

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “D” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.288/Ahd/2021
Assessment Year: 2014-15**

Shri Sunny Tarunkumar Doshi, 12, Shivani Apartment, Amarnagar Road, Jetpur – 360 370 Gujarat [PAN – AORPD 3837 M] (Appellant)	Vs.	The Income Tax Officer, Ward-1(1)(1), Ahmedabad. (Respondent)
Assessee by	Shri Mohit Balani, AR	
Revenue by	Shri Ankit Jain, Sr. DR	
Date of Hearing	24.01.2025	
Date of Pronouncement	14.02.2025	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the Assessee against order dated 28.10.2021, passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2014-15.

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

- “1. *Learned CIT(A) has erred in law and on the facts of the case in confirming the action of learned AO in assuming the jurisdiction u/s.147 of the Act.*
2. *Learned CIT(A) has erred in law and on facts of the case in confirming the action of learned AO in making an addition of Rs.69,49,250/- u/s.56(2)(vii)(b) of the Act.*
3. *Learned CIT(A) has erred in law and on the facts of the case in confirming the action of AO in charging interest u/s.234A/B/C/D.*
4. *The Learned CIT(A) has erred in law and on the facts of the case in confirming the action of AO in initiating penalty u/s.271(1)(c) of the Act which is wholly unsustainable in law and on facts of the case.”*

2.1 The assessee has also raised the following additional ground:

"The appellant craves leave to raise this additional ground of appeal before Your Honors. The appellant, through oversight, could not raise in the original appeal memo, the following additional ground of appeal and therefore the appellant now craves leave to raise these additional grounds of appeal before Your Honor. This is a legal ground and therefore as per the decision of Hon'ble Supreme Court in the case of National Thermal Power (229 ITR 383), it can be raised before Your Honor:

"1. The CIT(A) has erred in law and on facts of the case in confirming the action of learned AO in making an addition of Rs.69,49,250/- as income from undisclosed sources."

The appellant respectfully requests that this Honorable Tribunal admit these additional grounds of appeal, and in light of the above arguments, set aside the CIT(A)'s decision to reject the books of accounts. The appellant further requests a fair assessment based on the evidence provided without penalizing standard business practices such as counter sales."

3. The assessee is engaged in the business of commission work and trading of Chemical. The original return of income was filed on 18.09.2014 declaring total income at Rs.1,91,250/-. The case was selected for scrutiny and assessment was completed under Section 143(3) of the Income Tax Act, 1961 on 29.09.2016 at Rs.1,91,250/-. The Revenue found that the assessee had jointly purchased agricultural land with Shri Harekrishna Jeramdas Agrawal at Village Ukhrala, Bhavnagar vide two separate purchase deeds registered on 08.07.2013 and 25.09.2013 for a consideration of Rs.29,26,500/- and Rs.1,09,72,000/- respectively (total Rs.1,38,98,500/-) and the assessee's share works out to Rs.69,49,250/- (being 50% owner). This purchase of land was not shown by the assessee in his Balance Sheet for the year under consideration. The Assessing Officer observed that in view of the provisions of Section 69A of the Act, the value of investments which was not recorded in the books of account of the assessee and the same is required to be treated as income from the investments. Thus, the assessee purchased immovable property during the year under consideration without adequate consideration and therefore the provisions of Section 56(1)(vii) of the Act are applicable. After recording the reasons for reopening the case and also obtaining approval of the Higher Authorities, notice under Section 148 of the Act was issued on 31.03.2019. In response to notice under Section 148 of the

Act, the assessee filed e-return of income on 11.04.2019 declaring total income at Rs.1,91,252/-. Copy of the reasons recorded was provided to the assessee and the assessee furnished the reply dated 27.06.2019. The objections raised by the assessee was disposed of vide order dated 03.10.2019. The notice under Section 142(1) of the Act was also issued and the assessee furnished his reply dated 07.11.2019. The Assessing Officer made addition of Rs.69,49,250/- as assessee's income from undisclosed sources (50% of the stamp duty value of the properties).

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the assessee has not made any payment in respect of the said purchase of land and in fact the co-purchaser as well as the seller has affirmed non-payment. These evidences were produced before the proceedings under Section 143(1) of the Act and, therefore, the said issue is settled at the original assessment itself. The Ld. AR further submitted that as relates to applicability of Section 56(2)(vii) of the Act which has not come into picture in the original assessment as there was no dealing as such of payment related to the said purchase of land. The confirmation clearly set out that the assessee is not in possession with the said land. Thus, the reopening itself is not justifiable and hence the Ld. AR prayed that the assessment under Section 143(3) read with Section 147 of the Act is not justifiable. As on merit, the Ld. AR submitted that the basis of the addition was diverted/changed from the basic purchase deeds and if there is no adequate consideration of the deed whether it is registered or not does not have any sanctity per se. The Ld. AR relied upon the decision of Hon'ble High Court of Gujarat in the case of CIT vs. Mohamed Juned Dadani, 355 ITR 172. The Ld. AR, on the legal ground, has given the following comments which are as under :-

- *It is respectfully submitted that the assessment records under Section 143(3) of the Act, as placed on record by the Revenue, clearly indicate that the question of whether any amount was paid by the assessee for the purchase of the immovable property was duly examined by the Assessing Officer during the original assessment proceedings. No addition or disallowance was made in this regard. Consequently, the reopening of the*

assessment on the same issue amounts to a **mere change of opinion**, which is impermissible under the law. The Hon'ble Supreme Court in the landmark judgment of **CIT vs. Kelvinator of India Ltd. [2010] 320 ITR 561 (SC)** has held that once an assessment has been completed under Section 143(3), the same cannot be reopened within four years unless there is tangible material to establish escapement of income. The Court categorically ruled that reopening based on a mere change of opinion is not valid. As the present case falls within four years of the original assessment and no tangible material has been brought to justify the reopening, the action under Section 147 is liable to be quashed.

- The Assessing Officer (AO) initiated reassessment proceedings on the grounds of **"inadequate consideration" as well as S.69 of the Act** related to the purchase of immovable property.
- The final assessment order made an addition under **Section 56(2)(vii)(b)** on the grounds of **"without consideration"**, deviating from the original reasons for reopening. Moreover, when the Assessing Officer has himself found that the Appellant has not paid any consideration (no consideration), there arises no question of making an addition towards S.69 of the Act.
- Judicial principles mandate that reassessment proceedings must culminate in an addition based on the reasons recorded. Failure to do so invalidates the reassessment under Section 147. **CIT vs. Jet Airways (I) Ltd. [2011] 331 ITR 236 (Bom), Ranbaxy Laboratories Ltd. vs. CIT [2011] 336 ITR 136 (Del) and CIT vs. Mohmed Juned Dadani [2013] 355 ITR 172 (Guj).**
- The shift from "inadequate consideration" to "without consideration" shows that the AO did not base the addition on the recorded reasons, violating the legal framework of Section 147.
- Alternatively, and without prejudice to the above, the appellant most respectfully submits that a contract executed "without consideration" between not related parties is void ab initio as per the provisions of section 25 of the Indian Contract Act, 1872. The appellant thus submits that when the contract itself is not enforceable under the law, there cannot arise any liability of tax pursuant to the said contract. It is further most respectfully submitted that it is a well settled law that there arises no income under the head capital gain on a transaction which never materialised and it is further held by the Courts that at best the said transaction may result into a hypothetical income and as there is no real income involved in such transaction, there arises no income. Reliance for this proposition is placed upon **I-Process Services India Pvt. Ltd. vs. DCIT (ITAT- Delhi)**, placed at page No. 22-24 of the Compilation of judgments.
- In this connection, the appellant most respectfully submits that the addition has been made by the learned Assessing officer on the premises that the

appellant had purchased an immovable property amounting to Rs.1,07,72,000/- without consideration along with its co-owner and accordingly the share of the appellant amounting to Rs.69,49,250/- (50%) was added to the total income of the appellant under section 56(2)(vii)(b)(i) of the Act.

- *In this connection, the assessee most respectfully submits that the provisions of S.56(2)(vii)(b) of the Act are applicable only when the assessee receives any immovable property without consideration and thereafter the provisions apply so as to determine the deemed income.*
- *The appellant most respectfully submits that it is an undisputed fact that no consideration was paid to the seller in respect of the said property. **Please refer page number 7 of the assessment order.***
- *The appellant most respectfully submits that a contract executed “without consideration” between not related parties is void ab initio as per the provisions of Section 25 of the Indian Contract Act, 1872. The appellant thus submits that when the contract itself is not enforceable under the law, there cannot arise any liability of tax pursuant to the said contract. It is further most respectfully submitted that it is a well settled law that there arises no income under the head capital gain on a transaction which never materialised and it is further held by the Courts that at best the said transaction may result into a hypothetical income and as there is no real income involved in such transaction, there arises no income. Reliance for this proposition is placed upon I-Process Services India Pvt. Ltd. vs. DCIT (ITAT-Delhi), placed at page No.22-24 of the Compilation of judgments.*
- *Alternatively, and without prejudice to the above, at the cost of repetition the appellant most respectfully submits that the provisions of section 56(2)(vii) of the Act gets attracted only when an assessee “receives” an immovable property. The appellant most respectfully submits that the word receives in itself includes the element of transfer. Reliance for this proposition is placed upon the judgement of Hon’ble Gujarat High Court in the case of PCIT vs Jigar Jaswantlal Shah 460 ITR 628.*
- *It is further most respectfully submitted that when no consideration is involved in the said transaction, the appellant most respectfully submits that there is no transfer under the provisions of the Act. Reliance is placed upon the judgement of honourable ITAT - Jaipur in the case of ACIT vs. Jyaraajsingh in ITA No.91/Jp/2019 wherein the honourable Tribunal after following the honourable Supreme Court in the case of Balbir Singh Maini (Supra) held that where the deal of transfer of property not materialized, there was no transfer as per the provisions of Income Tax Act. The appellant thus submits that the appellant has not received any immovable*

property in question and thus the provisions of section 56(2)(vii) are not applicable and thus addition deserves to be deleted.

- *Alternatively and without prejudice to the above, the appellant has not received the possession of the said property and is not enjoying the fruits of ownership. Please refer additional evidences. The appellant thus most respectfully submits that “actual receipt” of the property is a Preliminary condition in order to invoke the provisions of section 56(2)(vii) of the Act. Reliance for this proposition is placed upon the judgement of Hon'ble Gujarat High Court in the case of PCIT vs Jigar Jaswantlal Shah, 460 ITR 628. In the facts and circumstances of the case is no possession has been transferred by the sellers to the appellant the provisions of Section 56(2)(vii) are not applicable and thus the addition deserves to be deleted.*
- *Alternatively and without prejudice to the above the appellant most respectfully submits that the property in question is an agricultural land situated beyond 8 km from the Bhavnagar district. The appellant most respectfully submits that the word “property” in the context of S.56(2) has been defined under the Act which restricts the scope to the extent of a “capital asset” under the provision of Income tax Act.*
- *The appellant most respectfully submits that as the property in question is an agricultural land situated beyond 8 km from the Bhavnagar District, the said immovable property cannot be categorised as capital asset and consequentially it cannot be considered as “property” within the meaning of Section 56(2)(vii) of the Act. The appellant thus submits that the provisions of section 56(2)(vii) are thus not applicable to the facts of the case and accordingly the addition deserves to be deleted.*
- *Alternatively and without prejudice to the above the valuation of the said property may kindly be referred to the DVO.*
- *In this connection, the Appellant at the outset submits that the Assessing Officer in the present case has admitted the fact that there was no consideration paid towards the purchase of the property which has been so confirmed by the sellers as well as co-owner. In such facts and circumstances of the case the addition deserves to be deleted.”*

5.1 The Ld. AR further submitted that as per the details given before the Assessing Officer and the chart submitted, it clearly set out that the same is not capital asset as there was no consideration given by the assessee and the land is also situated beyond the Municipal limit. The transaction itself is void though the assessee admits that the agreement is not yet cancelled but the process to cancel

the same has been started. In alternate, the Id. AR submitted that the reference to DVO should be made for the valuation if Section 56(2)(vii)(c) and the proviso clearly determines that the DVO's report should be taken into consideration.

6. The Ld. DR submitted that the reopening is justifiable as the assessee has not disclosed and indicated in the return of income related to the purchase of land and the registered deed of agreement for sale of two properties. The Ld. DR further submitted that the assessee at this juncture itself submits that the issue of Section 56(2)(vii) has to be examined. The Ld. DR further submitted that the judgement of Hon'ble Supreme Court in the case of CIT vs. Kelvinator of India Limited, 320 ITR 561, is applicable in assessee's case as tangible material found in assessee's case. The Ld. DR submitted that the Hon'ble Gujarat High Court's decision in case of Mohmed Juned Dadani (supra) is distinguishable as reopening is done under Section 80HHC of the case and the hence it cannot be placed at the same footing in the present case where the assessee has not cancelled the deed of purchase. On merit, the Id. DR submitted that the plea of the assessee that there was no transaction/payment is not justifiable when the assessee has paid the stamp duty and this requires examination as till date the assessee has not cancelled the deed of purchase.

7. We have heard both the parties and perused all the relevant material available on record. From the perusal of the records, it can clearly be set out that in the original assessment under Section 143(1) of the Act, the issue related to the deed of purchase of land was not looked into as the same is not reported in the assessee's income before the Revenue. Besides that, there is no change of opinion but all the aspects should have been taken into consideration by the Assessing Officer under proceedings related to Section 143(1) of the Act and, therefore, the Department has rightly reopened the assessee's case. The decisions relied by the Ld. AR in cases of CIT vs. Jet Airways (I) Ltd., Ranbaxy Laboratories Limited vs. CIT and CIT vs. Mohmed Juned Dadani will not be applicable in the present case as the Assessing Officer in present case has recorded valid reasons and made addition accordingly. The said ground of the assessee is thus dismissed.

7.1 As regards to merits of the case, the assessee is admitting that the cancellation has not been done but is under process, but no evidence has been filed by the assessee as regards cancellation of sale deed by the assessee. Though the assessee has produced confirmation that no payment has been made through co-purchaser but the same should have been taken from the seller as well and the stamp duty has not been refunded to either of the parties and the assessee failed to demonstrate before us that the agreement does not exist at this juncture. Thus, the Assessing Officer has rightly taken a view and it is not a change of opinion. On merit, it is further noticed that the assessee since not filed any evidence in respect of cancellation of sale deed nor filed any details of processing the cancellation of sale deed, the Assessing Officer and the CIT(A) rightly confirmed the addition.

8. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open Court on this 14 th February, 2025.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 14th day of February, 2025

PBN/*

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad