

**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. Nos. 236 & 237/SRT/2023
(Assessment Year: 2014-15)

Raghubhai Virabhai Bharwad, Dasturwad, Tarota Bazar, Navsari, Gujarat-396445 [PAN : AIBPB 7282 Q]	Vs.	Income Tax Officer, Ward-4, Navsari
(Appellant)	..	(Respondent)
Appellant represented by :	Shri Rasesh Shah, CA	
Respondent represented by:	Shri Ashish Kumar, Sr DR	
Date of Hearing	22.01.2026	
Date of Pronouncement	18.02.2026	

ORDER

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

These two appeals are filed by the assessee against two separate orders, both dated 16.02.2023, passed by the Ld. Commissioner of Income Tax (Appeals)-11, Ahmedabad [hereinafter referred to as "Ld. CIT(A)"] arising out of assessment framed under section 143(3) and penalty proceedings under section 271B of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for Assessment Year 2014-15. Since common facts are involved, both appeals are disposed of by this consolidated order. We first adjudicate ITA No. 236/SRT/2023.

2. The assessee has raised following grounds in ITA No. 236/Srt/2023.

"1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making addition of Rs. 1,04,43,966/- on account of alleged trading profit from sale of agricultural land.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making addition of Rs. 2,10,000/- on account of unexplained investment u/s. 69 of the Act.

3. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in

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making addition of Rs. 25,000/- on account of unexplained investment u/s. 69 of the Act."

3. The brief facts of the case are that the assessee is an individual engaged in the business of running a dairy and also carrying on estate brokerage activities. The return of income for Assessment Year 2014-15 was filed on 25.09.2014 declaring total income of Rs. 8,36,210/-. A survey action under section 133A of the Act was carried out on 21.10.2013 at the business premises of the assessee. During the course of survey, certain loose papers, diaries and Satakhats relating to agricultural lands were found and impounded. On the basis of the documents found during survey and subsequent enquiries, the Assessing Officer formed an opinion that the assessee had entered into transactions for purchase and sale of agricultural land bearing Block No. 53 situated at Village Kaolsana, Taluka Jalalpore, District Navsari and had earned profit therefrom. The assessment was completed by making addition on account of alleged trading profit and further additions were made u/s 69 of the Act on the basis of certain notings found in the impounded diary.

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

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

Ground No. 1: Addition of Rs. 1,04,43,966/- on account of trading profit from sale of agricultural land

6. The Assessing Officer observed that the assessee had entered into a Satakhath dated 30.03.2012 with the original owner for purchase of agricultural land for a consideration of Rs. 3,04,05,260/- and had paid an advance of Rs. 1,71,00,000/-. Subsequently, the assessee entered into another Satakhath dated 02.08.2013 agreeing to sell the same land to Shri Dipakbhai Mangubhai Ahir for a consideration of Rs. 4,20,09,666/- and received an advance of Rs. 1,71,00,000/-.

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The Assessing Officer treated the difference between the two agreed considerations amounting to Rs. 1,16,04,406/- as trading profit and after allowing 10% expenses made addition of Rs. 1,04,43,966/-.

6.1 The Ld. AR submitted that the entire addition is based on presumption that the transaction was completed and profit was earned. It was argued that the assessee never acquired ownership of the land, no registered sale deed was executed in his favour and possession of the land always remained with the original owner. The assessee was not a farmer and was legally barred from purchasing agricultural land under the Gujarat Tenancy Law and therefore the agreement never concluded into a legally enforceable transfer. It was further submitted that since the proposed purchaser did not pay the balance consideration, the earlier agreement with the original owner was cancelled and the advance paid was refunded. Similarly, the advance received from the proposed purchaser was returned. The ld. AR referred to the receipt dated 20.09.2013 evidencing cancellation and repayment and pointed out that during cross-examination the original owner confirmed receipt of money though he did not remember the exact dates. The Ld. AR argued that no material indicating receipt or retention of profit was found during survey and that the addition represents only notional income. The Ld. AR also argued that in his statement the assessee had stated that he was acting as a commission agent and at best only commission income could be examined.

6.2 The Ld. DR, on the other hand, relied upon the findings of the Assessing Officer and the Ld. CIT(A) and submitted that the substantial difference between the two agreements clearly indicated intention of trading and earning profit and that the cancellation documents were not found during survey.

6.3 We have considered the rival submissions and perused the material available on record.

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The Assessing Officer taxed the amount of Rs. 1,04,43,966/- on consideration of Rs. 4,20,09,666/- allegedly received by the assessee either from Dipakbhai and/or Santoshkumar Balvantsingh and/or Mahavirprasad Sumerchand and/or Laljibhai Mangubhai. The revenue has not taxed consideration paid by them in their cases. The onus of proof lies squarely on the Revenue to establish that the assessee actually purchased the property, actually sold it, received consideration, and retained profit. None of these elements have been proved. The assessment has been framed purely on suspicion, without any supporting evidence. In the absence of concrete evidence, the Revenue has failed to discharge its burden, and the assessment cannot be sustained.

The appeal of the assessee on this ground is allowed.

Ground No. 2: Addition of Rs. 2,10,000/- u/s 69 of the Act.

7. This ground relates to addition made on the basis of figures noted on page No. 4 of diary BF-2 impounded and inventorised during survey. The page contained certain figures aggregating to Rs. 2,30,000/-, out of which Rs. 20,000/- was deducted towards labour charges, without any date or detailed narration. The Assessing Officer treated the net amount of Rs. 2,10,000/- as unexplained investment u/s 69 of the Act.

7.1 The Ld. AR submitted that the said impounded document is a dumb document containing rough jottings without context and does not indicate any investment. The Ld. AR submitted that the entries pertained to repayment made to Shri Dineshbhai Manibhai Desai upon cancellation of a land transaction and that ledger accounts, cash book and financial statements reflecting such repayments were furnished before the Assessing Officer. The Ld. AR contended that the addition was made without rejecting the explanation or carrying out any independent inquiry.

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7.2 We have considered the rival submissions and perused the material available on record.

The Assessing Officer wrongly made the addition in as much as the assessee was neither the owner of the land nor the purchaser of the land but he was acting as a dealer of the land for carrying out the sale deal to earn dalali commission income. The payment was made by the prospective buyer Dinesh Desai who was subsequently repaid to him on cancellation of the deal and therefore, there was no question of making any investment by the assessee to the tune of Rs. 2,10,000/- and hence, the action of the Assessing Officer in treating the said amount as unexplained investment u/s. 69 of the Act is devoid of merits, hence deleted.

The appeal of the assessee on this ground is accordingly allowed.

Ground No. 3: Addition of Rs. 25,000/- u/s 69 of the Act.

8. This ground pertains to addition made on the basis of an entry of Rs. 25,000/- found on page 5 of the diary with the word "Parat" in Gujarati, which means 'repaid'. The assessee explained that it represented one of the instalments repaid to Shri Dineshbhai Manibhai Desai on cancellation of deal and furnished supporting ledger account.

8.1 We find that the entry itself indicates repayment and not investment. No material has been brought on record to show that the amount represents unexplained investment of the assessee. Therefore, the addition of Rs. 25,000/- is deleted.

The appeal of the assessee on this ground is thus allowed.

In the result, the appeal bearing ITA No. 236/SRT/2023 is allowed.

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ITA No. 237/SRT/2023 – Penalty u/s 271B of the Act.

9. The Assessing Officer, taking into consideration the addition, determined the turnover of the assessee at Rs.4.20 crores and held that by the virtue of turnover being Rs.4.20 crores, provisions of statutory audit u/s 44AB are attracted. Since a finding has been given as to how the amount of Rs.4.20 crores cannot be considered as turnover, the penalty levied u/s 271B of the Act is hereby directed to be obliterated.

10. In the combined result, both appeals of the assessee are allowed.

The order is pronounced in the open Court on 18.02.2026

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Sd/-

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

Ahmedabad ; Dated 18/02/2026

btk

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