आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।

In The Income Tax Appellate Tribunal, Rajkot Bench, Rajkot

Before Dr. Arjun Lal Saini, Accountant Member
And
Shri Sonjoy Sarma, Judicial Member

आयकर अपील सं./ITA No. 975/RJT/2025

[निर्धारण वर्ष/Assessment Year: 2008-09]

Shri Dineshbhai Dayabhai Hadiya Akshar, Block no.2, vallabhnagar, Depanjali- 2, Timbawadi, Junagadh- 362015, Gujarat	**Vs.**	Income Tax Officer, Ward-2, Junagadh-362015, Gujarat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **ACIPH3271Q**		
(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**

Appellant by	:	Shri Kalpesh Doshi, Ld. AR
Respondent by	:	Shri Ganesh Iyer, Ld. Sr. DR
Date of Hearing	:	12/08/2026
Date of Pronouncement	:	17/08/2026

:: ORDER ::

Per, Shri Sonjoy Sarma, JM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2008-09, is directed against the order under section 250 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] passed by the National Faceless Appeal Centre [hereinafter referred to as 'NFAC'], dated 17.10.2025, which in turn arises out of an order passed by assessing officer u/s. 143(3) r.w.s. 147 of the Act, dated 10.03.2016.

02. Brief fact of the case are that the assessee filed his return of income for A.Y. 2009-10 on 29.09.2009 declaring total income as NIL and agricultural income of Rs.1,73,155/-. The assessee was engaged in the business of retail sale of sanitary

ware. The case was selected for scrutiny under CASS for verification of the sale proceeds of immovable property .During the relevant year, the assessee sold an incomplete hotel building situated at Village Khicha, Taluka Dhari, constructed on 6,100 sq. mtrs. of land converted into non-agricultural land, for a consideration of Rs.60,00,000/-. The assessee claimed that construction of the hotel building had been undertaken through one Shri Chaturbhai Bhimjibhai Vegad pursuant to an agreement dated 25.09.2007 and that construction expenditure of Rs.58,34,000/- had been incurred. The Assessing Officer, however, found the alleged construction agreement and subsequent cash payments to be doubtful. On enquiry, it was found that Shri Chaturbhai Bhimjibhai Vegad had died on 03.11.2000 and, during his lifetime, was merely working as a small-scale mason and had neither the capacity nor the status of a civil contractor to undertake such substantial construction. The AO also noted that no payments were made to him during the period of construction and that the alleged payments were subsequently made in small cash amounts after receipt of the sale consideration. Accordingly, the AO treated the entire construction expenditure of Rs.58,34,000/- as unexplained expenditure under section 69C of the Income-tax Act and made the addition while completing the assessment under section 143(3) of the Act. In appeal, the CIT(A) held that the alleged agreement with Shri Chaturbhai was a colourable device and that the assessee himself had made the investment in construction during F.Y.2007-08. However, since the alleged source of payment was the sale consideration received during F.Y. 2008-09, therefore, the alleged the addition under section 69C of the Act for A.Y. 2009-10 was deleted. At the same time, the CIT(A) directed the AO to assess Rs.55,90,193/-, being the value of the construction as per the valuation report, as unexplained investment under section 69 of the Act for A.Y. 2008-09. Pursuant to the said direction, the assessment for A.Y. 2008-09 was reopened. After considering the material on record and the directions issued under section 144A of the Act, the AO concluded that the assessee himself had undertaken the construction of the unfinished hotel building during F.Y. 2007-08 and had made an unexplained investment of Rs.55,90,193/- therein. The AO accordingly treated the said amount as unexplained investment under section 69 of the Act for the AY 2008-09.

03. The assessee, being aggrieved by the aforesaid order, preferred an appeal before the Ld. CIT(A), where appeal of the assessee was dismissed.

04. Being dissatisfied with the order of the Ld. CIT(A), the assessee is now in appeal before this Tribunal.

05. At the time of hearing, the Ld. AR challenged the validity of the reopening of the assessment for A.Y. 2008-09, contending that the same was initiated solely pursuant to the direction issued by the Ld. CIT(A) in the appellate order for A.Y. 2009-10. It was submitted that the Ld. CIT(A) has no jurisdiction under the Act to direct the Assessing Officer to reopen an assessment under section 147 of the Act, particularly in respect of a different assessment year and an issue which was not the subject matter of the appeal before him. It was further submitted that the powers of the Ld. CIT(A) are confined to the subject matter of the assessment year under appeal and, though the CIT(A) may confirm, reduce, enhance or annul the assessment in accordance with law, he cannot travel beyond the assessment year and issue a direction for initiating reassessment proceedings for another year. The Ld. AR further submitted that the direction issued by the CIT(A) was also contrary to the principles of natural justice, as the assessee had not been afforded a proper opportunity to contest the proposed action of taxing the alleged unexplained investment in A.Y. 2008-09. The Ld. AR reliance was placed upon the judgment of the Hon'ble Supreme Court in CIT v. Murlidhar Bhaggu Babu, 52 ITR 335 (SC), wherein it was held that the appellate authority has no power to give a direction to

the Assessing Officer to reopen an assessment in respect of another assessment year. It was, therefore, submitted that the reassessment proceedings initiated pursuant to such an impermissible direction were without jurisdiction and the consequent assessment was liable to be quashed.

06. The Ld. DR, on the other hand, supported the orders of the lower authorities. However, he could not controvert the factual position that the reopening of the assessment for A.Y. 2008-09 was undertaken pursuant to the direction contained in the order of the Ld. CIT(A) passed in the appeal for A.Y. 2009-10.

07. We have heard the rival submissions and perused the material available on record. It is undisputed that, while disposing of the appeal for A.Y. 2009-10, the Ld. CIT(A) deleted the addition made under section 69C of the Act but directed the Assessing Officer to reopen the assessment for A.Y. 2008-09 and assess the alleged unexplained investment of Rs.55,90,193/- under section 69 of the Act. Pursuant to the said direction, the assessment for A.Y. 2008-09 was reopened and the impugned addition was made. In our considered view, such a direction could not have been issued by the Ld. CIT(A). The appellate jurisdiction under section 250 is confined to the subject matter of the assessment and the assessment year which is before the appellate authority. The CIT(A) cannot assume jurisdiction over an entirely different assessment year and direct the Assessing Officer to reopen the assessment under section 147 of the Act in respect of an issue which was not the subject matter of the appeal before him. The issue is squarely covered by the judgment of the Hon'ble Supreme Court in CIT v. Murlidhar Bhaggu Babu (52 ITR 335), wherein the Hon'ble Supreme Court held that the appellate authority has no power to give a direction to the Assessing Officer for reopening the assessment of another year. The power of the appellate authority is circumscribed by the statutory provisions and cannot be enlarged to confer jurisdiction which is otherwise not vested in it. We,

respectfully following the aforesaid binding judgment of the Hon'ble Supreme Court, we hold that the direction issued by the Ld. CIT(A) in the order for A.Y. 2009-10 to reopen the assessment for A.Y. 2008-09 was beyond his jurisdiction. Consequently, the reassessment proceedings initiated solely in pursuance of such direction cannot be sustained in law. Since the very assumption of jurisdiction for reopening the assessment is invalid, the consequential assessment order and the addition of Rs.55,90,193/- made therein under section 69 of the Act cannot survive. Accordingly, the reassessment order is held to be void ab initio and the Assessing Officer is directed to delete the addition of Rs.55,90,193/- as made in the case of assessee. The grounds raised by the assessee on this issue are accordingly allowed.

08. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 17th day of August, 2026.

Sd/-	**Sd/-**
[Dr. Arjun Lal Saini]	**[Shri Sonjoy Sarma]**
लेखा सदस्य/Accountant Member	**न्यायिक सदस्य/Judicial Member**

राजकोट/Rajkot
दिनांक/ Date: 17/08/2026

Copy of the order forwarded to :

1. The assessee
2. The Respondent
3. CIT
4. The CIT(A)
5. DR, ITAT, Rajkot
6. Guard File

By order

//True Copy//

Sr. Private Secretary
ITAT, Rajkot