

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT**

**BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 428/SRT/2025
(Assessment Year: 2014-15)

Kavita Jain, B-1001, Western Shikarji, Pal, Adajan, Surat-395009 [PAN : AJXPM 7740 H]	Vs.	Income Tax Officer, Ward 1(3)(2), Surat
(Appellant)	..	(Respondent)
Appellant represented by :	Shri Shaunak K. Zaveri, CA	
Respondent represented by:	Shri Ajay Uke, Sr DR	
Date of Hearing	23.01.2026	
Date of Pronouncement	17.02.2026	

ORDER

PER DR. B.R.R. KUMAR, VICE-PRESIDENT:-

This appeal has been filed by the assessee against the order dated 18.02.2025 passed by the Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as the "Ld. CIT(A)" for short), under Section 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act" for short) for Assessment Year 2014-15.

2. The assessee has raised following grounds of appeal :-

"1(a) That on the facts and in the circumstances of the case, the Ld. the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), New Delhi, [here-in-after referred to as Ld. CIT(Appeals) was not justified and grossly erred in dismissing the appeal which is bad-in-law and against principal of natural justice equity, thereby confirming the action of the A.O. for the order passed u/s. 147 read with section 144B of the I.T. Act, 1961 which is incomplete and also bad on facts.

1(b) Without prejudice to above ground that on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly

- 2-

erred and indirectly confirming the action of the A.O. in by accepting erred in issuing statutory notice under the act by AO.

2(a) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred and indirectly confirming the action of the A.O. in by accepting the making addition on account of unexplained investment u/s. 69 of the Act totalling amounting to Rs. 48,72,642/- being alleged unexplained investment in property paid to M/s Amar Developers and taxed total income under the Act which is incorrect & amp; bad-in-law and needs to be deleted in the interest of natural justice and equity.

2(b) Without prejudice to above ground that on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred and indirectly confirming the action of the A.O. making addition without providing an opportunity of cross examination of M/s. Amar Developers.

2(c) Without prejudice to above ground that on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred and indirectly confirming the action of the A.O. making addition by treating third party statement/evidence in appellant income.

3. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred and indirectly confirming the action of the A.O. in initiated penalties proceeding u/s. 274 r.w.s. 271(1)(c) of the Act in respect of unexplained investment u/s. 69 of the Act.”

3. The brief facts of the case are that the assessee, an individual, filed her return of income on 25.09.2014 declaring total income of Rs. 4,99,230/- for A.Y. 2014-15. Subsequently, information was received from the office of DCIT (CC)-1, Surat that during search action under section 132 in the case of Western Group (M/s Amar Developers), certain seized material including diaries and loose papers reflected receipt of “on-money” in cash from various purchasers of flats in the Western Shikharji Project. It was alleged that the assessee had paid on-money

- 3-

of Rs. 48,72,642/- over and above the registered sale consideration of Rs. 23,07,547/- for Flat No. 1001, Tower B. Based on the said information, proceedings under section 147 were initiated and assessment was completed under section 147 read with section 144B, making addition of Rs. 48,72,642/- under section 69 of the Act as unexplained investment.

4. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Ld. CIT(A), who confirmed the addition.

5. Aggrieved, the assessee is now in appeal before the Tribunal.

6. Before us, the Ld. AR contended that in view of CBDT Instruction No. 01/2022 dated 11.05.2022 issued pursuant to the judgment of the Hon'ble Supreme Court in Union of India vs. Ashish Agarwal (2022 SCC Online SC 543), the case for A.Y. 2014-15 could not have been reopened since the alleged escaped income was below Rs. 50 lakhs.

7. We have heard the rival submissions and perused the material available on record. It is pertinent to note that the CBDT Instruction No. 01/2022 clarified that for A.Y. 2013-14, A.Y. 2014-15 and A.Y. 2015-16, fresh notice under section 148 can be issued only if the case falls under clause (b) of section 149(1), i.e., where the escaped income represented in the form of asset amounts to Rs. 50 lakhs or more. Further, para 7.1 of the said Instruction categorically provides that in cases where the income escaping assessment is less than Rs. 50 lakhs for A.Y. 2013-14, 2014-15 and 2015-16, notice under section 148 cannot be issued. For the sake ready reference, the relevant part of the CBDT Instruction No. 01/2022 is reproduced hereunder :-

“.....

7.0 Cases where the Assessing Officer is required to provide the information and material relied upon within 30 days:

7.1 Hon'ble Supreme Court has directed that information and material is required to be provided in all cases within 30 days. However, it has also been noticed that notices cannot issued in a case for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Hence, in order to reduce the compliance burden of assesseees, it is clarified that information and material may not be provided in a case for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Separate instruction shall be issued regarding procedure for disposing these cases."

8. In the present case, the alleged escaped income is Rs. 48,72,642/-, which is admittedly less than Rs. 50 lakhs. The Assessing Officer was aware, even before the issuance of notice u/s 148, that the tax on the alleged on-money paid of Rs.48,72,642/- would not be more than Rs.50 lakhs. Hence, keeping in view the para No. 7.1 of the Instruction No. 01/2022 of CBDT, the case of the assessee cannot be reopened. Since the case of the assessee cannot be re-opened, any proceedings subsequent to the re-opening contrary to the Instruction of the CBDT are treated as null and void.

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

The order is pronounced in the open Court on 17.02.2026

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Ahmedabad; Dated 17/02/2026

btk

Sd/-

**(DR. B.R.R. KUMAR)
VICE-PRESIDENT**

- 5-

आदेश की प्रतिलिपि □ ग्रेषित/**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 ,/DR,ITAT, Surat,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ **BY ORDER,**

TRUE COPY

सहायक पंजीकार (**Asstt. Registrar**)
आयकर अपीलीय अधिकरण
ITAT, Surat