

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “A” BENCH, AHMEDABAD****BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER AND  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER****ITA Nos.24 & 25/Ahd/2024  
Assessment Years: 2009-10 for both**

Vijayaben Rajubhai Thakor, At & Post Mohmedpura, Ahmedabad – 380 001. (Gujarat). <b>[PAN – ALYPT 8529 Q]</b>	Vs.	Income Tax Officer, Ward – 3(3)5), Ahmedabad Previously Ward – 3(3)(12), Pratyakshkar Bhawan, B/h. Stock Exchange, Nr. Panjara Pole X Road, Ambawadi, Ahmedabad – 380 015 (Gujarat).
(Appellant)		(Respondent)
Assessee by	Shri Tushar Hemani, Sr. Advocate & Shri Parimalsinh B. Parmar, AR	
Revenue by	Shri Ashok Kumar Suthar, Sr. DR	
Date of Hearing	24.04.2025	
Date of Pronouncement	28.04.2025	

**ORDER****PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:**

These two appeals are filed by the assessee against the order of National Faceless Appeal Centre (NFAC), both dated 01.12.2023, for the Assessment Year 2009-10, one against the order under Section 144 of the Income Tax Act, 1961 [hereinafter referred to as ‘the Act’] and the other in respect of order under Section 271(1)(c) of the Act. Both these appeals were heard together and are being disposed of vide this common order for the sake of convenience.

2. The brief facts of the case are that the case of the assessee for Assessment Year 2009-10 was reopened under Section 147 of the Act on the basis of certain documents found in the course of search at the premises of one Shri Rohit Chanduji

Thakor. From the documents found during the search, it transpired that a property, in which the assessee had one fifth ownership, was sold for a consideration of Rs.16,15,40,700/-. Further that the assessee had not disclosed the sale consideration of this property and the capital gain arising thereon was not offered to tax. Therefore, the case was reopened under Section 147 of the Act after recording proper reasons. In the course of reassessment proceedings, no compliance was made by the assessee. The assessment was completed ex-parte under Section 144 read with Section 147 of the Act on 17.02.2015 wherein an addition of Rs.3,20,48,140/- was made on account of short term capital gain arising on sale consideration of the property. Subsequently, a penalty order under Section 271(1)(c) of the Act was also passed on 27.03.2018 imposing penalty of Rs.1,07,82,129/- on the assessee.

3. Aggrieved with the assessment order of the Assessing Officer, the assessee had filed an appeal before the First Appellate Authority which was decided vide the impugned order and the appeal of the assessee were dismissed for the reason that no compliance was made by the assessee before the Id. CIT(A). The appeal filed by the assessee against the penalty order was also dismissed for the same reason. The assessee is now in second appeal before us.

4. The following grounds have been taken in these two appeals: -

**ITA No.24/Ahd/2024 for A.Y. 2009-10**

- "1) The Ld. CIT(A) has erred in law and on facts of the case in deciding the appeal ex-parte in violation of principles of natural justice.*
- 2) The Ld. AO has erred in law and on facts of the case in reopening the assessment u/s.147 of the Act. Under the facts and circumstances of the case, the action of reopening is without jurisdiction and is not permissible either in law or on facts.*
- 3) The Ld. CIT(A) has erred in law and on facts of the case in confirming the addition of Rs.3,20,48,140/- on account of capital gain on sale of land.*
- 4) Both the lower authorities have passed the orders without properly appreciating the facts of the case and solely relying on the information received from DCIT. This action of the lower authorities is in clear breach of law and principles of natural justice and therefore deserves to be quashed.*

- 5) *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in levying interest u/s.234A/B/C/D of the Act.*
- 6) *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in initiating penalty proceedings under various sections of the Act.*
- 7) *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal."*

**ITA No.25/Ahd/2024 for A.Y. 2009-10**

- "1) *The Ld. CIT(A) has erred in law and on facts of the case in deciding the appeal ex-parte in violation of principles of natural justice.*
- 2) *The Ld. AO has erred in law and on facts of the case in initiating penalty proceedings u/s.271(1)c) of the Act.*
- 3) *The Ld. CIT(A) has erred in law and on facts of the case in confirming the levy of penalty of Rs.1,07,82,129/- u/s. 271(1)(c) of the Act.*
- 4) *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal."*

5. Shri Tushar Hemani, Ld. Sr. Counsel appearing for the assessee submitted that the Ld. CIT(A) had not adjudicated appeal of the assessee on merits and had dismissed the appeal in limine on the ground that the assessee had not made any compliance in the course of appeal proceeding. He submitted that the issue were not examined on merits as per the mandate of Section 250(6) of the Act. The Ld. Sr. Counsel requested that the matter may be set aside to the file of the Ld. CIT(A) for fresh adjudication of the appeal of the assessee on merits in accordance with law. The Ld. Sr. Counsel further submitted that the assessee will co-operate with the Ld. CIT(A) and furnish all necessary details and explanations as called for by the CIT(A) in the set aside appellate proceeding.

6. Per contra, Shri Ashok Kumar Suthar Ld. Sr. DR submitted that the assessee had neither appeared before the Assessing Officer nor before the Ld. CIT(A) and no

compliance was made by the assessee at all at any stage. Under the circumstances, the Ld. CIT(A) had no occasion to examine the matter on merits as no material was ever brought on record by the assessee. Ld. Sr. DR supported the orders of the lower authorities.

7. We have considered the rival submissions. The assessee has not explained the reason for non-compliance either before the Assessing Officer or before the Ld. CIT(A). In the absence of any explanation, we deem it proper to impose a cost of Rs.5,000/- on the assessee, which should be paid to the Income Tax Department within 15 days of receipt of this order. Further, as the matter was not examined on merits by the Ld. CIT(A), we deem it proper to set aside the file to the Ld. CIT(A) with the direction to allow another opportunity of being heard to the assessee. The assessee is also directed to co-operate and comply with the notices issued by the CIT(A) in the said proceeding.

8. In the result, appeal of the assessee in ITA No.24/Ahd/2024 for A.Y. 2009-10 is allowed for statistical purpose.

9. As the matter regarding quantum addition is set aside to the file of the Ld. CIT(A), we also deem it proper to set aside the appeal in ITA No.25/Ahd/2024 in respect of penalty under Section 271(1)(c) of the Act, to the file of Ld. CIT(A). This appeal of the assessee is also allowed for statistical purpose.

10. In the final result, both the appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open Court on this 28<sup>th</sup> April, 2025.

*Sd/-*  
**(SIDDHARTHA NAUTIYAL)**  
Judicial Member

*Sd/-*  
**(NARENDRA PRASAD SINHA)**  
Accountant Member

**Ahmedabad, the 28<sup>th</sup> April, 2025**

**PBN/\***

*Copies to:*

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad*