of assessment, in your case for A.Y. 2011-12, is as under:

"As per the data available with the department, it is found that assessee has made transactions in various immovable properties for Rs.2,08,09,435/- during the year under consideration which were registered with the Sub-Registrar Office, Danteshwar Zone, Vadodara and Sub Registrar Office, Waghodia, Vadodara.

Further during the year under consideration, the department is in the possession of information with respect to the transaction in scrips entered into by assessee amounting to Rs. 72,73,743/. However, on perusal of the P/L a/c of the assessee it is seen that he has not shown any sale in it.

Consequent to the information, the details of assessee of the relevant assessment year have been verified and found that the assessee has filed his return of income for A.Y. 2011-12 and declared total income only at Rs.4,02,420/-. Therefore I have reasons to believe that income out of capital gains received from transactions in immovable properties and trading in scrips has escaped assessment alongwith the examination of source of investment in such properties.

In view of above facts of the case, I have reason to believe that income of Rs. 2,08,09,435/ have escaped assessment for A.Y. 2011-12, within the meaning of section 147 of the Act.

8. It is, thus, found that the case of the assessee was reopened to examine the transaction of the assessee in various immovable properties amounting to Rs.2,08,09,435/- and also to examine the transaction in scrips for Rs.72,73,743/-. The exact basis for forming reason to belief and details of escapement of income was described in the reason of the AO as under:

“6. Basis of forming reason to believe and details of escapement of income: -

It is pertinent to mention here that, the burden to prove the facts of the undisclosed wale consideration amounting to Rs.1,08,51,000/- Rs.50,98,800/- and purchase amounting to Rs.48,59,635/- totaling to Rs.2,08,09,435/- lies on the assessee, which has not been discharged by the assessee through explanation in response to the query letter as discussed in para-4 above. Since, the purchase of property is prior to the sale of property and the assessee has not reflected any capital or loans in his ITR-4 filed for the A.Y.2011-12.

In view of the above facts, I have reason to believe that the assessee has failed to disclose full and true material facts in respect of sale/purchase consideration amounting to Rs.2,08,09,435/-, which has escaped assessment for A.Y. 2011-12 within the meaning of section 147 of the Act by reason of failure on the part of the assessee. Hence, notice

u/s. 148 r. w. a. 147 of the Income Tax Act, 1961 is to be issued for the assessment year 2011-12.”

9. It is evident from the above reason that the AO had specific information about the sale of two properties for Rs.1,08,51,000/- and Rs.50,98,800/- as well as purchase of one property for Rs.48,59,635/-, and the case was reopened to examine these transactions. The belief for escapement of income, recorded by the AO, was only in respect of sale/purchase consideration amounting to Rs.2,08,09,435/-. In fact, no specific belief for escapement of Rs.72,73,743/- on account of sale/purchase of scrips is found recorded in the reason. The assessee had explained before the AO that no immovable property was sold by him during the year, rather he had purchased three immovable properties as under:

- “I) Agricultural Land at Khatamba, Tal. Dist. Vadodara R.S.No. 148,160,162 Block 71 for Rs.1,08,51,000 vide purchase deed dt.10.2.2011 registered with Sub registrar office, Danteshwar Zone, Vadodara*
- II) 50% share in purchase of Agricultural Land at Moje Bapod, R.S.no.441 for Rs.50,76,708 vide purchase deed dt.3.8.2010 registered with Sub registrar office, Danteshwar Zone, Vadodara (my share Rs.25.38.354)and*
- III) 50% share in purchase of Agricultural Land at Pipadiya R.S.no.41(1-45-69()) for Rs.48,59,635 registered with Sub registrar office, Waghodia, Vadodara (my share Rs. Rs.24,29,820).”*

10. It is found from assessment order that the escapement of income on account of purchase/sale of immovable properties is not discussed at all. Thus, the AO appears to have accepted the explanation of the assessee in this regard. The assessee had also denied any share transaction of Rs.72,73,743/- and no discussion/addition in this regard is appearing in the assessment

order. In view of these facts, the contention of the assessee that the AO did not make any addition on the issues on which the case was reopened, is found to be correct.

11. The AO had acted upon information available on ITBA Portal in respect of transaction of the assessee in the scrip of M/s. Splash Media Ltd. and an addition of Rs.1,04,25,763/- in respect of this transaction was made in the assessment order. The contention of the assessee is that when no addition was made on the issues on which the case was reopened, it was not open for the AO to make addition on an altogether different ground, which was not part of the reason. The contention of the assessee that the foundation of the notice u/s.148 of the Act was bad and illegal, is found to be correct. The case was reopened to examine undisclosed sale considerations of Rs.1,08,51,000/- and Rs.50,98,500/-. It transpired that no sales were made by the assessee during the year and there was no case for escapement of any capital gain on the sale transactions. It has been held by the Hon'ble Madras High Court in the case of *FIVES India Engineering & Projects (P.) Ltd. (supra)* that if the reasons for reopening are based on grossly erroneous factual foundation, the notice u/s.148 of the Act is liable to be quashed. When the assessee had objected to the reopening of the assessment and reasons on which the case was reopened was found to be incorrect, the reopened proceedings should have been dropped rather than continuing with it to consider the fresh material, which was not part of the reason. The AO could have again reopened the case on the basis of further material received by him. Hon'ble Gujarat High Court has held that in the case of

Mohmed Juned Dadani (supra) that when on the ground on which reopening of assessment was based, no addition was made by the AO in the order of the assessment, he cannot make additions on some other grounds which did not form part of reasons recorded by him. In the present case also, it is found that the addition was made by the AO on the issue which was not part of the reason recorded by him. Such addition cannot survive when no addition was made by him on the issues on which the case was reopened. Respectfully following the decision of Hon'ble Jurisdictional High Court, the reopening in the present case is not only found to be bad in law but the addition as made in the assessment order on altogether different issues, is also found to be illegal and beyond jurisdiction. Hence, the assessment order passed by the AO is quashed.

12. In the result, the appeal of the assessee is allowed.

This Order pronounced on 01/01/2026

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 01/01/2026

S. K. SINHA

True Copy

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad**