आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।

In The Income Tax Appellate Tribunal, Rajkot Bench, Rajkot

Before Dr. Arjun Lal Saini, Accountant Member
And
Shri Sonjoy Sarma, Judicial Member

आयकर अपील सं./ITA No. 857/RJT/2024

[निर्धारण वर्ष/Assessment Year: 2009-10]

Nilesh Harilal Manek 302, Elite Flats, B-8 Swastik Society, Navrangpura, Ahmedabad-380009, Gujarat	**Vs.**	Income-Tax Officer, Ward-2(3), Porbandar-360575, Gujarat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **ADDPM0362M**		
(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**

Cross Objection No. 13/RJT/2025

[arising out of ITA No. 857/RJT/2024]

[निर्धारण वर्ष/Assessment Year: 2009-10]

Income-Tax Officer, Ward-2(3), Porbandar-360575, Gujarat	**Vs.**	Nilesh Harilal Manek 302, Elite Flats, B-8 Swastik Society, Navrangpura, Ahmedabad-380009, Gujarat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **ADDPM0362M**		
(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**

Appellant by	:	Shri D. M. Rindani, Ld. AR
Respondent by	:	Shri Ganesh Iyer, Ld. Sr. DR
Date of Hearing	:	01/09/2026
Date of Pronouncement	:	08/09/2026

:: ORDER ::

<u>Per, Shri Sonjoy Sarma, JM:</u>

The instant appeal, being ITA No. 857/Rjt/2024 for the assessment year 2009-10, has been filed by the assessee against the order of the Ld. CIT(A) dated 06.08.2024, arising out of the assessment order passed under section 144 read with section 147 of the Income-tax Act, 1961 ("the Act") dated 25.11.2016. The Revenue has also filed Cross Objection No. 13/Rjt/2025 for the same assessment year against the aforesaid order of the Ld. CIT(A).Since both the matters arise out of the same assessment proceedings, involve the same assessee and common issues, and one has been filed by the assessee while the other is a cross- objection filed by the Revenue, they were heard together and are being disposed of by this common order.

02. We first take up the assessee's appeal in ITA No. 857/Rjt/2024. The decision rendered therein shall apply, *mutatis mutandis*, to the Revenue's Cross Objection No. 13/Rjt/2025.

03. Brief facts of the case are that the assessee, is an individual and resident assessee. For the assessment year 2009-10, the assessee did not file his return of income. Subsequently, on the basis of information available with the Assessing Officer, it was noticed that the assessee, jointly with Ms. Nayana J. Manek, had purchased an immovable property on 12.12.2008 for a consideration of Rs.50,00,000/-. Since the assessee had not filed his return of income for the year under consideration and had also not furnished any explanation regarding the source of the investment, the Assessing Officer recorded reasons for reopening the assessment. After obtaining the requisite approval from the Ld. Principal Commissioner of Income-tax, Jamnagar, notice under section 148 of the Income-tax Act, 1961 ("the Act") dated 29.03.2016 was issued and, as recorded by the Assessing Officer, was duly served upon the assessee. Thereafter, notices under section 142(1) of the Act were issued on various dates, namely, 27.06.2016, 15.07.2016, 09.08.2016, 14.09.2016 and 13.10.2016, calling upon the assessee to furnish the requisite details and documents, including the details regarding the immovable property purchased during the relevant previous year and the source of investment. However, the assessee failed to comply with the said notices. Subsequently, a show-

cause notice under section 142(1) of the Act dated 11.11.2016 was issued and served upon the assessee, requiring him to explain why the investment of Rs.50,00,000/- made towards purchase of the immovable property should not be treated as unexplained investment and added to his total income. The matter was fixed for hearing on 22.11.2016. However, the assessee again failed to furnish any explanation or supporting evidence. In view of the continued non-compliance on the part of the assessee, the Assessing Officer proceeded to complete the assessment to the best of his judgment under section 144 read with section 147 of the Act. In the absence of any explanation regarding the source of the investment, the Assessing Officer treated the entire consideration of Rs.50,00,000/- paid towards purchase of the immovable property as unexplained investment and added the same to the total income of the assessee. Accordingly, the total income of the assessee was assessed at Rs.50,00,000/- vide order dated 25.11.2016 passed under section 144 read with section 147 of the Act. The Assessing Officer also initiated penalty proceedings under sections 271(1)(c) and 271(1)(b) of the Act.

04. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A) and, during the appellate proceedings, furnished additional evidence explaining the source of the investment. The Ld. CIT(A), after considering the remand report of the Assessing Officer and the rejoinder filed by the assessee, admitted the additional evidence under Rule 46A of the Income-tax Rules, 1962, observing that the assessee was 69 years old, was suffering from serious illness and had shifted from Porbandar to Ahmedabad, whereas the notices of hearing had been sent to his old address. The Ld. CIT(A), therefore, admitted the additional evidence in the interest of natural justice. On merits, the assessee explained that the source of the investment of Rs.50,00,000/- in the immovable property was out of the sale proceeds of another immovable property situated at Porbandar, which had been sold for Rs.1,25,00,000/-, in which the assessee had a share of Rs.62,50,000/-. The Ld.

CIT(A) accepted the explanation regarding the source of the investment and held that the investment of Rs.50,00,000/- stood explained. However, the Ld. CIT(A) observed that the assessee had not filed his return of income for the year under consideration and, consequently, the long-term capital gain arising from the sale of the Porbandar property had not been offered to tax. The Ld. CIT(A), therefore, proceeded to determine the taxable long-term capital gain arising from the said sale. After considering the valuation report and allowing the indexed cost of acquisition of Rs.24,86,304/-, but disallowing the claimed brokerage and other expenses for want of supporting evidence, the Ld. CIT(A) determined the long-term capital gain at Rs.11,35,578/- Accordingly, out of the original addition of Rs.50,00,000/- made by the Assessing Officer as unexplained investment, the Ld. CIT(A) sustained an addition of Rs.11,35,578/- under the head "Long-Term Capital Gain" and deleted the balance addition of Rs.38,64,422/-. Thus, the ground relating to the addition of Rs.50,00,000/- was partly allowed.

Now, the assessee is in further appeal before the tribunal against the aforesaid order of the Ld. CIT(A).At the time of hearing, the Ld. AR submitted that the addition of Rs.11,35,578/- sustained by the Ld. CIT(A) was not justified. It was contended that the assessee had incurred brokerage and other expenses aggregating to Rs.11,13,355/- in connection with the transaction, which ought to have been considered while computing the capital gain. It was further submitted that the very initiation of reassessment proceedings under section 147 of the Act was invalid in law. The Ld. AR specifically contended that the notice under section 148 of the Act dated 29.03.2016, as well as the reasons recorded for reopening the assessment, merely referred to purchase of an immovable property for a consideration of Rs.50,00,000/- jointly with Ms. Nayana J. Manek. However, neither the extent of the assessee's share in the property nor the amount of investment attributable to the assessee was specified. It was, therefore, submitted that the Assessing Officer had failed to specify with clarity the income chargeable to tax which had allegedly escaped assessment in the hands of the assessee. According to the Ld. AR, the Assessing Officer had proceeded on the basis of general information without making any independent enquiry or application of mind to ascertain the assessee's actual share in the property and the corresponding amount of income, if any, that had escaped assessment. The Ld. AR further submitted that the validity of the reassessment proceedings is a pure question of law going to the root of the matter and can be raised at any stage of the appellate proceedings. In support thereof, reliance was placed on the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. v. CIT, 229 ITR 383 (SC).

05. Per contra, the Ld. DR supported the orders of the lower authorities. It was submitted that the reopening of the assessment was validly initiated on the basis of information available with the Assessing Officer regarding the purchase of the immovable property and the assessee's failure to file his return of income. It was further submitted that the assessee had not furnished the requisite details before the Assessing Officer despite repeated opportunities and, therefore, the assessment was rightly completed ex parte. On merits, the Ld. DR relied upon the findings of the Assessing Officer and the Ld. CIT(A).

06. We have heard the rival submissions and carefully perused the material available on record. The assessee has raised a legal ground challenging the validity of the reassessment proceedings under sections 147 of the Act. Since the said ground goes to the root of the matter, we proceed to adjudicate the same first. On perusal of the reasons recorded by the Assessing Officer, we find that the information available with the Department was that the assessee, along with Ms. Nayana J. Manek, had purchased an immovable property for a total consideration of Rs.50,00,000/- on 12.12.2008. However, the reasons recorded do not indicate the respective share of

the assessee and the other co-purchaser in the said property. More importantly, the Assessing Officer proceeded to record his belief that income chargeable to tax to the extent of the entire Rs.50,00,000/- had escaped assessment in the hands of the assessee, without specifying or demonstrating as to how the entire investment represented the assessee's investment. Thus, the basic link between the information regarding the joint purchase of the property and the conclusion that Rs.50,00,000/- constituted income chargeable to tax which had escaped assessment in the hands of this particular assessee has not been properly established in the reasons recorded. The Assessing Officer was required to apply his mind to the assessee's actual share in the property and the corresponding amount of investment attributable to him before forming the requisite belief under section 147 of the Act. It is also relevant that the Ld. CIT(A), during the appellate proceedings, accepted the assessee's explanation that the source of the investment was out of his share of the sale proceeds of another immovable property. The Ld. CIT(A) accordingly held that the investment of Rs.50,00,000/- stood explained and substituted the original addition by taxing long-term capital gain arising from the sale of the other property. This subsequent finding further demonstrates that the nature and extent of the assessee's actual investment required proper examination at the stage of recording reasons itself. In our considered view, the reasons recorded by the Assessing Officer do not disclose a proper and legally sustainable basis for forming the belief that the precise amount of income chargeable to tax in the hands of the assessee had escaped assessment. The jurisdiction assumed under section 147 of the Act is therefore found to be invalid. Once the very assumption of jurisdiction under section 147 of the Act is held to be invalid, all subsequent proceedings pursuant thereto, including the assessment framed under section 144 read with section 147 of the Act, cannot survive in law. Consequently, the assessment order dated 25.11.2016 is quashed on the legal ground. Since the reassessment itself is held to be invalid, the additions made or sustained pursuant thereto do not survive and the grounds raised by the assessee on the merits of the addition are rendered academic and require no separate adjudication. Accordingly, the appeal of the assessee is allowed.

07. In the result, ITA No. 864/Rjt/2024 filed by the assessee is allowed.

08. Now, we, take up Revenue's Cross Objection No. 13/Rjt/2025 in ITA No. 857/Rjt/2025.

09. The Revenue has preferred the aforesaid appeal against the order of the Ld. CIT(A), *inter alia*, challenging the deletion of the addition of Rs.38,64,422/-.

10. At the outset, the Ld. AR submitted that the tax effect involved in the Revenue's appeal is below the monetary limit prescribed by the CBDT for filing appeals before the tribunal. It was further submitted that the Revenue has not demonstrated that the present case falls within any of the exceptions carved out in the relevant CBDT Circular.

11. On the other hand, the Ld. DR was unable to controvert the aforesaid contention regarding the tax effect or demonstrate that the case falls within any of the specified exceptions.

12. We have considered the rival submissions. Since the tax effect involved in the Cross Objection of the Revenue is below the monetary limit prescribed by the CBDT for filing appeals before the Tribunal and no material has been brought on record to establish that the present case falls within any of the exceptions prescribed in the relevant CBDT Circular, the appeal filed by the Revenue is not maintainable in view of the said monetary limit. Accordingly, the appeal of the Revenue is liable to be dismissed on account of low tax effect. Further, as we have already held in the assessee's appeal that the very initiation of reassessment proceedings under section 147 of the Act is invalid, the assessment itself does not survive. Consequently, the

Revenue's challenge to the deletion of a part of the addition also becomes infructuous.

13. In the result, Cross Objection No.13/Rjt/2025 filed by the Revenue is dismissed.

14. Accordingly, ITA No. 857/Rjt/2024 filed by the assessee is allowed and CO. No. 13/Rjt/2025 filed by the Revenue is dismissed.

Order pronounced in the open court on this 8th day of September, 2026.

Sd/-	**Sd/-**
[Dr. Arjun Lal Saini]	**[Shri Sonjoy Sarma]**
लेखा सदस्य/Accountant Member	**न्यायिक सदस्य/Judicial Member**

राजकोट/Rajkot
दिनांक/ Date: 08/09/2026

Copy of the order forwarded to :

1. The assessee
2. The Respondent
3. CIT
4. The CIT(A)
5. DR, ITAT, Rajkot
6. Guard File

By order

//True Copy//

Sr. Private Secretary
ITAT, Rajkot