

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH "DB" SURAT**

**BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 373/SRT/2025
Assessment Year: 2017-2018**

Vishwas Builders,
Laskana Kholvad Road,
Gujarat-395004.

**PAN NO. AAKFV 9174 A
Appellant**

Vs. ACIT, Cir 2(2),
Aaykar Bhavan,
Majuragate,
Surat-395001.

Respondent

Assessee by : Mr. Samir Shah
Revenue by : Ms. Namita Patel, Sr. DR

Date of Hearing : 08/10/2025
Date of pronouncement : 23/12/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 30.01.2025 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2017-18, raising following grounds:

1. That on facts and circumstances of the case and in law, the learned CIT(A) have grossly erred in dismissing the appeal of the appellant, challenging the stand of learned AO in making addition of Rs. 1,30,00,000/- as unexplained cash credit under section 68 of the Act.



2. That on facts and circumstances of the case and in law, the learned CIT(A) have grossly erred in dismissing the appeal of the appellant and sustaining the entire addition of Rs. 1,30,00,000/-, made through extrapolation. The learned AO had made the addition disregarding the fact that out of 516 customers, only 4 customers from whom aggregate amount of service tax of Rs. 1,38,395 was received in cash did not respond to notices u/s. 133(6) of the Act.

3. That on facts and circumstances of the case and in law, the learned CIT(A) have grossly erred in sustaining the applicability of provisions of section 68 r.w.s. 115BBE of the Act, even though the source, identity, genuineness and credit worthiness of customers from whom, service tax was collected by the appellant firm in cash was duly submitted and justifiably proved before learned AO.

4. The appellant craves leave to add, amend, alter, substitute, modify the above ground of appeal, if necessary on the basis of submissions to be made at the time of personal hearing.

2. Briefly stated, the facts of the case are that the assessee is engaged in the business of real estate development. During the relevant period, the assessee developed a project known as “Opera Royal” at Surat, Gujarat. For the assessment year under consideration, the assessee filed its return of income on 27.10.2017 declaring a total income of ₹3,73,55,490/-. The return was selected for scrutiny on account of the following issues:

- (i) large cash deposits during the demonetisation period coupled with an abnormal increase in sales with a disproportionate decline in profitability as compared to the preceding year;
- (ii) real estate business reflecting high closing stock; and



(iii) higher turnover reported in the service tax returns vis-à-vis the income-tax return.

2.1 The Assessing Officer issued notice under section 143(2) of the Income-tax Act, 1961 (“the Act”), followed by notice under section 142(1) of the Act. During the course of assessment proceedings, the Assessing Officer noticed cash deposits aggregating to ₹1,50,60,000/- in two bank accounts maintained by the assessee, comprising ₹60,000/- in Varachha Co-operative Bank and ₹1,50,00,000/- in Syndicate Bank, deposited during the demonetisation period.

2.2 The assessee explained that the cash deposits represented (i) cash received from buyers of flats/shops towards service tax at the time of execution of sale/conveyance deeds, and (ii) cash withdrawn earlier from bank accounts for business purposes. It was submitted that the major portion of cash received pertained to service tax collected in cash from buyers. The assessee furnished a list of buyers containing their names, PAN, addresses, and details of service tax stated to have been received in cash.

2.3 The Assessing Officer issued notices under section 133(6) of the Act to five buyers selected from the list to verify the alleged cash payment of service tax. No confirmation was received from any of the said parties. Consequently, the Assessing Officer issued a show-cause notice observing that the assessee had claimed receipt of



₹1,54,22,893/- in cash towards service tax on execution of sale/conveyance deeds, which remained unverified in the absence of independent confirmation from the buyers.

2.4 The assessee produced copies of ledger accounts of the buyers as reflected in its books of account. However, the Assessing Officer rejected the same on the ground that the ledgers were not duly signed or confirmed by the respective buyers. The Assessing Officer further observed that it was against normal human conduct and business probability that the entire sale consideration was received by cheque, whereas the service tax component from all buyers was allegedly received in cash. He also questioned the explanation that service tax was paid to the Government without collection from buyers at the time of invoicing and was collected only subsequently at the time of execution of sale deeds.

2.5 After allowing benefit of cash withdrawals aggregating to ₹30,00,000/-, the Assessing Officer treated the balance amount of ₹1,30,00,000/- as unexplained cash credit and made an addition under section 68 of the Act.

2.6 The Assessing Officer further observed that in the event the assessee succeeded in establishing that the cash was received from buyers, the transaction may attract the provisions of section 269SS of the Act, and appropriate proceedings could be initiated in accordance with law.



3. On appeal, the learned Commissioner of Income-tax (Appeals) rejected the explanation of the assessee, holding that the assessee had failed to discharge the onus cast upon it to establish the genuineness of the cash receipts. The learned CIT(A) observed that no confirmations, affidavits, or other corroborative evidence were produced from the buyers and that the explanation offered was contrary to human probabilities. Accordingly, the addition was confirmed. The Ld. CIT(A) rejected the contention of the assessee observing as under:

“In view of above facts and the considering the explanation of the appellant, it is clear that the assessee has failed to justify the transactions based on which addition was made to income during the assessment proceedings. During the course of appeal proceedings, the appellant has not submitted any supporting documents such as contract agreement between appellant firm and buyers, confirmation letter that cash was paid by buyers for service tax and other payment were paid in cheque. It is crystal clear that all the buyers are buying flats in the apartment built by the appellant. The owners and builder will have formed association in housing society in which the builder is also one of the member and can get confirmation from the owner easily. While the appellant has not provided any confirmation letter from the customers, merely stating that cash was paid by them is not proving the genuineness of the transaction. All the customers have taken possession of flats in the same premises which was sold by the appellant firm. To discharge the onus the appellant firm could have easily provided simple confirmation from the parties that they paid the cost of the flat in cheque but service tax in cash. It is very unusual and is out of the human probability that all the purchasing party paid the cost of the property in cheque but only the service tax part was paid by all in cash. The appellant firm just provided the receipts but not confirmation from parties. The appellant firm was confronted with the fact that notice against u/s 133(6) of the Act was not yielded any result the Assessing officer during the course of assessment proceedings. Thus, the appellant has failed to discharge onus against the cash credited in the books of account. Thus it is proved beyond doubt that the appellant is falsely claiming the unaccounted



cash in hand to be received from customers against Service Tax. Therefore cash deposited in the bank account during the demonetization period is unexplained and was deposited in the bank account. The contention of the appellant remained unjustified and unsubstantiated. Hence, the ground is noted as disallowed.”

4. Before us, the learned counsel for the assessee placed on record a paper book comprising pages 1 to 757, containing copies of cash receipts, ledger accounts of buyers, written submissions filed before the lower authorities, and other supporting documents.

5. We have heard the rival submissions and carefully perused the material available on record. The sole issue for consideration in the ground raised is whether the addition of ₹1,30,00,000/- made under section 68 of the Act on account of unexplained cash deposits is sustainable.

5.1 The Assessing Officer observed deposit of the cash of Rs.1,56,00,000/- in the two bank accounts maintained by the assessee firm. The assessee explained that cash was deposited out of (i) cash received from customers towards service tax on sale of flats by the assessee firm and (ii) cash earlier withdrawal from the bank. We find that Assessing Officer had already given benefit of the cash withdrawal from the bank amounting to Rs.30,00,000/- and he made only addition of Rs.1,30,00,000/- towards the alleged receipt from the customers against service tax.

5.2 It is undisputed that the Assessing Officer has already granted benefit of cash withdrawals amounting to ₹30,00,000/- and that



the addition pertains solely to the alleged cash receipts from buyers towards service tax. Upon examination of the record, we find ourselves in agreement with the findings of the lower authorities for the following reasons:

- (i) notices issued under section 133(6) of the Act to selected buyers yielded no response, and despite being confronted with this fact, the assessee failed to either produce the buyers or furnish affidavits from them confirming cash payment of service tax; .
- (ii) the cash receipts issued by the assessee do not bear the signatures of the respective buyers, rendering them unverifiable. For ready reference, one such cash receipt available on Paper Book page 4 is reproduced as under:

VISHWASH BUILDERS
OPERA PALACE, LASKANA KHOLWAD
ROAD, KHOLWAD, SURAT.

RECEIPT


To, C6-203/DEEPABEN JAYSUKHBHAI NAVAPARIYA Date :- 07-10-2016
195, SHIV DARSHAN SOCIETY,

YOGI CHOWK, SURAT. Rs.

Being the amount received from you for
CASH RECD FOR SEVICE TAX.

_____ 25484.00

O E. & O. E. Rs. 25484.00
Rupees TWENTY FIVE THOUSAND FOUR HUNDRED EIGHTY FOUR Only
For VISHWASH BUILDERS





(iii) the ledger accounts produced by the assessee were not independently confirmed by the buyers, nor was any linkage established between the signatories on such ledgers and the buyers named in the registered sale documents;

(iv) the explanation that all buyers paid sale consideration by cheque but the entire service tax component was paid in cash is contrary to normal human conduct and commercial probability; and

(v) the assessee failed to satisfactorily explain the practice of paying service tax to the Government without collecting the same contemporaneously from buyers and allegedly receiving it in cash only at the stage of sale/conveyance.

5.3 The explanation furnished by the assessee cannot be examined in isolation on the basis of entries appearing in its books of account. As held by the Hon'ble Supreme Court in *Sumati Dayal v. CIT*, [1995] 214 ITR 801 the apparent state of affairs must be tested against **human probabilities, surrounding circumstances, and the conduct of parties**, and the taxing authorities are entitled to consider whether the version put forth is **real and credible**, or merely **a façade of documentation**.

5.4 Applying the aforesaid principle to the facts of the present case, the explanation of the assessee that **all purchasers uniformly paid the service tax component in cash**, while remitting the



entire sale consideration through banking channels, appears **inherently improbable and contrary to normal business conduct**. In ordinary commercial practice, statutory levies form an inseparable part of the sale transaction and are ordinarily recovered contemporaneously with the consideration, particularly where the parties are identifiable and transactions are governed by registered instruments.

5.5 The improbability is compounded by the fact that such alleged cash collections are stated to have taken place during the demonetisation period, and yet no purchaser has independently confirmed the payment, no affidavit has been filed, no response has been received to notices issued under section 133(6) of the Act, and the cash receipts relied upon do not bear the signatures of the buyers. When viewed cumulatively, these circumstances cast serious doubt on the genuineness of the explanation and justify a deeper factual inquiry, as contemplated by the doctrine laid down in *Sumati Dayal (supra)*.

5.6 At the same time, it is also a matter of record that the buyers of the flats/shops are identifiable, traceable, and confined to one or two residential buildings developed by the assessee. In such circumstances, outright rejection of the explanation without affording a final opportunity of verification may not advance the cause of substantial justice.



5.7 Accordingly, **in the interest of justice and in faithful application of the test of human probability**, we deem it appropriate to restore the issue to the file of the Assessing Officer with the following directions:

(i) the assessee shall furnish **affidavits on stamp paper** from all buyers who are stated to have paid service tax in cash, clearly specifying the **date, amount, and mode** of such payment or produce them before the AO alongwith necessary evidence of availability of cash in their hands;

(ii) in the event the assessee fails to furnish such affidavits or produce the buyers, the Assessing Officer shall be at liberty to **invoke powers under section 131 of the Act** to summon the buyers, permit their examination, and conduct such further inquiry, including cross-examination, as may be necessary to test the veracity of the assessee's claim in light of human probabilities;

(iii) the Assessing Officer shall place the outcome of such inquiry on record, furnish a copy thereof to the assessee, and thereafter adjudicate the issue **strictly in accordance with law**, uninfluenced by any observations made herein, save to the extent of application of the settled legal principles.



5.8 The Assessing Officer shall confine the inquiry to the above limited aspects and shall afford the assessee reasonable opportunity of being heard before passing a speaking order.

5.9 The grounds raised by the assessee are accordingly allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced under Rule 34(4) of ITAT Rule, 1963 on 23/12/2025.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Surat;
Dated: 23/12/2025
Rahul Sharma, Sr. P.S. (on Tour)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Surat
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Surat