



आयकर अपीलिय अधिकरण,राजकोट न्यायपीठ,राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No.568/RJT/2025
Assessment Year: (2015-16)
(Physical Hearing)

M/s Radhika Jewellers, Opp. Asharapura Temple, Palace Road, Rajkot-361 004	बनाम/ Vs.	Deputy Commissioner of Income-tax, 2(1), Aayakar Bhavan, Race Course Ring Road, Rajkot – 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AARFRT1473P		
(Appellant)		(/Respondent)

निर्धारिती की ओर से/Appellant by : Shri Samir Jani, Ld. AR
राजस्व की ओर से/Respondent by : Shri Sanjay Punglia, Ld. CIT(DR)

सुनवाई की तारीख/Date of Hearing : 06/01/2026
घोषणा की तारीख/Date of Pronouncement : 20/01/2026

आदेश /ORDER

Per Dr. Arjun Lal Saini, AM:

Captioned appeal filed by the assessee, pertaining to assessment year (AY) 2015-16, is directed against the order passed under section 250 of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 10.09.2025 by the National Faceless Appeal Centre (NFAC), Delhi/ Commissioner of Income Tax (Appeals) [in short ‘Ld.CIT(A)’] which in turn arises out of an assessment order passed by the Assessing Officer (in short ‘AO’) u/s 143(3) of the Act dated 30.12.2017.

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

1. *The appellate order dated 10.09.2025 is bad & illegal and against the weight of equity and natural justice since an adjournment application dated 23.09.2025 was*



filed which has been ignored and appeal order has been passed by the Ld. CIT (A), NFAC. The same is prayed for restoration.

2. The Ld. CIT (Appeals) has erred in invoking provisions of section 45 (3) in case of transferee which is not permitted by statute, especially when the similar provisions are invoked in case of transferor on substantive basis. The addition of Rs. 43,41,79,329/- is prayed for deletion.

3. The Ld. CIT (appeals) has erred in taxing the difference between market value and book value of the shop being Rs. 2,95,09,518/- whereas the fact is the value credited to capital account of the proprietor is book value and no assessment is framed in the hands of proprietor. A substantive assessment is framed in the hands of transferee invoking provisions of section 45(3). The addition of Rs.2,95,09,518/- is prayed for deletion.

4. The appellant reserves its rights to add, amend, alter or modify any of the grounds on or before the time of final hearing.

3. The relevant material facts, as culled out from the material on record, are as follows. Return of income, declaring an income of Rs.33,45,45,640/- was filed by the assessee, on 23.09.2015. The assessee derives income from the selling of the gold and gold ornaments. Case of the assessee was selected for limited scrutiny through CASS, hence a notice u/s 143(2) of the Act was issued to the assessee on 19.09.2016, which was duly served upon the assessee on 20.09.2016. The notice u/s 142(1) of the Act, cum questionnaire was issued to the assessee. In compliance thereto, the AR of assessee, appeared and filed written submissions. Books of accounts and relevant bills / vouchers etc, were produced, before the assessing officer. The assessee has claimed that M/s Radhika Jewellers, was proprietorship concern, up to 30.06.2014 and Shri. Ashok Kumar Zinzuwadia was the proprietor of the said concern. With effect from 01.07.2014, M/s. Radhika Jewellers, was converted into the partnership firm. Name of the partners of the said firm are as under:

Sr.No.	Name of the Partner	Profits sharing ratio (%)	Loss sharing ratio(%)
1	Shri. Ashok Kumar Zinnawadia	24	24
2	Shri. Hareshbhai Mathuradas Zinzuwada	20	27



3	Mrs. Hansaben Mathuradas Zinzuwadia	7	7
4	Mrs. Kavtaben AshokKumar Zinzuwadia	7	7
5	Mrs. Hetal Hereshbhai Zinzuwadia	7	7
6	Shri Darshit Hereshbhai Zinzuwadia	7	7
7	Minor Jenil Hereshbhai Zinzuwadia	7	0
8	Shri Mathurabhai Banhubhai Zinzuwadia HUF	7	7
9	Shri. Ashok Kumar Mathuradas Zinzuwadia- HUF	7	7
10	Shri Harehbhai Zinzuwadia-HUF	7	7
	Total	100	100

The assessing officer observed that the proprietor of M/s. Radhika Jewellers having share ratio only 24% and balance share ratio comes to 76% which belongs to other 9 partners of the firm. Each partner of firm having different share ratio of the profit in the said firm. The business of the erstwhile proprietorship was transferred to the newly incorporated partnership firm. Hence, assessing officer was of the view that the provisions related to capital gain was found to be applicable and accordingly, a show-cause notice dated 20.12.2017 was issued to the assessee as to why the transfer should not be assumed and capital gain should be brought to tax,

4. In response to the above show-cause notice, the assessee has filed its reply before the assessing officer, stating that Proprietary concern of Shri Ashokkumar M Zinzuwadia, namely, Radhika Jewellers, has been taken over by partnership -firm M/s. Radhika Jewellers, with effect from 01.07.2014, as going concern. The closing stock as on 30.06.2014 with all assets and liabilities which include stock and shop the value of the closing stock as on 30.06.2014 was Rs. 34,33,38,821/- which was carried over trading account of firm as stock transfer and credited to the capital account of Shri Ashokkumar M Zinzuwadia with the firm. The copy of the general entry passed accordingly on 01.07.2014, was submitted before the assessing officer. The details of the opening stock, purchase, sales in the desired format were also submitted before the assessing officer.

5. However, the assessing officer rejected the above contention of the assessee and was of the view that there should be **protective addition** in



the hands of the partnership- firm and there should be **substantive addition** in the hands of the respective partners. The assessing officer observed that the assessee has shown the valuation of the stock in the partnership- firm at Rs. 77,75,10,150/-, as on 01.07.2014 through capital account of following partners:

Sr. No.	Name of the Partner	Value of Stock	Remarks
1	Shri. Ashok Kumar Zinzuwadia	34,33,30,821	The person Proprietor of M/s Radhika Jewellers upto 30.06.2014
2.	Harsh M. Shri. Zinzuwadia	36,74,97,249	Brother of said Proprietor
3.	Shri Darshit A Zinzuwadia	6,66,82,080	Son of said proprietor
	Total value of Stock as on 01.07.2014	77,75,10,150	

In reply to show cause notice, the assessee has given value of stock as on 30.06.2014 at Rs. 34,33,30,821/- It was observed by the assessing officer that in the garb of transfer of business of going concern, the assessee has inflated the value of stock from Rs. 34,33,30,821/- to Rs. 77,75,10,150/-. This stock has been brought in the partnership firm by way of capital contribution by the above 3 mentioned partners. In such a case, the assessing officer was of the view that the provisions of section 45(3) of the Act are attracted and the value recorded in the books of the firm is treated as full value of consideration for the purpose of computing capital gain. Accordingly, the capital gain was worked out at Rs.43,41,79,329 (77,75,10,150 - 34,33,30,821). The same was taxed in the hands of the assessee- firm on **protective basis** and consequential actions will be taken in the hands of respective partners to tax the same on **substantive basis**. Therefore, addition was made in the hands of the respective partners on **substantive basis**.

6. It was also observed by the assessing officer that Shri Ashokkumar M Zinzuwadia had a showroom of Rs. 29,90,482/-, as on 30.06.2014. The



assessing officer noted that said asset is transferred to the assessee- firm and therefore provisions of section 48 of the I.T. Act is applicable for charging capital gain on the said transfer. As on date 01.07.2014, the assessee -firm has taken book value at Rs. 29,90,482/- as per previous owner. However, said value of asset should be taken as per prevailing market rate as on 01.07.2014. The assessee has not filed any valuation report regarding fair market value as on date of transfer. Hence, assessing officer has taken market value of the said transferred asset as on 01.07.2014 at Rs. 3.25 crores, and the capital gain was computed on the basis of market rate of the asset, as on 01.07.2014, considering the full value of sale consideration. Difference in value comes to Rs. 2,95,09,518 (3,25,00,000-29,92,482). Accordingly, a show cause notice issued to the assessee proposing the addition of difference amount of Rs. 2,95,09,518/- in the hands of assessee- firm on **protective base** and **substantive addition** on the same amount is to be made in the hands of Shri Ashokkumar M Zinzuwadia, partner.

7. In response thereto, the assessee filed its reply before the assessing officer on 27.12.2017. The assessee stated in its reply that there is no transfer of shop as alleged. In fact, it is taking over proprietor business as going concern by the partnership- firm. Since, there is no transfer, no capital gain can be computed, as per the provision of section 48 and 45(3) of the I.T. Act, 1961. The assessee further, argued that even as on today asset stands in the name of Shri Ashokkumar M Zinzuwadia. No sale deed has been executed. Copy of the ledger account for shop as appearing in the books of proprietorship concern and as appearing in the books of firm were submitted before the assessing officer, wherein, the amount credit of Rs. 29,92,482/- in both the cases and as such no capital gain arises.



8. However, the assessing officer rejected the above reply of the assessee and held that the provisions of section 45(3) of the Act are clearly applicable to the assessee, and therefore, assessing officer held that capital gain of Rs.2,95,09,518/- is chargeable to tax. Hence, addition of the capital gain of Rs.2,95,09,518/- was added in the hands of (Shri Ashok Kumar M Zinzuwadia Proprietor of said concern) on **substantive basis** and the same addition of difference amount of Rs.2,95,09,518/- was also added in the hands of assessee- firm on **protective basis**.

9. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Ld.CIT(A), who has confirmed the action of the Assessing Officer. The ld.CIT(A) noticed that stock has been brought in the partnership -firm by way of capital contribution by the 3 partners. In such a case, the provisions of section 45(3) are attracted and the value recorded in the books of the firm is treated as full value of consideration for the purpose of computing capital gain. Accordingly, the capital gain is worked out at Rs.43,41,79,329 (77,75,10,150-34,33,30,821). The same is taxed in the hands of the assessee -firm **on protective basis** and consequential actions will be taken in the hands of respective partners to tax the same on **substantive basis**. The ld.CIT(A) also observed that Shri Ashokkumar M Zinzuwadia had a showroom of Rs.29,90,482/-, as on 30.06.2014. The said asset is transferred to the assessee- firm and provisions of section 48 of the I.T. Act is applicable for charging capital gain on the said transfer. As on date 01.07.2014, the assessee -firm has taken book value at Rs. 29,90,482/- as per previous owner. However, said value of asset should be taken as per prevailing market rate as on 01.07.2014. The assessee has not filed any valuation report regarding fair market value as on date of transfer. Hence, market value of the said transferred asset as on 01.07.2014 was taken at Rs. 3.25 crore on the basis



of enquiry conducted by the Inspector. The Capital gain was computed on the basis of market rate of the asset as on 01.07.2014 considering the full value of sale consideration. Difference in value comes to Rs. 2,95,09,518/- (3,25,00,000- 29,92,482). Accordingly, addition of difference amount of Rs. 2,95,09,518/- was made in the hands of assessee- firm on **protective basis**, and **substantive addition** was made in the hands of the partners.

10. Aggrieved by the order of the Ld.CIT(A), the assessee is in further appeal before us.

11. Shri Samir Jani, learned Counsel for the assessee, vehemently argued that **substantive additions** were already made in the hands of the respective partners, therefore, **protective addition**, so made by the assessing officer, in the hands of the partnership -firm, should be deleted. There should not be two additions for the same issue, therefore, if the protective addition is not deleted, then it amounts to double taxation on the same issue, which is not permitted by the law. Since the **substantive additions** were already made in the hands of the respective partners, by the assessing officer and learned CIT(A) also confirmed the **substantive additions** in the hands of the partners, therefore **protective addition** made in the hands of the partnership- firm may be deleted.

12. Shri Samir Jani, also argued that conversion of proprietorship concern into a partnership-firm and transfer of assets and liabilities of proprietorship concern to a partnership- firm, do not amount to transfer and therefore provisions of section 45(3) of the Act do not apply to the assessee, under consideration. The ld.Counsel further stated that in the assessee`s case, what has been introduced by the partners, is stock-in-trade and not capital asset, since partners are traders in Gold & Gold Ornaments and also hold a



VAT registration. Thus, on introduction of stock-in-trade section 45 (3) cannot be invoked.

13. On the other hand, learned CIT-DR for the Revenue fairly agreed that **substantive additions** were already made by the assessing officer, in the hands of the respective partners, and, on appeal by the assessee, before learned CIT(A), the learned CIT(A) has also confirmed the **substantive additions** in the hands of the respective partners. Hence, revenue is fully protected, by substantive additions, therefore, the Bench may take an appropriate view in respect of the **protective additions**. The learned DR for the revenue also relied on the order passed by the learned CIT(A) and assessing officer.

14. We have heard the rival parties and have gone through the material placed on record. For the sake of clarity and also being pertinent, we find that when **substantive additions** were already made by the assessing officer, in the hands of the respective partners, and, on appeal by the assessee, before learned CIT(A), the learned CIT(A) has also confirmed the **substantive additions** in the hands of the respective partners. Hence, revenue is fully protected, by substantive additions, therefore, the **protective additions**, needs to be deleted, as there should not be two additions, in the hands of two different persons, for the same issue, as it amounts to double taxation, hence, protective additions, so made by the assessing officer, in the hands of the assessee firm, needs to be deleted.

15. When can and why a protective assessment be made. An assessment which is made to protect the interests of revenue against the bar of limitation is called 'protective assessment, it also goes under such diverse



names as 'precautionary assessment', 'alternate assessment, or assessment made *ex- abundanti cautela*. When the department has any doubt as to the person who has actually received the income, it makes a protective or alternate assessment. Thus, where it appears to the Assessing Officer that certain income has been received during the relevant previous year but it is not clear who has received that income and prima facie it appears that income may have been received either by A or by B, the Assessing Officer may determine the said question by taking appropriate proceedings both against A and B. In such a situation, he may assess the income in the hands of either A or B and at the same time, he may make a protective assessment on B or A, as the case may be. The protective assessment is kept as a stand by and it will spring into action only if the other assessment is held to be incorrect. If the other assessment is found to be correct and the inclusion of the income in that assessment is upheld, the protective assessment will be cancelled. In the assessee`s case under consideration, we find that assessing officer has identified the partners, as the persons in whose hands the substantive addition should be made. And in fact, the assessing officer made the substantive addition in the hands of the partners, and the substantive addition, so made, in the hands of the partners, were confirmed by the learned CIT(A) also. The partners of the firm have acknowledged and accepted the responsibility of the substantive addition, therefore, since the substantive addition have already been made in the hands of the partners, therefore, protective addition made in the hands of the partnership-firm, should be deleted, as the revenue is fully protected by the substantive addition made by the assessing officer in the hands of the partners.

16. Indian tax jurisprudence clearly holds that **protective additions cannot survive once substantive additions on the same income are finally sustained in the hands of the correct assessee**, because the same income



cannot be taxed twice. Protective assessment/addition is only a temporary measure adopted by the Assessing Officer when there is doubt about the real person in whose hands income is taxable. Once such doubt is resolved and the income is finally assessed substantively in the hands of one person, the protective addition in the hands of the other person must be deleted. Allowing both (substantive and protective) to stand, would amount to double taxation of the same income, which is impermissible. Protective assessment is permissible only to safeguard the interest of Revenue. Once it is found as to who is the real assessee, the income can be assessed only in his hands and not in the hands of any other person. In the case of *Jaswant Singh v. CIT* (1974) 94 ITR 246 (SC), Hon`ble Supreme Court held that the same income cannot be assessed in the hands of two different assessees. The Protective assessment loses its relevance once substantive assessment is made. We note that in assessee`s case under consideration the substantive additions were already made by the assessing officer in the hands of the partners, and on appeal by the assessee, the Id.CIT(A) has also confirmed the substantive addition in the hands of the partner, hence, protective addition needs to be deleted.

17. In view of the above factual position, we find that the revenue had initiated substantive assessment and additions have been made on substantive basis in the hands of partners, hence, there is no question of any protective assessment in the present case in the hands of the partnership - firm. As we have noted above that the Protective assessment loses its relevance once substantive assessment is made. As the assessing officer, made substantive addition in the hands of the partners, on appeal, by the assessee, the Id.CIT(A) has also confirmed the substantive addition in the hands of the partners, hence, revenue is fully protected by substantive



addition, therefore we delete the protective addition in the hands of the partnership -firm.

18. In the result, appeal filed by the assessee is allowed.

Order is pronounced in the open court on 20/01/2026.

Sd/-

(Dinesh Mohan Sinha)

न्यायिक सदस्य/ **Judicial Member**

Rajkot

Date: 20/01/2026.

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 आधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

Sd/-

(Dr. Arjun Lal Saini)

लेखा सदस्य/**Accountant Member**

By order,

Assistant Registrar/Sr.P.S/PS
ITAT, Rajkot