

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

**BEFORE: SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. Nos. 240, 241, 242 & 243/Ahd/2022  
(निर्धारण वर्ष / Assessment Years : 2009-10, 2010-11, 2013-14 &  
2014-15)

<b>Simatajvar Yusufkhan Khan</b> Nawab Chambers, Machhipith Raopura, Vadodara – 390001, Gujarat	<b>बनाम/ Vs.</b>	<b>ITO</b> Ward-3(1)(5), Vadodara
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BWMPS8856F		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

अपीलार्थी ओर से /Appellant by :	Ms. Kaushani Shah, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Abhijit, Sr.DR

<b>Date of Hearing</b>	08/01/2026
<b>Date of Pronouncement</b>	13/01/2026

**(आदेश)/ORDER**

**PER ANNAPURNA GUPTA, AM:**

The present four appeals filed by the same assessee are against separate orders of the Ld. Commissioner of Income Tax (Appeals), (hereinafter referred to as “CIT(A)”), National Faceless Appeal Centre (hereinafter referred to as “NFAC”), Delhi all dated 22.04.2022 passed under Section 250 of the Income Tax Act, 1961

(hereinafter referred to as the “Act”) and relate to Assessment Years (A.Ys.) 2009-10, 2010-11, 2013-14 & 2014-15.

2. It was common ground that the issue involved in all the appeals was identical pertaining to treatment of amounts received by the assessee during all the impugned years, which the assessee stated were capital receipts while the Revenue held the same to be in the nature of casual receipts taxable under the head ‘income from other source’. The said receipts, it was common ground, arose to the assessee in pursuance to an alleged MOU entered into for sale of land. Since admittedly the issue in all the cases before us is the same, arising in the backdrop of identical set of facts, therefore, all the appeals were taken up together for hearing and are being disposed of vide this common and consolidated order.

3. The brief facts of the case are that the assessee was noted to have received amounts in the impugned years as a result of an MOU between the assessee (seller) and Mohammed Yusuf Abdul Majid Shaikh (purchaser) for a land bearing Survey Nos. 506, 507 and 508 at Village Abhwa, Tal. Choryasi, District Surat. The report of the Investigation Wing of the department revealed that as per the MOU the entire deal was of Rs.151 Crores. Accordingly, the AO formed reason to believe that income to the extent of amount received in the respective years had escaped assessment within the meaning of provisions of Section 147 of the Act and reopened the case of the assessee by issuing notice u/s.148 of the

Act. During assessment proceedings, the AO found that the assessee was not the owner of the land for which the purported MOU was entered into by the assessee and he noted that the assessee was unable to establish her ownership of the impugned land. He, therefore, rejected the assessee's contention of the amounts having been received as advance for sale of land and treated the same as casual income received by the assessee liable to tax as 'income from other sources'. The same was confirmed by the Ld. CIT(A).

4. Aggrieved by the same, the assessee has come up in appeal before us raising following grounds:

- “1. *The Ld. CIT(A), NFAC has erred in law and in facts in holding the findings of the Ld. A.O. that the amount of advance of Rs. 4,50,000/- received in consideration of agreeing to transfer the immovable property on the basis of MOU, as income chargeable to tax u/s. 56(2)(vii)(a) of the I.T. Act.*
2. *The CIT(A), NFAC has further erred in facts and in law in confirming that the amount of Rs. 4,50,000/- received represents the advance which is forfeited and is to be taxed as Income u/s 56(2)(vii)(a) of the I.T. Act.*
3. *The Ld. CIT(A), NFAC has erred in law and in facts in not appreciating the fact that there is no agreement which is registered, as the right of the appellant, is contingent and thus, in absence of any transfer of any property, the amount of advance received could not have been held to be income from other source particularly when the same has not accrued.*
4. *Your appellant craves liberty to add, alter, amend, substitute or withdraw any of the ground(s) of appeal hereinabove contended.”*

5. Thereafter, the assessee filed additional ground before us which challenged the validity of the assessment framed u/s.147 of the Act and also reiterated the grounds raised in on the merits of the case. The same are reproduced hereunder:

*“I. On Legality*

1. (a) *Your Appellant submits that the Notice w/s. 148 dated 30-3-2016 and Reasons Recorded for Reopening are also date 30-3-2016 is in violation of sec. 148(2) for which your Appellant refers and relies on binding judgement of Guj. HC in the case of Rajoo Engineers Lid vs. Dy.CIT (2008) 218 CTR page 53 and states that the Axsestment Order and Demand Notice raised by Assessing Officers are bad-in-Law & void and be cancelled.*  
  
*b) Your Appellant submits that the Reopening Proceeding is Bad-in-Law and void since there is a serious variation between the amount mentioned of Rs 1,10,000/- as escapement in Reasons Recorded for Reopening and actual addition of Rs.4,50,000/-which goes to the root of Assessment and against provision of Law and various judgement held in favour of Appellant for which relies is placed in binding judgement of Gujarat High Court in case of Dhruv Parulbhai Patel 367 ITR P.234 and it is submit that the Asst, order be cancelled.*
2. *Your Appellant submits that on facts of the case and us provision of Law the CIT(A) ought to have held that Reopening of Assessment u/s 147 of the Act by Notice u/s 148 dated 30-3-2016 for A.Y 2009-10 is Time Barred and therefore the proceedings and the Asst. Order is bad in Law and Void.*
3. (a) *It is also submitted by the Appellant that notice u/s.148 dated 30-3-2016 was not accompanied by copy of Reasons Recorded for Reopening and it supply on 16-6-2016 is not as per provision of Law and various judgements of judicial authorities and bad in Law and Void.*  
  
*b) Your Appellant further submits that the Reasons Recorded has no direct relation with facts of the case and no direct link as well as satisfaction of the AO to uphold the alleged escapement of any income and proceedings of*

*reopening are for making fishing inquiries and therefore the entire proceedings u/s/148 and order u/s. 147 is bad in Law and Void.*

4. (a) *The Reassessment is Bad-in-Law and void since the AD has not satisfied himself about escapement of Income & he has Reopened Assessment on borrowed Information of ITO (Ins) Baroda for making fishing inquire which is invalid.*  
(b) *Further the Assessing Officer has failed comply with provision of sac. 151 of the Act by not taking sanction to issue Notice u/s.148 of CIT making Reassessment is void.*

5. *Your Appellant refers and relies on the Judgements of Bombay High Court in the case of Sahebrao Deshmukh Co. Op. bank Ltd. vs. ACIT 149 taxmann.com 248 (Bombay) and AND Pr. CIT vs. TATA Sons 290 ITR page 394 states that Reasons for Reopening, the Assessment was required to be recorded prior to issue of Notice and as Rules be Delhi Tribunal in case of Deepak Bajaj vs. ITO Kolkata ITA No.721/Kal/2022 dated 21-4-2023 both Notice u/s. 148 and Reasons Recorded to be served together to Assessee which is not done and have Reopening in not valid.*

II. On Quantum:

(a) *Without prejudice to above, your Appellant submits that the AO has erred in taxing Rs.4,50,000/- as "casual income." In view of MOU dated 15-3-2009 which is a subject matter of litigation and right or ownership of Assessee not having been established the amount is sort of a Returnable Deposit and not Income under I.T. Act. between Nawab Family and Shri Mohmed Yusuf A. Shaikh no Income has accrued or arisen is taxable and it is only an Advance as per MOU not having nature or character of Income.*

(b) *Your Appellant submits that MOU is akin to Agreement to Sell and it is not a Sale Deed and no transaction of transfer of Immovable Property has taken place and your Appellant submits that Sec.56(2)(vii)(a) do not apply in view of various judgements of various authorities since MOU does not result into any transfer of Asset. Your Appellant refers and rely on judgement of Supreme Court in the case of CIT vs. Shoorji Vallabhdas & Co., 46 ITR page 144 and submits that account of Rs. 4,50,000/-be deleted.*

*It is therefore submitted that relief claimed above be allowed and the order of the Assessing Officer be modified accordingly. Your Appellant reserves right to add, alter, amend to withdraw any or all Grounds of Appeal.”*

6. These grounds are identically raised in all the appeals before us.

7. With respect to the grounds raised on the merits of the addition confirmed by the Ld. CIT(A), during the course of hearing before us, the finding of the Ld. CIT(A) holding that the assessee was found not to be the owner of the lands against which he had stated the amounts to have been received by the assessee as advance for the sale of the said lands was read out in open Court and are reproduced hereunder:

*“The submissions made by the appellant have been considered carefully and contextualized to the facts of appellant's case. It is seen from the Assessment records, the Assessee has received sums from Mr. Mohammed Yusuf Abdul Majid, not only in the current year but also in other years as given in the table below:-*

<b>A.Y.</b>	<b>Date of Assessment</b>	<b>Amount of receipt taxed</b>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>AY 2009-10</i>	<i>25.11.2016</i>	<i>4,50,000/-</i>
<i>AY 2010-11</i>	<i>06.10.2017</i>	<i>19,50,000/-</i>
<i>AY 2013-14</i>	<i>08.11.2017</i>	<i>58,50,000/-</i>
<i>AY 2014-15</i>	<i>06.10.2017</i>	<i>10,00,000/-</i>

*This is an undisputed fact that no asset is owned by the Assessee. Yet, she is receiving monies year after year. The said land in village Abhava had been sold to one Sh. Maganbhai Becharbhai Patel and others, in the year 1968, who pursued the litigation in relation to the said land before various revenue and judicial authorities, and even got decisions in their favour. These facts have been admitted, rather submitted by the appellant herself. At no stage it has been submitted that the appellant was party to any suit before the revenue*

*authorities, or claimed any such right therein. The appellant and other persons may have been legal heirs, but they themselves have stated to have parted with all such rights in Revenue Survey no. 505, 506 and 507 in the year 1968 itself, so now they cannot claim to have any rights what-so-ever to plead that the receipts are advance for sale of property which will be declared as capital gains on some future date.*

*5,3 Now, the Assessee is in receipt of substantial sums of monies year after year, which emanate from an agreement signed by the appellant and her other relatives with Mohammed Yusuf Abdul Majid. The said agreement has been perused. A bare reading of the said agreement, which is unregistered, clearly states that the appellant and her other family members are not in possession of land in above survey nos. and admittedly they had sold the same to Maganbhai Becharbhai Patel and others in the year 1968. When they do not have any rights what-so-ever, there is no question of relinquishment of those rights. Further, the agreement does not stipulate any kind of service having been provided by the appellant to any person. It is also clear that the parcel of land has changed hands several times, and the subsequent owners are in litigation with the government in respect of the mutations which are required to be done. On the top of the copy of this agreement furnished in the appellate proceedings, the caption from Verzone developers' appears on the top. The agreement appears to have been entered into just as a matter of abundant caution to avoid any future litigation which may cast any shadow on the investment made, or maybe even as a ruse to siphon off Rs. 151 crores as a cost of acquisition by the ultimate owners. The AO may look into this aspect also, and refer the matter to the Investigation Wing for further inquiries, if it is deemed fit. Hence, it is concluded that the appellant has received the amounts due to the disputes between the subsequent owners and the government and not because of any ownership rights of any kind in the said parcel of land. The appellant has received the sums over the years without any consideration and just because of the disputes centered on the lands they had parted with in year 1968. These receipts clearly fall in the scope of section 56(2)(vii)(a), and the AO has rightly taxed the same under the head Income from other sources. Accordingly, the addition of Rs. 4,50,000/- made by the AO is hereby confirmed fully.”*

8. The following facts noted by the Ld.CIT(A) leading to his finding that the assessee was not the owner of any asset was categorically pointed out to the Ld.Counsel for the assessee :

- That no asset was owned by the assessee in Village Abhawa
- That the impugned land had been actually sold to one Shri Maganbhai Becharbhai Patel and others in the year 1968, who had pursued the litigation in relation to the said land before various revenue and judicial authorities and even got decisions in his favour.
- The Ld. CIT(A) had noted that this fact was admitted by the assessee herself and at no stage it was submitted that the assessee was party to any suit before the Revenue authorities or the assessee claimed any such right therein.
- The Ld. CIT(A) had categorically noted that the assessee and other persons had themselves stated in the MOU to have parted with all such rights in the impugned land in revenue Survey Nos. 505, 506 & 507 in the year 1968 itself.

9. The Ld. Counsel for the assessee was asked at Bar to point any infirmity in the above finding of facts by the Ld. CIT(A) to which he was unable to point out. In fact, he fairly admitted to the facts being correct. Copy of the High Court order pertaining to the litigation in the impugned land was filed before us and the Ld.Counsel for the assessee was unable to demonstrate therefrom any claim made by the assessee in the impugned land in the petition filed to the High Court.

10. The Ld. Counsel for the assessee clearly was unable to demonstrate in any way the ownership of the assessee in the impugned land.

11. The contention of the assessee all along has been that its ownership in the land was contingent. But as noted above the Ld.Counsel was unable to demonstrate the said fact before us. Having admitted to have sold the land in 1968 itself and no evidence being filed before us or even the lower authorities regarding the assessee being party to any litigation relating to the ownership of land, we find no merit in the contention of the Ld.Counsel for the assessee that the amounts were received on account of contingent ownership of land. As a matter of fact, which is admitted also, the assessee is not the owner of land. The receipts by virtue of the MOU therefore cannot be said to be advances in relation to any rights in land agreed to be sold.

12. In the light of the same, we find no infirmity in the findings of the Ld. CIT(A) that the assessee's explanation of amounts having been received year-to-year on sale of the impugned land was factually incorrect and false. The Ld. CIT(A), we hold, has rightly held that when the assessee was not even the owner of the land nor was able to demonstrate any ownership arising to it in the future on account of any pending litigation, there was no question of the assessee being seller of the land and receiving amounts from the alleged buyers as advance for sale of land given. The MOU, on the basis of which, the assessee had taken the stand of the amounts having been received by the assessee for sale of the impugned lands, therefore, has been rightly held to not support the explanation of the assessee. In fact, at para 5.3 of his order, Ld.

CIT(A) has noted that even the said MOU/agreement clearly stated that the assessee and her other family members were not in possession of the impugned land and admittedly had sold the same to Shri Maganbhai Becharbhai Patel and others in 1968. Therefore, it is an uncontroverted admitted and accepted fact that the impugned lands for which the assessee had allegedly stated to have received advance on sale thereof had been sold way back in 1968 and the assessee in no way was its owner nor in possession thereof.

13. In the light of the above admitted fact, the amounts received by the assessee year-to-year is clearly not an advance on the sale of the said land has been rightly held to be casual income received by the assessee taxable under the head 'income from other sources'. The ground raised by the assessee on the merits of the addition, therefore, stands rejected.

14. Vis-à-vis legal ground raised by the assessee challenging validity of the assessment framed u/s.147 of the Act, Ld. Counsel for the assessee contended that he was pressing this ground only in appeal of the assessee for A.Y.2009-10 in ITA No.240/Ahd/2022. The legal ground raised in the remaining three appeals of the assessee, he stated to as not being pressed by him.

15. Vis-à-vis the challenge to the validity of the assessment framed u/s.147 of the Act in A.Y. 2009-10, the contention of the Ld. Counsel for the assessee was that the AO had recorded an

incorrect fact in his reasons. He pointed out that while the amount received by the assessee in A.Y. 2009-10 by virtue of the MOU was Rs.4,50,000/-, the AO, on the contrary, in his reasons had recorded an amount of Rs.1,10,00,000/- to have been received by the assessee and income to the said extent having escaped assessment. He stated that the AO clearly had based his belief of escapement of income on incorrect facts and, therefore, the reasons recorded were not valid for the formation of belief of escapement of income so as to assume valid jurisdiction to reopen the case of the assessee u/s.147 of the Act. Several decisions in this regard were pointed out by the Ld. Counsel for the assessee before us, pointing out that it was a settled law that jurisdiction assumed by the AO to reopen the case of the assessee on the basis of reasons recorded based on incorrect assumption of facts was invalid.

16. For adjudicating the issue, it is pertinent to reproduce the reasons recorded by the AO, which are as under:

*“In this case, the assessee has not filed return of income for A.Y. 2009-10.*

*2. In this case, the vide letter ITO(Inv), Baroda No. BRD/ITO(Inv)/TEP/VD/2015-16 dated 29.3.2016 informed the receipt of TEP. The investigation was carried out by the Wing and it was found that the above mentioned assessee has received an amount Rs.1,10,00,000/- during the F.Y. 2008-09 relevant to A.Y. 2009-10, as a result of MOU dated 15.3.2009 between Navab Family (Seller) and Shri Mohammed Yusuf A Shaikh (Purchaser) for a land bearing survey No. 506,507 & 508 at Village Abhwa, Tal. Choryasi, Dist. Surat,*

*3. The report of the investigation wing also stated that as per the MOU the entire deal was of Rs.151 crores.*

4. *In view of the above facts, I have reason to believe that the income to the extent of Rs. 1,10,00,000/- has escaped assessment within the meaning of the provisions of section 147 of the I.T. Act, 1961, for which the assessment needs to be reopened. I am satisfied that it is a fit case for issue of notice u/s.148 of the Act for A.Y. 2009-10."*

17. As per the reasons recorded, the assessee was stated to have received an amount on account of an MOU entered into by him for sale of land. The reasons recorded reveal that as per the MOU, the entire deal was for Rs.151 Crores. Since, the amount received by the assessee on account of MOU was not returned to tax, the AO had formed reason to believe that income had escaped assessment to the said assessee. The fact that the assessee had entered into an MOU for the sale of land is admittedly correct. The fact that as per the MOU the deal for the sale of land was of Rs.151 Crores is also admittedly correct. The fact that in pursuance to the said MOU the assessee also had received amount is also admittedly correct. The only mistake of fact pointed out by the Ld. Counsel for the assessee is with respect to the quantum of the amount received by the assessee, which was noted by the AO to be Rs.1.10 Crores, but, actually was Rs.4.50 Lakhs alone. In our view, this factual mistake of the AO is not material enough to render the assumption of jurisdiction by the AO to be invalid. It is not denied that the assessee had received amount on account of entering into MOU, which was liable to tax in the impugned year. Whether the quantum was Rs.1.10 Crores or Rs.4.50 Lakhs the fact remains that the income of the assessee on account of the receipt had escaped assessment. The fact relating to quantum of amount received by the assessee incorrectly noted by the AO, we hold, is

not material enough to hold that the AO had wrongly formed belief of escapement of income of the assessee.

18. In the light of the same, this incorrect fact mentioned in the reasons recorded by the AO, we hold, does not invalidate the entire assessment proceedings. The argument raised, therefore, on the legal ground stands rejected.

19. In view of the above, all the grounds raised by the assessee both on merits and the legal ground, are rejected.

20. In the result, all four appeals filed by the assessee are dismissed.

**This Order pronounced on 13/01/2026**

Sd/-  
(SIDDHARTHA NAUTIYAL)  
**JUDICIAL MEMBER**

Ahmedabad; Dated 13/01/2026

S. K. SINHA

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आदेश की प्रतिलिपि अद्येषित/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 प्रतिलिपि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd/-  
(ANNAPURNA GUPTA)  
**ACCOUNTANT MEMBER**

आदेशानुसार/ BY ORDER,

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