

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before Dr. BRR Kumar, Vice President
And Ms. Suchitra Kamble, Judicial Member**

**ITA No. 681/Ahd/2024
Assessment Year 2016-17**

Hiren Rameshbhai Patel, Miral Bungalows, Dhwani Tenament, Isanpur, Ahmedabad PAN: ABYPP8084C (Appellant)	Vs	The Dy. CIT, Circle-3(2), Ahmedabad (Respondent)
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**Assessee by: Shri Biren Shah, A.R.
Revenue by: Shri B.P. Srivastava, Sr. D.R.**

Date of hearing : 06-05-2025
Date of pronouncement : 03-06-2025

आदेश/ORDER

Per Suchitra Kamble, Judicial Member:

This is an appeal filed against the order dated 14-02-2024 passed by National Faceless Appeal Centre (NFAC), Delhi for assessment year 2016-17.

2. The grounds of appeal are as under:-

"1. In law and in the facts and circumstances of the appellant's case, the order passed by the learned CIT(A) u/s. 250 of the Income-tax Act is erroneous and bad in law.

2. In law and in facts and circumstances of the appellant's case, the Ld CIT(A) has erred in upholding the impugned addition on account of section 56(2)(vii) (b) amounting Rs. 90,00,000/-,

received towards relinquishment in title over land offered as Capital Gain by the Appellant.

2.1 Without prejudice to above, the appellant submits that the Ld CIT(A) has erred in upholding addition of Rs. 90,00,000/- without allowing actual cost incurred by appellant for purchase of land in question amounting to Rs. 8,16,458/-.

3. In law and in facts and circumstances of the appellant's case, the Ld. CIT(A) has erred in upholding the impugned addition u/s 68 amounting Rs. 4,97,543/- received as refund for surrender of Life Insurance Policy offered as exempt income by the appellant.

3.1 Without prejudice to above, the appellant submits that the Ld CIT(A) has erred in upholding addition of Rs. 4,97,543/- without allowing of insurance premium paid by the appellant towards the Life Insurance Policy.

4. The appellant craves leave to add, alter or amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.”

3. The return of income was filed by the assessee for assessment year 2016-17 on 29-03-2018 declaring total income at Rs. 54,59,950/-. The case was selected for complete scrutiny under CASS and the notice u/s. 143(2) of the Income Tax Act, 1961 was issued on 28-09-2018 which was duly served upon the assessee. Subsequently, statutory notices were issued to the assessee which were responded by the assessee during the assessment proceedings. The Assessing Officer observed that the assessee made an agreement to sale in the year 1992-93 for acquiring a land as an owner of plot along with other co-owners. The purchase deed of the said land was not registered at that time as the title of the land could not be received in the hands of the Lalchand Cooperative Society due to some objections. Hence, the registration of sale deed could not be

made due to non-availability of title clearance and other legal permissions of registrar of society. During the year 2015-16 assessee along with other co-owners came to know that Lalkar Co-op Housing Society is in process of the sale of such plot of land. The assessee already made payment towards such land. Since the assessee 1992-93 had a right over said property faces objections on such sale and hence received Rs. 90,00,000/- to relinquish title over such land so that they can sell the land to prospective buyer. The Assessing Officer observed that bonafide submitted by the assessee was not valid registered document and therefore the said property cannot be considered as mandatory asset of assessee as per definition u/s. 2(14) of the Income Tax Act, 1961. The assessee was asked to submit his explanation through show cause notice dated 03-12-2018 as to why the same should not be treated as income from other sources instead of income from long term capital gain. After going through the response, the Assessing Officer held that assessee for the year under consideration is not a property developer and does not deal with the business income of a property developer as well as the amount of Rs. 90,00,000/- received by the assessee is not allowed for sale consideration as sale consideration for computation of capital gain. Accordingly, the income offered by the assessee in the head of long term capital gain was disallowed by the Assessing Officer and considered as income from other sources as provisions of section 56(2)(vii)(b) of the Income Tax Act 1961. The Assessing Officer further made addition of Rs. 4,97,543/- u/s. 68 of

the Act relating to payment made to ICICI Prudential Life Insurance Company which was received after surrendering the said Life Insurance Policy.

4. 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. A.R. submitted that the assessee had entered into an agreement to sell plot of land along with the other co-owners in the year 1992-93 in a plot of land called Ishanpur. The sale deed was not executed but the assessee has given payment towards such land in 1992-93 hence the sale consideration was also paid to the Lalkar Co-op Housing Society. In the year 2015-16, the assessee along with co-owners received 90,00,000/- to relinquish the title for the said land as the Lalkar Co-op Housing Society after registered sale deed in favour of the buyer in assessment year 2016-17 transferred fund to respective owner on plot of land and thereby accepted the fact that the right over such property was belonging to assessee and other co-owners. Therefore, the assessee though not having registered sale deed but have symbolic possession over the property and therefore this is a long term gain and the assessee has rightly treated it as long term capital gain only. The Assessing Officer as well as the CIT(A) has changed the head which is not justifiable. The ld. A.R. relied upon the decision of Hon'ble Gujarat High Court in the case of Taraben D/o. Nanubhai Kasanbhai Patel vs. Saileshbhai

Rangilabhai Patel No. 199 with C.A. No. 6470 of 2012 with Appeal Form Order No. 200 of 2012 with C.A. No. 6471 of 2012 wherein it was upheld the validity of banachitthi. Thus, the ld. A.R. submitted that in the light of these facts the banakhat which was executed between the assessee and the society definitely holds the legal sanctity for the purpose of computing the capital gain. As regards the addition made u/s. 68 of the Act for Rs. 4,97,543/-, the assessee made payment to ICICI Prudential Life Insurance Company in previous years towards life insurance cover which has been received by assessee as an insurance refund from ICICI Prudential Life Insurance Company as the policy has been surrendered and since the assessee is not in possession of that policy document, the assessee could not submit the same and has requested the bank to provide photocopy. The assessee has submitted that receipt and the money received through routine banking channel and therefore the money received was duly accounted and that cannot be the criteria for making addition u/s. 68 of the Act. The ld. A.R. has taken an alternate contention that the provisions of section 68 are not applicable in his case then the gross receipt should be taxed u/s. 10(10D) r.w.s. section 80CCC(2)(a) of the Act.

6. The ld. D.R. submitted that the banakhat in respect of the plot of land at Ishanpur was not registered document and in fact the Assessing Officer has rightly held that received an amount of Rs. 90,00,000/- as the assessee is not a property developer or there is no transfer of property

to the assessee then such consideration can be treated as income from other sources only and not as long term capital gain.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that as regards consideration received by the assessee amounting to Rs. 90,00,000/- for relinquishing the rights, the assessee has not submitted any details in the form of the settlement agreement or the deed of relinquishing of right in the property either before the Assessing Officer or before the CIT(A) and has also not submitted. The submissions of the ld. A.R. are that the assessee made payment in the year 1995-96 to Lalkar Co-op Housing Society as also not been placed on record before the Assessing Officer as well as before the CIT(A) and not before the Tribunal. The assessee is merely saying that the assessee along with other co-owners has made an agreement to sale in the year 1992-93 of the plot of land in Lalkar Co-op Housing Society but the same was never registered and if the assessee and the co-owners has relinquished the right in the said plot of land why the property was in the possession of the said Lalkar Co-op Housing Society has not been demonstrated. The argument that the assessee though not having registered sale deed but have symbolic possession over the property and therefore this is a long term gain, gets defeated as the subsequent events categorically mentions that the society did not provide the required document for getting clear title report

at the time and they were not in position to return money (submissions of assessee dated 10.12.2018 reproduced at page 3 of assessment order). So this cannot be said as long term capital gain but as income from other sources as treated by the Assessing Officer. Hence, the Assessing Officer and the CIT(A) has rightly treated it as income from other sources as it is the right which was transferred by the assessee and not ownership per se. Thus, Ground No. 2 and 2.1 are dismissed.

8. As regards to addition u/s. 68, the Assessing Officer has categorically mentioned that if the assessee will submit the proof/documents in relation to refund of Rs. 4,97,543/- which was received after surrendering the life insurance policy from ICICI Prudential, then same will not be as exempt income because the said amount received should be taxed under the head income from other sources as per provisions of section 80CCC(2)(a) of the Act. But since the assessee has not given any details, the Assessing Officer has rightly made addition.

9. The ld. D.R. relied on assessment order and the order of the CIT(A).

10. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the amount of Rs. 4,97,543/- was received by the assessee as refund for surrender of Life Insurance Policy by ICICI Prudential Life Insurance Company towards Life

Insurance Cover. Since the assessee is not in possession of that policy due to surrender, the said document was not submitted to the Assessing Officer, but the relevant details of amount received from surrendering the policy as well as the earlier payment made to Insurance Company was submitted to both the Revenue authorities as well as CIT(A). Hence, the assessee explained the amount of Rs. 4,97,543/- which is an insurance refund and claimed as exempt income. Thus, this cannot be treated as unexplained money under Section 68 of the Act. Therefore, Ground No. 3 and 3.1 are allowed.

11. In result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 03-06-2025

Sd/-
(Dr. BRR Kumar)
Vice President

Ahmedabad : Dated 03/06/2025

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

Sd/-
(Suchitra Kamble)
Judicial Member

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद