

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "ए", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

श्री संजय गर्ग, न्यायिक सदस्य एवं
अन्नपूर्णा गुप्ता, लेखा सदस्य के समक्ष।

Before Shri Sanjay Garg, Judicial Member And
Annapurna Gupta, Accountant Member

आयकर अपील सं./ITA No.2342/Ahd/2025
निर्धारण वर्ष /Assessment Year : 2023-24

Kailas Kalyan Creators Private Limited 5, Prerna Kutir Bungalows Nr. Sarthi Hotel Vastrapur, Bodakdev Ahmedabad - 380 054	<u>बनाम/</u> <u>v/s.</u>	The ITO Ward-2(1)(1) Ahmedabad - 380 051
स्थायी लेखा सं./PAN: AAACK 9110 C		

(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :		Shri Chetan Agarwal, A.R.
Revenue by :		Shri Alpesh Parmar, CIT-DR

सुनवाई की तारीख/Date of Hearing : 24/02/2026
घोषणा की तारीख /Date of Pronouncement: 09/04/2026

आदेश/ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'CIT(A)'] dated 28/11/2025 passed u/s.250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the Assessment Year (AY) 2023-24.

2. The assessee, in this appeal, has taken the following grounds of appeal:

“1. The Ld. CIT(A) has erred in law as well as on fact by upholding disallowance of cost of improvement amounting to Rs. 7,65,95,000/- made by Ld. AC along with indexation thereon claimed while computing long term capital gain u/s 48 r.w.s. 55 of the Act.

2. The Ld. CIT(A) has erred in law as well as on facts by upholding disallowance of current year business loss of Rs. 2,57,516/- made by Ld. AO without any basis.

3. The Ld. CIT(A) has erred in law as well as on facts by not properly appreciating and considering submissions, evidences and supporting documents placed on record during the course of the appellate proceeding

4. The Ld. CIT(A) has erred in law as well as on facts by declining to take cognizance of additional evidences produced and not considering evidences for adjudication.”

3. The brief facts of the case are that assessee is engaged in the business of land development as well as buying and selling of land and building. The assessee filed its return of income for the year under consideration, i.e. 2023-24 on 30/10/2023. The case of the assessee was taken up for scrutiny assessment for the reason, “Low Long Term Capital Gain and high improvement cost”.

3.1. During the assessment proceedings, the Assessing Officer (AO) observed that the assessee had sold a land of property for consideration of Rs.12,79,25,000/- during the year under consideration, upon which the assessee had offered Long Term Capital Gain (LTCG) of Rs.2,91,89,534/-. The AO further noticed that the assessee while arriving at the LTCG had claimed improvement a cost of Rs.7,65,95,000/- claimed to have been expended/paid towards removing the encroachers for getting the land vacated. The AO observed that the assessee had not submitted complete details of the persons, such as, their names, PANs, nature of payments either cash or bank, etc.

3.2. On being asked to explain in this respect, the assessee submitted that the land in question was encroached upon by various people who had constructed their residential houses thereupon. That the assessee had approached Ahmedabad Municipal Corporation (AMC) for vacation of the land from the aforesaid people and thereafter a long protracted litigation ensued between the said encroachers and the AMC. The issue was also politicised also. When the assessee could not get the land vacated through legal course, the assessee had to make a deal with the said encroachers and paid compensation to each of them. The assessee furnished the details of all the persons to the AO and claimed that a total compensation of Rs.7,65,95,000/- was paid to the encroachers to get the clear and vacant possession of the land, which was further sold by the assessee to Naroda to Himalaya Sunmall LLP and, accordingly, offered the LTCGs earned for tax. The AO, however, observed that the details furnished by the assessee of the persons and corresponding evidences of the payments were not complete. He observed that the assessee had claimed total improvement expenditure of Rs.7,65,95,000/- including the amount of Rs.4,99,80,686/- paid during the year, however, the assessee had not furnished the complete details of all the expenditures incurred, bills & vouchers and names & addresses of the payees, etc. He, therefore, disallowed the entire improvement costs of Rs.7,65,95,000/- (total indexed cost of Rs.8,58,82,367/- and assessed the LTCGs at Rs.11,50,71,901/-.

4. Being aggrieved by the said order of the AO, the assessee preferred the appeal before the Ld. CIT(A).

5. Before the Ld. CIT(A), the assessee submitted that the assessee was pursuing to get the land vacated by removing the illegal encroachments since 2003 till the date of sale and for that, the assessee approached many authorities including AMC, Chief Minister's Officer, Gujarat, Additional Chief Secretary Urban development, Police and Judiciary, however, remained unsuccessful in getting the land vacated and finally the assessee decided to pay compensation to the illegal encroachers and, accordingly, settled the issue by making payment. The assessee furnished notarized agreements with 47 such encroachers to whom the total payment of Rs.7,65,95,000/- was made out of which Rs.3,65,25,000/- was made in the year 2016 and the remaining amount of Rs.4,00,00,000/- was paid in the year 2023. The said expenditure was claimed as cost of improvement in the return of income. The assessee also requested the Ld. CIT(A) to get the aforesaid facts verified by calling remand report from the Ld. AO. The Ld. CIT(A), however, observed that it was not clear as to whether the aforesaid evidences furnished by the assessee were adduced before the AO or not. He, therefore, declined to recognize the evidences furnished by the assessee. He further observed that the AO had noted that the assessee had not furnished complete details of expenditure incurred by it including bills/vouchers and names & addresses of the payees, etc. He, however, observed that **"Whereas appellant's assertion regarding 192 dwelling structures on the land has not specifically been doubted, the AO has expressed his clear dissatisfaction on the quality and quantity of evidence as to the sums claimed to be paid as compensation to such parties"**. He, therefore, upheld the order of the AO on this issue and confirmed the addition, so made by the AO.

5.1. Apart from the above issue relating to disallowance of cost of improvement, the assessee had also agitated before the Ld. CIT(A) that the AO has wrongly disallowed the business loss of Rs.2,57,516/- without any basis whatsoever. The Ld. CIT(A), in this respect, observed that the AO in the opening paragraph of the assessment has observed that the assessee had claimed a total loss of Rs.9,60,795/- and the same has not been disturbed by the AO. Whereas, the assessee claimed before the Ld. CIT(A) that the total loss claimed by the assessee in the return of income was of Rs.12,18,311/- and not Rs.9,60,795/-. That the AO wrongly noted that the loss claimed was of Rs.9,60,795/-. However, the Ld. CIT(A) dismissed this ground also, observing that the assessee had done nothing to demonstrate the correctness of its claim of loss.

6. Being aggrieved by the said order of the Ld. CIT(A), the assessee has come in appeal before us.

7. We have heard the rival contentions and gone through the record. So far as the issue relating to disallowance of loss of Rs.2,57,516/- is concerned, we find that this issue neither was a subject matter of scrutiny assessment nor the loss claimed has been disputed by the AO. It seems to be a matter of only clerical error as the AO noted the loss claimed at Rs.9,60,795/-, whereas, the assessee has claimed that the total claimed loss was of Rs.12,18,311/-. The Ld. Counsel for the assessee has brought our attention to Page-49 of the paper-book, which is the copy of the computation of the total income of the assessee and has demonstrated that the net profit/loss as per the Profit & Loss account of the assessee was Rs.(-)9,60,795/-. However, there was depreciation claimed as per the books of accounts of Rs.5,95,870/- which was

added back by the assessee and the depreciation as per the Income Tax Act/Income Tax Rules was claimed at Rs.8,53,386/- and, therefore, the total business loss of the assessee was of Rs.12,18,311/-. The Ld.AR for the assessee has, therefore, explained that the discrepancy was about the net business loss and the total business loss claimed by the assessee. It is, therefore, being a clerical mistake in taking the total business loss by the AO and there being no adverse findings against the assessee regarding validity of the said claim, the impugned addition of Rs.2,57,516/- on account of such discrepancy in the business loss claimed is, therefore, ordered to be deleted.

8. So far as the issue relating to cost of improvement claimed by the assessee along with indexation thereupon in computing the LTCGS is concerned, the Ld. AR of the assessee has relied upon various evidences furnished before us. He has also submitted following evidences were also duly furnished before the Ld. CIT(A):

<i>"Sr.No.</i>	<i>Particulars</i>	<i>Page No.of the paper-book</i>
1.	<i>Copy of sale deed dated 21.02.2023</i>	<i>08-118</i>
2.	<i>Copy of purchase deed dated 24.04.2007</i>	<i>119-141</i>
3.	<i>Copy of town planning officer highlighting encroached land</i>	<i>142</i>
4.	<i>Application made to Ahmedabad municipal corporation for removing illegal encroachment in said land dated 19.02.2003</i>	<i>143-144</i>
5.	<i>Application made to Ahmedabad municipal corporation for removing illegal encroachment in said land dated 10.11.2016</i>	<i>145</i>
6.	<i>Request made by Ahmedabad Municipal Corporation to Police Commissioner Ahmedabad to assist in removing illegal encroachment on said land letter 146dated 11.12.2020</i>	<i>146</i>
7.	<i>Ap147plication made to Chief Minister's Office, Gujarat with copy to Additional Chief Secretary, Urban Development to do needful in the matter since the land encroachments.</i>	<i>147</i>
8.	<i>Acknowledgement given by Ahmedabad municipal corporation with respect to above complaint to Chief Minister that they will do the needful by letter dated 18.06.2022.</i>	<i>148</i>

9.	<i>Acknowledgement given by Ahmedabad municipal Corporation with respect to above complain to Chief Minister that they will do the needful by letter dated 24.08.2022</i>	149
10.	<i>Photographs of encroachment and demolition exercise carried out</i>	150-190
11.	<i>Police complain against family members and directors of the company for suicide attempt made by encroachers</i>	191-192
12.	<i>Newspaper cuttings since the issue was politicize</i>	193-202
13.	<i>Order of Hon. High Court and Supreme Court in litigation made by encroachers.</i>	203-543"

8.1. Apart from that, the Ld. AR has also relied upon the various evidences regarding payment to encroachers and it has been certified that some of the said evidences in the shape of bills, vouchers, etc. were not furnished before the lower authorities. However, the basic evidences proving the fact that the land was encroached by the various encroachers, the various authorities were involved in the matter relating to removal of encroachments including Ahmedabad Municipal Corporation, Police authorities, printed and social media and even the issue was politicised. The assessee had also furnished the separate agreements entered with each of the encroacher and also the details of payments made to each of the payee along with their names & addresses, and other details were also furnished.

8.2. Considering the rival submissions, it is an admitted position on the file that the land in question was encroached upon by various encroachers and that even after a protracted litigation and other all sort of efforts made, the assessee could not get the land vacated and that the assessee had to pay compensation to the said encroachers. The short issue raised before us is only relating to the quantum of the amount of compensation paid and the veracity of evidences, such as, bills and vouchers, etc. furnished by the assessee to claim the aforesaid compensation. The Ld. Counsel for the assessee has

submitted that despite furnishing of voluminous evidences, the lower authorities have mechanically ignored the same stating only that the complete details were not furnished, without pointing out any discrepancy, etc. in the various evidences furnished by the assessee.

8.3. Considering that the short dispute was relating to examination of bills and vouchers, etc. furnished by the assessee, it was observed that referring the matter back to the file of the AO will result into a long protracted litigation again. It was requested by the Ld. Counsel for the assessee that this Bench should appreciate the evidences on the file, so that the assessee may be saved from facing both the physical and financial hardship from multiple stages of litigation. Therefore, the Ld. CIT-DR was requested to examine the evidences on the file and point out, if there was any serious discrepancy in the same. Accordingly, the case was adjourned for the next date of hearing.

8.4. The Ld. CIT-DR stated at bar that he has thoroughly examined the evidences furnished by the assessee including the separate agreements entered with each of the encroacher and also the details of payments made by the assessee to various encroachers, most of which were through banking channel. He has pointed out that though some payments were made in cash, however, those were preceded by immediate withdrawal from the bank account of the assessee. The Ld. DR has also not disputed the justification for the payments made. It was also an admitted fact on the file that the assessee had adopted all the legal courses available to him including approaching the various authorities both legal and administrative, such as, Ahmedabad Municipal Corporation, applications were made to the Chief Minister's office, Gujarat and to the Additional Chief Secretary Urban Development. There

was a protracted litigation between the AMC, Ahmedabad and the encroachers for getting the land vacated and there were police complaints also. There was newspaper-cuttings also and the encroachers had allegedly threatened and made complaints to the police against the family members and Directors of the assessee-company alleging that the suicide attempts were made by the encroachers for which the Directors of the assessee-company and their relatives were alleged to be responsible. The AO and the Ld. CIT(A) have also not disputed the encroachment on the land as the Ld. CIT(A) himself in his impugned order has mentioned that there were 192 dwelling structures of the encroachers on the said land. Despite the orders of the Hon'ble Gujarat High Court in a petition filed by the encroachers against the Municipal Corporation Ahmedabad against the removal of their possession/encroachments upon the land, the same being dismissed by the Hon'ble Gujarat High Court, the assessee could not remove the said encroachers from the land. The bills and vouchers and the entire evidences having been thoroughly examined by the Ld. CIT-DR and there being no dispute about the factum of compensation paid by the assessee to the encroachers, we, therefore, do not find any justification on the part of the lower authorities in not allowing the said claim of improvement on account of payments of compensation to the encroachers.

8.5. In view of our above observations, this issue is also decided in favour of the assessee, the impugned order of the Ld. CIT(A) is set aside, and the impugned addition made/confirmed by the lower authorities on this issue is also ordered to be deleted.

9. In view of the discussion made above, the appeal of the assessee stands allowed.

Order pronounced in the Open Court on 09/04/2026.

**Sd/-
(Annapurna Gupta)
Accountant Member**

**Sd/-
(Sanjay Garg)
Judicial Member**

अहमदाबाद/Ahmedabad, दिनांक/Dated 09/04/2026

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/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 , अहमदाबाद/DR, ITAT, Ahmedabad.
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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