

आयकर अपीलीय अधिकरण न्याय पीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

BEFORE SHRI AMIT SHUKLA, JM &
SHRI ARUN KHODPIA, AM

I.T.A. No. 6377/Mum/2025
(Assessment Year: 2016-17)

Ramesh Deora, Flat No. 32, Krishna Kunj, 10 th Road, Nutan Laxmi Society, JVPD Scheme, Vile Parle (W), Mumbai - 400021 PAN: AIEPD3129P	Vs.	DCIT, Aayakar Bhavan, Mumbai-400020
Assessee -अपीलार्थी / Appellant	:	Revenue - प्रत्यर्थी / Respondent

Assessee by : Shri Suchek Anchaliya & Tushar
Nagori, AR

Revenue by : Shri Annavarani Kosuri, Sr. DR

Date of Hearing : 09.12.2025

Date of Pronouncement : 27.01.2026

ORDER

Per Arun Khodpia, AM:

This appeal is filed by the assessee challenging the order of Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [for short “Id. CIT(A)”] dated 19.08.2025 for the AY 2016-17, arises from the assessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the Act) dated 27.03.2022 by the Assessment Unit, Income Tax Department. The grounds of appeal raised by the assessee are as under:

“1. The notice issued us 148 of the Act dated 31-03-2021 was neither digitally nor physically signed and such signed notice was only served by the AO on 29-06-2021 which makes the notice issued us 148 of the Act invalid and void.

2. Ld. CIT A erred in law and on facts in confirming the addition made by AO of Rs. 72,50,000/- as short-term capital gain in respect of the immovable property sold by appellant and his wife being Flat No. 201, 2nd Floor, EARTH-12, Makarba, Vejalpur, Ahmedaba alleging that the said amount was received by appellant in cash i.e. on money in respect of the said sale of property transaction.

3. The aforesaid addition made by the AO and sustained by the Ld. CIT A is invalid and unsustainable in law as the only basis for making the said addition is an Unsigned, Unnotarized, Draft Memorandum of Undertaking -MOU-found from the laptop of Mr. Ravi Dave in course of the survey action carried out in his case u/s 133A of the I.T. Act on 13-06-2020 which does not have any evidentiary value especially in absence of any sufficient, independent evidence found during the course of such third party survey action in support of the entries contained therein.

4. Ld. AO erred in making the said addition and Ld. CIT A erred in sustaining the same without examining Mr. Ravi Dave on the contents of the said MOU and without allowing the appellant the opportunity to cross examine him in this regard. Thus, the orders of lower authorities are clearly in violation of principle of natural justice.”

2. Brief facts of the case: Assessee filed his return of income on 31.03.2017, declaring total income of Rs. 3,57,550/-, showing income from salary and other sources. A property was sold by the assessee during the year for a consideration of Rs. 2,90,00,000/-, but such transaction was not shown in the return filed. This led the revenue to reopen the case of assessee. Notice u/s 148 was issued, in response assessee furnished ROI declaring the taxable income at Rs. 3,90,600/- including income from capital gains. To examine the transaction of sale of property and taxable capital gain, assessee was asked to furnish copy of MOU, sale deed, purchase deed, bank statement, cost of development etc. Initially assessee failed to response but later compliance was made. Considering the

information and documents furnished on 12.03.2022, assessee was show caused vide notice dated 23.03.2022, proposing the addition detailed in the draft assessment order. The addition was proposed based on digital document detained during the survey u/s 133 of Act, in the case of Dave Group (M/s Parmanand Healthcare and Research) on 13-06-2020, wherein from the laptop of Shri Ravi Dave, soft copy of a MOU (reproduced in the assessment order) was found between the assessee and his wife (the vendor) and Dr. Pareshbhai Vamanrao Dave and Ravibhai Dave (Purchaser) stating therein the total consideration of Rs. 2,90,00,000/-, including part cash payment of Rs. 1,01,00,000/- and cheque payment of Rs. 5lac plus Rs. 25Lac. Further, soft copy of sale deed was also found in the digital data, reproduced in the assessment order. On an analysis of the MOU and Sale deed, ld. AO observed that the sale consideration shown by the assessee along with his wife is only 1,45,00,000/- as against the actual receipt of Rs. 2,90,00,000/-. Assessee on the other hand requested for copy of MOU and cross examination of the persons to whom the cash supposedly was paid. Ld. AO denied the request of assessee, stating that the copy of MOU is already scanned in the assessment order and cross examination cannot be provided as concerned persons was not done. It is inferred by the Ao that the veracity of the MOU is verifiable from the fact that the payments reflected in the sale deed are coincided with details of payment in MOU. It is then concluded that the assessee had concealed the transaction of sale of immovable property in original return and have furnished incorrect capital gain in return filed in response to notice u/s 148.

Finally an addition of Rs. 72,50,000/- was made to the income of assessee, taking half of the total consideration received jointly by assessee and his wife at Rs. 2.90 Crore.

3. Being aggrieved with the foresaid action of the Ld. AO, assessee preferred an appeal before the Ld. CIT(A), who decide the appeal against the assessee, rejecting the contentions raised by the assessee that the unsigned / unnotarized MOU cannot be riled upon as an enforceable evidence and the figures of MOU are not matching with that of the figures in sale deed, observing that cash component mentioned in the MOU cannot be negated. Also, non-furnishing of the certificate u/s 65B(4) of the Evidence Act would only be a technical issue, which would have obtained by the AO. It is also observed that the assessee, had delayed the proceedings before AO, by furnishing the requisite details after many reminders, thus wilfully dragged the matter till fag end of the statutory time barring date to escape the thorough verifications. In conclusion, Ld CIT(A), approved the findings of AO and confirm the addition.

4. The assessee, to challenge the aforesaid order and reasoning of the Ld CIT(A), has filed the present appeal before us.

5. At the outset, the Authorised representative of the assessee (Ld. AR) submitted that, the copy of document i.e., the soft copy of MOU used against the assessee, was not provided to him for rebuttal, also the said document was an

unsigned / unnotarized document, which the assessee was unaware, so cannot be a document enforceable in the eyes of law. Further, the cross examination of persons sought by the assessee, from where the alleged incriminating material was found was not permitted by the Ld. AO, as well as the Ld. CIT(A). Such act of the authorities was against the principle of natural justice. Also, the assessment of assessee's wife, also the co-owner and joint vendor in the subjected transaction of sale of immovable property, u/s 147 r.w.s. 143(3) was completed on 19.03.2022 on same facts with no addition *qua* the capital gain, so there could not be different stand of the revenue for same transaction in the case of two co-owners. In view of such facts and circumstances, it was the prayer that addition made by the Ld. AO for capital gain in the hands of assessee, does not hold good and liable to be deleted.

6. Per contra. Ld. DR representing the revenue, reiterated the facts from the orders of revenue authorities, supported the same and requested to uphold.

7. We have heard the rival contentions, perused the material on record and considered the relevant jurisprudence. Admittedly, in present case the assessee had made request to provide the copies of document used against him as well as cross examination of the persons concerned, having possession of the incriminating material. Such request was made by the assessee by his reply dated 12.03.2022, whereas the assessment was completed on 27.03.2022, so it cannot

be said that the assessee demanded something at the fag end of the time barring date. Even the ld. CIT(A), having powers coterminous with that of the powers of AO, so would have provided such opportunity to the assessee. In this case, nothing is coming out qua the independent enquiries, to establish the veracity of the incriminating material, by way of proceedings u/s 133(6) or any statement u/s 132(4) of the concerned persons, further the denial of cross examination grossly contravenes the scheme of act, more over the relevant documents are first time shown to the assessee by extracting in the assessment order itself. Such actions by the revenue authorities, vitiates the entire proceedings, violative to the principle of natural justice and failed to conclusively prove the alleged transaction of payment of cash received by the assessee. We, thus, are unable to subscribe to the view expressed by the Ld. CIT(A), based on Ld. AO's findings under conscious and reasonable estimate following the principle of preponderance of probabilities, but unsubstantiated by any conclusive evidence or admission by the parties or assessee. In back drop of such facts, circumstances and interpretations, as observed herein above, we find material flaws in the decision of ld. CIT(A) in confirming the addition made by the AO, also the addition made by Ld. AO without providing the material against the assessee and to deny the cross examination, goes against the settled legal principles, so would be liable to be struck down. The relevant ground of appeal of assessee there for stands allowed.

8. The other legal contention raised by the assessee, issue of notice u/s 148 without signature, but issuance of same later with signature, has become academic, as the substantive addition made in the present case is already directed to deleted by us.

9. In result the appeal of assessee is allowed, in terms of our aforesaid observations.

Order pronounced in the open court on 27-01-2026.

Sd/-
(AMIT SHUKLA)
Judicial Member

Mumbai, Dated : 27-01-2026.

**SK, Sr. PS*

Sd/-
(ARUN KHODPIA)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai