

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

**BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
Ms SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.866/Ahd/2025
(Assessment Year: 2013-14)

Sandipkumar Natwarlal Patel, 32/B, Sampat Nagar, Sector 8, Isanpur, Ahmedabad-382443. [PAN :ALWPP0967 E]	Vs.	The Income Tax Officer, Ward-3(2)(10), Ahmedabad.
(Appellant)	..	(Respondent)
Appellant by :	Shri S N Divetia, with Shri Samir Vora, AR	
Respondent by:	Shri Kamal Deep Singh, Sr. DR	
Date of Hearing	09.07.2025	
Date of Pronouncement	17.07.2025	

ORDER

PER DR. B.R.R. KUMAR, VICE-PRESIDENT:-

This appeal is filed by the Assessee against the appellate order dated 28.02.2025 passed by the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi, relating to the Assessment Year 2013-14.

2. The assessee has raised the following grounds of appeal:

1.1 The order passed u/s 250 on 28.02.2025 for A.Y. 2013-14 by Addl./JCIT(Appeal)-6. Mumbai (for short CIT(A) confirming addition u/s 69 of Rs.8,01,000/- as on money payments to Dharmadev Infrastructure Ltd is wholly illegal, unlawful and against the principles of natural justice.

1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the explanations furnished and the evidence produced by the appellant. The CIT(A) has also failed to consider that the said party did not turn up for cross examination in response to the summons issued by AO, though the appellant had waited in the office of CIT(A) for the whole day.

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1.3 The Ld. CIT(A) has grievously erred in law and or on facts in making addition u/s 69 of Rs. 8,01,000/- as on money payments to Dharmadev Infrastructure Ltd without furnishing the entire material relied upon so that it was liable to be quashed.

2.1 The Ld. CIT(A) has grievously erred in law and or on facts in initiating proceedings u/s 147 for AY 2013-14 because the conditions precedent was not fulfilled.

2. The Ld. CIT(A) has grievously erred in law and or on facts in not appreciating that the proceedings Initiated u/s 147 were illegal and unlawful.

3.1 The Ld. CIT(A) has grievously erred in law and or on facts in holding that the appellant had made cash payments of Rs. 8,01,000/- as on money payments to Dharmadev Infrastructure Ltd and thereby making addition of Rs. 8,01,000/- as unexplained investments.

3.2 That in the facts and circumstances of the case as well as in law, the Ld. CIT(A) has grievously erred in holding that the appellant had made cash payments aggregating to Rs. 8,01,000/- to Dharmadev Infrastructure Ltd towards purchase of property in the scheme and thereby making addition of Rs.8,01,000/- as unexplained investments.

It is therefore prayed that the addition u/s 69 of Rs.8,01,000/- towards unexplained investments made by the CIT(A) should be deleted.

3. The brief facts of the case are that the assessee is an individual and derives income by way of job work. He had filed his original return of income for the year under consideration on 08.08.2014, declaring total income at Rs. 5,02,140/-. The Assessing Officer received information from the office of DCIT, Cen Cir2(4), Ahmedabad that assessee had made advance payment in cash of Rs. 8,01,000/- on 29.08.2012 to M/s Dharmadev Group for purchase of two shops on ground floor at block no. I & J of Swaminarayan Park-1, Narol; however, the source of investment remains unverified. Therefore, notice u/s 148 dated 28.3.2018 was issued. In response, the assessee filed return of income on 23.10.2018 declaring total income at Rs.5,02,140/-. The assessee was provided with the copy of reasons recorded by letter dated 24.10.2018.

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4. During the course of re-assessment proceedings, the Assessing Officer issued notice u/s 142(1) on the basis of aforesaid information and propose to make addition of Rs.8,01,000/- as unexplained investments. The assessee by letter dated 15.10.2018 denied to have made payment in cash aggregating to Rs.8,01,000/- in respect of purchase of shops at Swaminarayan part-1, Narol. A final show cause notice dated 6.11.2018 was issued proposing to make addition of Rs.8,01,000/- as unexplained money u/s 69 of the Act. The assessee vide reply dated 6.11.2018 explained that aggregate payment of Rs.8,01,000/-out of which Rs.5,94,500/- was made by cheque and cash of Rs.12,500/- for which receipts were issued by the said party. However, it was rejected by the Assessing Officer for the reason that Dharmadev Group had admitted before Settlement Commission to have received total on-money aggregating to Rs.85.45 cr. as advance for booking of property in various schemes from various customers. Ultimately, the Assessing Officer treated the investment in purchase of property at Rs.8,01,000/- as unexplained u/s 69 of the Act. The assessee states that during the course of assessment proceedings, the Assessing Officer had called upon the party for cross examination but he did not turn up, though the assessee waited for the entire day in the office of the Assessing Officer. The addition of Rs.8,01,000/- has been made solely on the basis of the declaration of Dharmadev Group/Shri Umang Thakkar before the Settlement Commission. Being aggrieved, the assessee preferred appeal to NFAC/CIT(A), wherein detailed submissions were filed from time to time along with relevant case law including the decision of jurisdictional Tribunal in case of Kirit Kalidas Gajjar vs ITO ITA No.2444/Ahd/2018 dtd. 09.12.2022. The NFAC has dismissed the appeal on a short ground that the Dharmadev Group/Shri Umang Thakkar had made an offer before the Settlement Commission which included cash payments made by the assessee. The Ld. CIT(A) dismissed the appeal of the assessee by observing as under:

“...I have gone through the material available on record and the submissions made by the assessee along with the presented before me

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during the video conferencing scheduled on 28.02.2025. As the Settlement Commission had accepted the income offered by Dharmaveer of Rs.85.45 crores which includes cash payments made by Shri Sandipbhai Natvarlal Patel, the appeal filed by the assessee is hence, dismissed...”

5. Before us, the assessee argued that the validity of statement recorded u/s 132(4) cannot be equated with the statement given before the ITSC. The submission of a third party before the Settlement Commission cannot be a reason to make addition in the hands of the assessee without bringing any cogent evidences by the Assessing Officer and without providing opportunity of rebuttal to the assessee.

6. On the other hand, Ld. DR argued that assessee is the best judge of his affairs and the factum of the other company offering the additional income before the Settlement Commission proves without any doubt that the assessee has paid Rs.8,01,000/- which is the undisclosed income of the assessee. It was argued that the ratio of statement recorded u/s 132(4) would be applicable on par with the statement given before the ITSC becomes statutory and binding in nature.

7. Heard both the parties and perused the material available on record.

The provisions of Section 132(4) are as under:-

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

[Explanation.—For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.]

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8. We have also gone through the circular of CBDT with regard to the disclosure made in the statement recorded u/s 132(4) sans seized material.

CBDT Instruction F. No. 286/2/2003-IT (Inv.), dated 10-3-2003

Regarding confession of additional income during the course of search & seizure and survey operation is as reproduced herein under –

*“Instances have come to the notice of the Board where assesseees have claimed that they have been forced to confess undisclosed income during the course of the search and seizure and survey operation. Such confession, if not based on credible evidence, are taken/retracted by the concerned assesseees while filing return of income. In these circumstances, confession during the search and seizure and survey operation do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration **on collection of evidence of income** which leads to information on what has not been disclosed or is not likely to be disclosed before the Income-tax department. Similarly, while recording statement during the course of search and seizure operation, no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely”.*

9. The CBDT also instructed the field authority not to rely merely on the statement in the absence of credible evidence. In this case, the Assessing Officer has not brought any evidence, material, incriminating document to make addition of Rs. 8,01,000/-. Merely because the other party has offered the same before the Hon'ble ITSC does not necessarily convert the same as undisclosed income in the hands of the assessee. The fact that the disclosure made under section 245D(1) of the Act even if constructed as if no order under section 245D(4) has been passed, it will not give a license to the Assessing Officer to use the confidential information disclosed in an annexure to the application of the Settlement Commission. If the application is treated as not admitted under 245D(1) of the Act, then the provisions are clear that confidential information can never be passed on to the Assessing Officer nor can it be used in evidence against the assessee.

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10. In the instant case the Assessing Officer has not brought any evidence or made any inquiry that assessee has earned undisclosed income of Rs.8,01,000/-. The Assessing Officer had not made any inquiry and not examined the material which was before him and addition has been made simply relying upon the declaration made in the application before the Settlement Commission under section 245D made by other party. The assessee vide reply dated 6.11.2018 explained that aggregate payment of Rs.8,01,000/-out of which Rs.5,94,500/- was made by cheque and cash of Rs.12,500/- for which receipts were issued by the said party. Hence, we hold that the addition made by the Assessing Officer, as confirmed by the Ld. CIT(A), cannot be upheld.

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

The order is pronounced in the open Court on 17.07.2025

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 17.07.2025

Btk

Sd/-

(DR. B.R.R. KUMAR)
VICE-PRESIDENT

आदेश की प्रतिलिपि □ ग्रेषित/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, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

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आदेशानुसार/ BY ORDER,

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