

आयकर अपीलीय अधिकरण, नागपुर पीठ, नागपुर
INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH, NAGPUR
BENCH: SMC

BEFORE HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

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| ITA 52/NAG/2026 निर्धारण वर्ष/Assmt. Year: 2009-10) Permanent Account Number: AAQPM2378D | | |
| AFZAL ABUBAKER MITHA FLAT NO - 802, A WING, EMPRESS ROYAL RESI, MAHATMA FULE BAZAR, NAGPUR, NAGPUR-440018, MAHARASHTRA | Vs. | ITO WARD 4(3) BSNL RTTC BUILDING, CIVIL LINE, NAGPUR NAGPUR-440001, MAHARASHTRA |
| (अपीलार्थी Appellant) | | (प्रत्यर्थी Respondent) |
| निर्धारिती द्वारा/Assessee represented by: | | Shri Naresh Jakhotia (through virtual) |
| राजस्व द्वारा/Revenue represented by: | | Shri Surjit Kumar Saha, Sr.DR (Virtual) |
| सुनवाई की तारीख / Date of conclusion of hearing: | | 18-Mar-2026 |
| घोषणा की तारीख / Date of pronouncement: | | 14-May-2026 |

आदेश / ORDER

PER MANISH BORAD, ACCOUNTANT MEMBER:

This appeal is filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeal) vide DIN: ITBA/APL/S/250/2025-26/1082844004(1) dated 21-Nov-2025 for the Assessment Year 2009-10 arising out of assessment order dated 20.12.2017 passed u/s 143(3) r.w.s 254 of the Act.

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

- 1) 1. On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming and learned AO erred in not appreciating the fact that the investment of Rs. 2953840/- is from explained source of investment only can not be taxed as unexplained investment
- 2) 2. On the facts and circumstances of the case and in law the learned Assessing Officer has erred in making and CIT (Appeal) has erred in confirming the additions in violation of the principle of natural justice

- 3) 3. On the facts and circumstances of the case and in law whether learned AO is right in observing that ITAT has not discussed the issue of addition of Rs. 2953840/- though the order categorically mentions this appeal by the assessee is allowed
- 4) 4. Appellant crave to add amend modify alter revise substitute delete any OR all grounds of appeal if deemed necessary at the time of hearing of the appeal

3. At the outset, ld. Counsel for the assessee submitted that the issue regarding addition for unexplained investment of Rs. 24,57,840/- deserves to be restored to the file of ld. JAO. Since the details filed by the assessee have not been examined. He further submitted that even before ld. CIT(A) assessee could not get fair opportunity to plead and ld. CIT(A) has decided *ex parte* confirming action of AO.

4. On the other hand, Ld.DR supported the order of ld. CIT(A).

5. I have heard rival contentions and perused the records placed before me. The assessee is an individual and declared income of Rs. 1,54,410/- in the return filed u/s 139 of the Act. Case selected for scrutiny u/s 143(3) of the Act and assessment concluded on 21.02.2011 assessing total income at Rs. 86,13,890/-. Thereafter, the assessee has challenged the additions before ld. CIT(A) and fail to succeed. Thereafter the assessee carried the matter before this Tribunal vide order dated 28.12.2016 vide ITA 187/Nag/2014, the appeal of the assessee has been allowed for statistical purpose and in the decision the Tribunal observes that the assessee furnished return of income in ITR-2, but he has also claimed that it is engaged in the business of purchase and sale of flat. This Tribunal also observed that in the earlier years Revenue Authorities have accepted that the assessee is engaged in the business of purchase and sale of flat and therefore cannot make an about-turn in not accepting the assessee having carried out the business of purchase and sale of flat of land merely because it has filed the return in ITR-2 which certainly is not applicable for the assessee engaged in this business. This Tribunal directed the AO to decide the issue afresh.

6. Now, considering the direction given by this Tribunal ld. AO carried out the assessment proceedings u/s 143(3) r.w.s 254 of the Act and concluded the same on 20.12.2017. During the year assessee carried out transaction of purchase and sale of three immovable properties. With regard to two properties which were sold for a consideration of Rs. 32,00,000 and Rs. 72,00,000/-. Ld. AO after duly examining the details accepted the assessee's claim and calculated business income at loss of Rs. 1,82,860/- and loss of Rs. 28,280/- from property No. 1 & 2 and there is no dispute to this extent. The property No. 3 admeasuring 2.60 Hr was sold on 17.03.2009 having market value of Rs. 77 lakhs for which assessee paid Rs. 25 laksh in cash to Smt Sugrabee Abdul Bashir and also incurred expenditure of Rs. 4,23,500/-. So far as sale consideration the AO has accepted

the same but only disputed source of huge investment of Rs. 29,53,840/-. Ld. AO observed in the assessment order that assessee could not explain the source during the course of assesemtn proceedings. It is stated by ld. Counsel for the assessee that alleged investment of Rs.29,53,840/- is duly recorded in the books of accounts and even the cash book, bank book and financial statements were filed before the first appellate authority. However since proper compliance was not made before ld. CIT(A) ld. Counsel for the assessee prayed for one more opportunity for remitting matter back to the file of ld. JAO for necessary verification and examination. I note that it is second round proceedings before this Tribunal, however considering the prayer by ld. Counsel for the assessee and also observing that proper compliance could not be made before both the lower authorities and also taking into consideration that larger interest of justice should prevail even if the proceedings are prolonged, I restore the issue raised in the grounds of appeal before me relating to alleged unexplained investment of Rs. 29,53,840/- to the file of Jurisdictional Assessing Officer for afresh adjudication and to be decided in accordance with law. Needless to mention that the ld. JAO shall afford proper opportunity to the assessee. Further, we direct the assessee to remain cooperative in furnishing the details called for by the ld. CIT(A). Finding of ld. CIT(A) is set aside and effective grounds of appeal raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 14.05.2026

Sd/-
MANISH BORAD
ACCOUNTANT MEMBER

Nagpur
Dated: 14.05.2026

Copy to:

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| 1 | AFZAL ABUBAKER MITHA, FLAT NO - 802, A WING, EMPRESS ROYAL RESI, MAHATMA FULE BAZAR, NAGPUR, NAGPUR-440018, MAHARASHTRA |
| 2 | ITO WARD 4(3), BSNL RTTC BUILDING, CIVIL LINE, NAGPUR, NAGPUR-440001, MAHARASHTRA |
| 3 | THE PCIT / CIT, |
| 4 | THE D.R., ITAT, NAGPUR BENCH |
| 5 | GUARD FILE |

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**ASSISTANT REGISTRAR /
SR. PRIVATE SECRETARY
I.T.A.T., NAGPUR**