

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

**BEFORE SHRI TR SETHIL KUMAR, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No. 331/AHD/2026
Assessment Years: 2013-14**

Khodal Exports Private Limited, Plot No. 6, Dharmendra Nivas Adarsh Dairy, Jail Road Bhavnagar, Bhavnagar Gujarat - 364001 [PAN – AADCK8659D] (Appellant)	Vs.	Assistant Commissioner of Income Tax, Circle – 1, Bhavnagar - 364002 (Respondent)
Assessee by	Shri S. D. Chheda, AR	
Revenue by	Shri Sher Sigh, CIT-DR	
Date of Hearing	15.04.2026	
Date of Pronouncement	24.04.2026	

ORDER

PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:

This appeal is filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as ‘CIT(A)’] dated 21.01.2026 for the Assessment Year (A.Y.) 2013-14 in the proceeding u/s 147 r.w.s. 144B of the Income Tax Act.

2. The brief facts of the case are that the assessee had filed its return of income for A.Y. 2013-14 on 25.09.2013 declaring total income of Rs.46,72,558/-. The original assessment was completed at total income of Rs.47,11,740/-. Subsequently, the AO had received a suspicious

transactions report (STR) with reference to a company by the name “Dishita Gems Pvt. Ltd”, which was engaged in providing accommodation entries. The AO had recorded the reason that the assessee company had obtained accommodation entry of Rs.8,83,17,429/- from the said M/s Dishita Gems Pvt. Ltd and income to that extent had escaped assessment. Accordingly, a notice u/s. 148 of the Act was issued on 31.03.2021 after obtaining approval of the competent authority. In the course of assessment however, no addition was made in respect of transaction with M/s Dishita Gems Pvt. Ltd. The AO treated the purchases of Rs.17,21,94,429/- made from another concern M/s Gyan Gems as bogus and accordingly made the addition. Further, addition of Rs.4,22,82,372/- on account of unexplained sales was also made. The assessment was completed u/s. 147 r.w.s. 144B of the Act on 31.03.2022.

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the first appellate authority, which was decided by the learned CIT(A) vide the impugned order and the appeal of the assessee was dismissed.

4. Now the assessee is in second appeal before us. The following grounds have been taken in this appeal:

1. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O to issue notice u/s 148 of the Act*
2. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O to issue notice u/s 148 of the Act as it is beyond the period of limitation being original assessment u/s 143(3).*

3. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O that the assessment u/s 147 is bad and required to be quashed*
4. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O that the assessment u/s 147 is bad and required to be quashed as it was without valid notice u/s 143(2)*
5. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O that the assessment u/s 147 is bad and required to be quashed as notice u/s 143(2) is issued by NFAC and which does not have authority to conduct assessment before 29.03.2022.*
6. *The learned CIT(A) has erred in law & in facts to improve recorded reasons by adding words "and its associates" after words Dishita Gems and which words are not there in original recorded reasons.*
7. *The appellant prays that the Notice u/s 148 is bad as sanction obtained u/s 151 is not in accordance with law and mechanical.*
8. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O to make the addition inspite of not considering and disposing of objections on issues related to Dishita Gems in submission made by the appellant and in such a case the assessment order is required to be quashed*
9. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O to make addition for other items, when no addition is to be made for the item for which reopening has been done*
10. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O to add Rs. 17,21,94,429 as bogus purchases.*
11. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O to add Rs. 17,21,94,429 as bogus purchases as there is no modus operandi as alleged by learned AO*
12. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O to add for bogus purchases inspite of fact that there is no purchases debited in profit & loss a/c of Gyan Gems Pvt Ltd.*
13. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O and failed to appreciate the fact that when sales have been dully accepted by A.O along with quantitative & production records, there is no question of unaccounted purchases & The learned CIT(A) has erred on law & in facts to confirm the action of A.O to make addition when sales have been effected consequent to that purchases & sales have been accepted as true & correct & also GP has been accepted.*
14. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O to make addition in current year when the purchase is of earlier year.*
15. *The learned CIT(A) has erred in law & in facts to confirm the action of AO and failed to appreciate that just because of non appearance of parties in response to summon U/S 133(6) does not amount that the appellant has bogus*

purchases/Sales & specially when confirmation from the creditor was provided and even cross examination was not allowed of witness inspite of demanded by the appellatant.

16. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O to appreciate that addition has resulted in exorbitant G.P. which is impossible in this business & also with past records and also subsequent assessment u/s 143(3), where there was no bogus purchase and hence making the addition bad & illegal.*
17. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O to add Rs. 17,21,94,429 by applying provision of Section 69C.*
18. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O in rejecting the explanation by the appellatant without proving that it is false & purely on the basis of predetermined mind without looking to the facts & evidences produced.*
19. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O in following judgments in case of Asst CIT Vs. Amar Mining Co (2009) 121 TTJ 273 (Ahd.) (TM) where facts are completely different And also inspite of binding precedents of jurisdictional high court in the case of DCIT vs. Adinath Industries 252 ITR 476 (GUJ High Court)*
20. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O to add Rs. 4,22,82,372 as unexplained cash credit u/s 68 which was receipt against cash.*
21. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O. on the basis of conjunction, suspicion & surmises.*
22. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O that when the books being not rejected & accepted as true, the book results cannot be disturbed by making addition for bogus purchases/sales.*
23. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O to give more weightage on secondary evidence i.e statement by third party than primary evidences available in the form of bills, cheque payments, subsequent sales etc. and confirming addition on the basis of third party statements without any corroborative evidences.*
24. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O to consider objections against show cause while passing the assessment order and which is against the CBDT instructions and natural justice and in such a case appellatant prays that assessment order is required to be quashed.*
25. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O in when the statements made by dealers cannot be relied when made one sided to save their skin and without providing copy of the statement to the appellatant and failed to appreciate that in the absence of any conclusive proof addition cannot be done.*

26. *The appellant prays that An assessment made is required to be quashed as it is made without disclosing to the assessee the information supplied by the departmental and without giving any opportunity to the assessee to rebut the information so supplied and declining to take into consideration all materials which the assessee wanted to produce in support of case and which is a violation of the fundamental rules of justice.*
27. *The appellant prays that an assessment made is required to be quashed as statements of witnesses are made basis of demand, not allowing assessee to cross-examine witnesses and which makes order nullity, as it amounts to violation of principles of natural justice.*
28. *The learned CIT(A) has erred in law & in facts to confirm the action of A.O to provide reasonable opportunity for filling reply and evidences.*
29. *The appellant prays that the CIT (A) has wrongly relied upon judgments as stated in appellate order as the facts are completely different.*
30. *The Appellant leaves the right to amend, add, or alter the grounds at the time of regular hearing and the grounds are without prejudice to each other*

5. Shri S. D. Chheda, the Ld. AR of the assessee submitted at the outset that the reason recorded by the AO for reopening of the case was not correct. He explained that the assessee had not carried out any transaction with any party in the name and style of M/s Dishita Gems Pvt. Ltd. Therefore, the notice issued by the AO in respect of accommodation entry of Rs.8,83,17,429/- taken from M/s Dishita Gems Pvt. Ltd was without verification of facts. The Ld. AR submitted that once the AO had found that no such transaction was made by the assessee with M/s Dishita Gems Pvt. Ltd, the reopened proceeding should have been dropped. The Ld. AR contended that since no addition was made by the AO on the basis of the information on which reopening was done, it was not open for the AO to make addition in respect of any other issue. In this respect he relied upon the decision of Hon'ble Gujarat High Court in the case of **CIT Vs. Mohamed Juned Dadani (355 ITR 172)**. The Ld. AR submitted that on merits also the addition as made by the AO was not called for as the assessee had furnished all documentary evidences in respect of

purchases and sales. He contended that the addition was based on mere suspicion and the AO was not correct in making addition for purchases and sales.

6. Per Contra Shri Sher Sigh, the Ld. CIT-DR, supported the order of the lower authorities.

7. We have considered the rival submissions. A copy of the reason recorded by the AO for reopening the case has been brought on record in the paper-book. It is found that the AO had recorded the reason of escapement of income in respect of transaction of the assessee with M/s Dishita Gems Pvt Ltd. The relevant portion of the reason is reproduced below:

As discussed in detail in Para-2 herein above, the concern M/s Dishita Gems Pvt Ltd was engaged in providing accommodation entries to various clients and one of them happens to be the assessee company M/s Khodal Exports Ltd. In the facts and circumstances of the case it clearly emerged that the transaction to the tune of Rs. 8,83,17,429/- shown to have been made by the assessee company with M/s Dishita Gems Pvt Ltd are not genuine. Hence, this escaped income liable for taxation needs to be brought to tax in the hands of assessee company in the Asst.Year 2013-14.

8. It is thus evident that the case of the assessee was reopened to examine the accommodation entry obtained from M/s Dishita Gems Pvt Ltd. This reopening was done on the basis of STR report in the case of M/s Dishita Gems Pvt Ltd. We do not find name of any other concern appearing in the reason as recorded by AO. In the assessment order, however, no addition has been made in respect of any accommodation

entry taken by the assessee from M/s Dishita Gems Pvt Ltd. According to the assessee, no transaction was carried out by it with M/s Dishita Gems Pvt Ltd and that the reason recorded by the AO was based on wrong information. This submission of the assessee is found to be *prima facie* correct, as no addition was made by the AO in respect of any transaction with M/s Dishita Gems Pvt Ltd. It is seen from the assessment order that the AO had made inquiries u/s. 133(6) of the Act with M/s Gyan Gems by recording that this was one such beneficiary/colluding entity. However, we do not find any reference of Gyan Gems Pvt Ltd in the reason as recorded by the AO. It is a trite law that formation of belief of escapement of income should be discernible from the materials and information available on record. The name of Gyan Gems Pvt Ltd is nowhere appearing in the reason as recorded by AO. The only name appearing in the reason recorded by the AO is that of Dishita Gems Pvt Ltd. in respect of which no addition was made in the assessment order. It is a settled position of law that once the Assessing Officer does not assess or reassess the income which was the basis of the notice u/s 148, it would not be open for the AO to assess income under some other issue independently. The Hon'ble Gujarat High Court in the case of *Mohamed Juned Dadani (supra)* has upheld the principle that Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceeding, only if addition is made in respect of the issues for which the case was reopened. In the present case, no addition was made by the AO on the issue of accommodation entry taken from Dishita Gems Pvt Ltd., which was the reason for reopening the case. Under the circumstances, it was not open for the AO to make addition in respect of the transaction of the assessee with any other entity. In the absence of

any addition in respect of Dishita Gems Pvt Ltd, the very basis of reopening of assessment does not survive. Therefore, the assumption of jurisdiction u/s. 147 of the Act by AO cannot be sustained. Accordingly, the proceeding initiated to reopen the case u/s 147 of the Act is **quashed**.

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

Order pronounced in the Court on 24/04/2026 at Ahmedabad.

Sd/-
(TR SETHIL KUMAR)
Judicial Member

Dated – 24th April, 2026

Neelesh, Sr. PS

(True Copy)

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

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 / DR, ITAT,
6. गार्ड फाईल / Guard file.

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