

**IN THE INCOME TAX APPELLATE TRIBUNAL,
SURAT BENCH, SURAT
BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No.1329/SRT/2024
(Assessment Year: 2017-18)

The Assistant Commissioner of Income Tax, Circle-1, Vapi.	Vs.	Rajeshbhai Maganbhai Ahir D-16,17,18, Panchvati Society, Behind Intercity Township, PunaKumbhadiyaRoad, Kumbhariya B.O, Surat-395010 [PAN : AGHPA6776G]
(Appellant)	..	(Respondent)

Appellant by :	Shri Ajay Uke, Sr.DR
Respondent by:	Shri Hardik Vora, AR
Date of Hearing	22.01.2026
Date of Pronouncement	15.04.2026

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:-

The captioned appeal has been filed by the Revenue against the order passed the Ld. Additional Commissioner of Income Tax, Central Circle-1, Vapi (hereinafter referred to as "ACIT") vide order dated 30.10.2024 relevant to Assessment Year 2017-18.

2. The Revenue has raised the following grounds of appeal:

"1 On the facts and in the circumstances of the case and in law the Ld CIT(A) has erred in deleting the addition of Rs 10,39,500/ made by the AO u/s 69A of the IT Act in contravention to the provision of section 2920 of the IT Act 1961 and without appreciating the facts that the addition had been made on the basis of incriminating details/documents recovered during the survey proceedings"

2 On the facts and in the circumstances of the case and in law the Ld CIT(A) has erred in deleting the addition of Rs.1,68.09,490/ made by the AO u/s 69A of the IT Act in contravention to the provision of section 2920 of the IT Act 1961 and without appreciating the facts that the addition had been made on the basis of incriminating details/documents recovered during the survey proceedings"

3 On the facts and in the circumstances of the case and in law the Ld CIT(A) has erred in deleting the addition of Rs.49,59,944/ made by the AO u/s 69B of the I.T Act in contravention to the provision of section 2920 of the IT Act 1961 and without appreciating the facts that the addition had been made on the basis of incriminating details/documents recovered during the survey proceedings.

4 On the facts and circumstances of the case and in law, the Ld CIT(A) erred in deleting the addition made by the Assessing Officer ignoring the principles of "Human Probability Test i.e. preponderance of probabilities which is applicable for Income Tax proceedings"

5. The appellant craves to add, amend, alter, substitute, modify the above ground of appeal, raise any new ground of appeal, if necessary, either before or during the course of the hearing of the appeal on the basis of submissions to be made."

3. The assessee is an individual and a partner in various firms, namely M/s. Lotus Infra, M/s. M. Poonam Developers, M/s. M. Poonam Construction and M/s. M. M. Enterprises. The assessee filed the return of income on 31.03.2018, declaring total income of Rs.14,87,400/-. A survey under section 133A of the Income Tax Act, 1961 was conducted on 21.02.2018 at the business premises of M/s. M. Poonam Developers, M/s. Lotus Infra and M/s. M. Poonam Construction. During the course

of the survey proceedings, certain documents were found and impounded which were alleged to contain details relating to the assessee. Based on these documents and after obtaining necessary approval from the competent authority, the Assessing Officer issued a notice under section 148 dated 26.03.2021. In response to the said notice, the assessee filed the return of income on 24.04.2021, declaring the same income as originally returned. Thereafter, the assessment was completed under section 143(3) read with section 147 of the Act on 19.03.2022, determining the total income at Rs.2,42,96,330/-. While completing the assessment, the Assessing Officer made additions of Rs.10,39,500/- under section 69A on account of alleged on-money payment, Rs.1,68,09,490/- under section 69A on account of unexplained money, and **Rs.49,59,944/- under section 69B** on account of investment not recorded in the books of account.

4. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Ld.CIT(A), who allowed the ground of appeal of the assessee.

5. During the course of appellate proceedings, the Ld. Counsel for the assessee submitted that the reassessment proceedings initiated under section 148 of the Act are invalid. It was contended that the reassessment was initiated merely on the basis that the name of the assessee appeared on certain loose papers found during the survey conducted in the case of M. Poonam Group, without any independent verification by the Assessing Officer. The assessee argued that **mere suspicion cannot constitute "reason to believe"** for reopening an

assessment. It was further submitted that the Assessing Officer recorded **incorrect facts while forming the reasons for reopening** the assessment. According to the Assessing Officer, the assessee had purchased **Flat No. E2/203 from M/s. Lotus Infra** and had allegedly paid **on-money of Rs.10,39,500/-**. However, the assessee submitted that **no sale deed was executed during the relevant year** and that the assessee had only made **advance payments through proper banking channels**, with the **first installment being paid on 04.04.2017**. Therefore, it was argued that the reasons recorded for reopening were based on **incorrect facts and assumptions**, and consequently the reassessment proceedings initiated on such grounds are liable to be **quashed**.

6. The **Ld. Departmental Representative (DR)** submitted that the **Ld. CIT(A)** erred in deleting the additions made by the Assessing Officer. It was contended that the Ld. CIT(A) wrongly deleted the addition of **Rs.10,39,500/-** made by the Assessing Officer under **section 69A of the Income Tax Act, 1961**, in contravention of the provisions of **section 292C of the Act**, without appreciating the fact that the addition was based on **incriminating details/documents recovered during the course of survey proceedings**. The Ld. DR further submitted that the Ld. CIT(A) also erred in deleting the addition of **Rs.1,68,09,490/-** made under **section 69A of the Act**, ignoring the evidentiary value of the incriminating documents found during the survey proceedings. Similarly, it was argued that the Ld. CIT(A) was not justified in deleting the addition of **Rs.49,59,944/-** made by the Assessing Officer under **section 69B of the Act**, which was also based

on incriminating material recovered during the survey. The Ld. DR further contended that the Ld. CIT(A) deleted the additions without properly considering the **principle of “human probability test” or “preponderance of probabilities”**, which is applicable in income tax proceedings.

7. The Ld.AR relied on the order of the Ld.CIT(A)

8. We have heard both the parties and perused the relevant material available on record. In the present case, a survey under section 133A of the Income Tax Act, 1961 was conducted on **21.02.2018** in the case of M/s. M. Poonam Developers, M/s. Lotus Infrastructure and M/s.M Poonam Construction at three premises, during which various documents alleged to be incriminating were found and impounded, and marked as Annexure BS-1 (pages 61, 62, 63 and 67). On the basis of these documents, the Assessing Officer observed that the assessee had purchased Flat No. E2/203 from M/s. Lotus Infrastructure, wherein the documented value was **Rs.35,34,300/-** at the rate of **Rs.1,650 per sq. ft.** for an area of **2079 sq. ft.**, whereas the actual consideration was alleged to be **Rs.45,73,800/-** at the rate of **Rs.2,200 per sq. ft.**, thereby inferring that the assessee had paid **on-money of Rs.10,39,500/- in cash**, which remained unaccounted and was not disclosed in the return of income. However, on perusal of the impounded material contained in Annexure BS-1, it is observed that neither the amount of **Rs.35,34,300/-** nor **Rs.45,73,800/-** is reflected in the seized documents; only the rate of **Rs.2,200 per sq. ft.** appears therein. Further, the **flat number mentioned in the seized material does not**

match the flat allegedly purchased by the assessee. During the course of hearing, the Ld. DR relied upon the provisions of **section 292C of the Act**, which provide for presumption as to the correctness of documents found during the course of survey proceedings. However, such presumption can be drawn only when there exists a **clear nexus between the seized documents and the assessee.** In the present case, no such nexus or logical connection has been established by the Assessing Officer, and even the basic details relied upon by the AO are not borne out from the seized material. Therefore, the presumption sought to be invoked by the AO is without any basis and cannot be sustained. In view of the above facts and circumstances, we find that the **Ld. CIT(A) has rightly deleted the additions**, and accordingly, the **appeal filed by the Revenue is dismissed.**

9. In the result, the appeal filed by the Revenue is dismissed.

The order is pronounced in the open Court on 15.04.2026.

Sd/-
(DR. B.R.R. KUMAR)
VICE-PRESIDENT

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

(True Copy)
Ahmedabad; Dated 15.04.2026
MV

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, Surat
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Surat