IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
& SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

I.T(SS).A. Nos.449/Ahd/2019 & 44/Ahd/2020
(A.Ys.: 2011-12 & 2012-13)

Deputy Commissioner of Income Tax, Central Circle-3, Vadodara	Vs.	Shri Nagin A. Vaghela, 11, Purva Bunglow, Nr. Manglam Duple, Sama, Vadodara
[PAN No.AAKPW5302R]		
(Appellant)	..	**(Respondent)**

I.T.A. No.1562/Ahd/2019
(A.Y.: 2014-15)

Nagin A. Vaghela, Parva Bunglow, Nr. Manglam Duplex, Sama-Savali Road, Vadodara	Vs.	Assistant Commissioner of Income Tax, Central Circle-3, Vadodara
[PAN No.AAACU6551K]		
(Appellant)	..	**(Respondent)**

I.T.A. No.270/Ahd/2021
(A.Y.: 2017-18)

Nagin A. Vaghela, Parva Bunglow, Nr. Manglam Duplex, Sama-Savali Road, Vadodara	Vs.	Deputy Commissioner of Income Tax, Central Circle-3, Vadodara
[PAN No.AAKPW5302R]		
(Appellant)	..	**(Respondent)**

Appellant by :	None
Respondent by:	Shri A.P. Singh, CIT-DR & Shri Rignesh Das, Sr. DR

Date of Hearing	08.10.2024
Date of Pronouncement	23.10.2024

O R D E R

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

These appeals are filed by the Department and Assessee against the order of Commissioner of Income Tax (Appeals)-12 (in short "CIT(A)"),

Ahmedabad vide separate orders dated 26.07.2019, 05.12.2019, 27.08.2019 and 25.03.2021 passed for A.Ys. 2011-12, 2012-13, 2014-15 and 2017-18.

We shall first start the Department's appeal for A.Y. 2011-12 in IT(SS)A No. 449/Ahd/2019:

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

"1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in holding that any addition during the assessment u/s.l53A has to be confined to the incriminating material found during the course of search u/s. 132(1) of the Act, even though, there is no such stipulation in sec. 153 A of the Act.

2. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in not appreciating that sec. 153A requires a notice to be issued requiring the assessee to furnish his return of income in respect of each assessment year falling within six assessment years and to assess or re-assess the total income of those six assessment years, and that the scheme of assessment or re-assessment of the total income of a person, searched will be brought to naught if no addition is allowed to be made for those six assessment years in the absence of any seized incriminating material.

3. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in not appreciating that while computation of undisclosed income of the block period U/S.158BB was to be made on the basis of evidence found as a result of search or requisition of books of accounts, there is no such stipulation in sec.153A and scc.153BI specifically states that the provisions of Chapter-XIV-B, under which sec.158BB falls, would not be applied where a search was initiated u/s. 132 after 31/5/2003.

4. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in not appreciating that assessment in relation to certain issues not related to the search and seizure may arise in. any of the said six assessment years after the search u/s. 132 is conducted in the case of the assessee, and that if the interpretation of the ld. CIT(A) were to hold it will not be possible to assess such income in the 153A proceedings, while no other parallel proceedings to assess such other income can be initiated, leading to no possibility of assessing such other income, which could not have been the intention of the legislature.

5. On the facts and in the circumstances of the case and in law the ld. CIT(A) has erred in deleting the addition of Rs. 4,91,59,500/- made on account of

unexplained investment in purchase of land without appreciating the fact involved in this case that assesses failed to submit an explanation dining the assessment proceeding..

6. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.2,18,56,110 on account of sale of immovable properties without appreciating the fact involved in this case that assesses failed to submit an explanation during the assessment proceeding.

7. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.3,17,81,453/- on account of unsecured loan without, appreciating the fact involved in this case that assessee failed to prove the identity, creditworthiness and genuiness of the depositors submit an explanation during the assessment proceeding.

8. It is, therefore, prayed that the order the Ld. CIT(A)-12, Ahmedabad may be set aside and that of the AO may be restored to the above extent.

9. The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal."

3. The brief facts of the case are that a search action under section 132 of the Income Tax Act, 1961, was carried out on the Vaghela Group, including the assessee, on August 30, 2013. Following the search, proceedings under section 153A of the Act were initiated. On February 4, 2014, a notice under section 153A was issued to the assessee, requiring the filing of return of income for Assessment Year (A.Y.) 2013-14 within thirty days. However, the assessee failed to file the return in response to the above notice. Consequently, on December 1, 2014, a show-cause notice under section 153A was issued, which was served on December 2, 2014, yet the assessee filed a delayed return for A.Y. 2011-12 on June 26, 2015, declaring a total income of ₹34,05,800/-. Subsequently, notices under sections 143(2) and 142(1) were issued to the assessee. A detailed questionnaire was sent on August 3, 2015, but the assessee did not comply. The assessee, who derived

income from business and other sources during the relevant year, was summoned under section 131 of the Income Tax Act on January 8, 2015, to produce books of accounts or other documents by January 13, 2015, but no compliance was made. Further, the assessee did not respond to several notices and summonses issued by the AO, dated July 20, 2015, under section 142(1) of the Act, a show-cause notice for prosecution under section 276C(1) issued on August 20, 2015, a notice dated August 7, 2015, under section 142(1) concerning transactions from Annual Information Returns (AIRs) and a summon under section 131 dated October 13, 2015. The assessee also failed to attend the hearing scheduled for December 28, 2015, in response to another notice under section 142(1). Therefore, the Assessing Officer, on the basis of AIRs, questioned the assessee about the purchase and sale of immovable property during A.Y. 2011-12, but no response was provided. The Assessing Officer noted that the assessee had made total land purchases amounting to Rs.4,91,59,500/-, and since the assessee failed to explain these transactions, the Assessing Officer added back this the amount as undisclosed income of the assessee. Similarly, the Assessing Officer observed that the assessee had made sale of land during the same period amounted to Rs.2,18,56,110/-, which was also added back due to non-compliance and lack of explanation on part of the Assessing Officer. The Assessing Officer also initiated penalty proceedings separately for concealment of income. Further, during the assessment proceedings, the assessee had shown an unsecured loan of Rs.3,17,81,453/- in the return for A.Y. 2011-12 but failed to provide supporting documents. The Assessing Officer observed that despite being asked to show cause on December 18,

2015, the assessee did not comply or provide any satisfactory explanation regarding the identity, genuineness, and creditworthiness of the loan taken. As a result, this amount was treated as unexplained income under section 68 of the Act and added back to the total income of the assessee. Penalty proceedings for concealment of income under section 271(1)(c) were initiated for this addition as well. In totality, the Assessing Officer added a sum of Rs.4,91,59,500/- towards unexplained land purchases, a sum of Rs.2,18,56,110/- for unexplained land sales, and a sum of Rs.3,17,81,453/- towards unsecured loan which was disallowed by the Assessing Officer, resulting in a total assessed income of Rs.10,62,02,863/-.

4. In appeal before CIT(Appeals), he observed the additions made by the Assessing Officer comprised ₹4,91,59,500/- for the purchase of immovable properties, ₹2,18,56,110/- for the sale of immovable properties, and ₹3,17,81,453/- on account of unsecured loans. CIT(Appeals) noted that from the assessment order, it is clear that the addition of ₹4,91,59,500/- was based on information from the Annual Information Return (AIR) related to the assessee's purchase of immovable properties during the year, which was available in the ITD System. Similarly, the addition of ₹2,18,56,110/- originated from information about the sale of immovable properties in the AIR data. Both additions were made due to the assessee’s failure to submit any relevant details during the assessment. The addition of ₹3,17,81,453/- was made because the assessee did not provide any evidence to establish the genuineness of the unsecured loans declared in the return of income. CIT(Appeals) noted that the entire purchase cost and sale considerations

reflected in the AIR data and the same cannot be treated as the assessee's income on the basis of any incriminating material found during the course of search. The Assessing Officer did not verify what amount of capital gains was offered to tax in the return or whether it was properly accounted for. More crucially, since A.Y. 2011-12 was an unabated year for the purposes of section 153A proceedings, the AO could not have made any additions unless incriminating documents were found during the search. **The assessment record does not mention any such incriminating material that was relied upon by the AO as a basis for the additions**. Therefore, CIT(Appeals), following the case law presented by the assessee, held that the additions made by the Assessing Officer cannot be sustained and were held to be void. The AO was accordingly directed to delete the additions of ₹4,91,59,500/-, ₹2,18,56,110/-, and ₹3,17,81,453/-. The CIT(Appeals) while passing the order noted that various judgments by Tribunals, High Courts, and the Supreme Court-including the jurisdictional ITAT of Ahmedabad and the Gujarat High Court in Saumya Construction Pvt. Ltd. which have established that in assessments under section 153A, the AO's additions must be based on incriminating material discovered during the search. No additions can be made in such proceedings without related incriminating evidence. These legal precedents apply to unabated assessment years i.e. those years where neither an assessment proceeding was pending nor the time for issuing a notice under section 143(2) had expired at the time of the search. For such years, the AO is prohibited from conducting further investigations beyond the incriminating material found during the search. Thus, any additions that are not based on incriminating material are

considered void ab initio and must be quashed. Consequently, any arguments made by the appellant on the merits of these additions would become purely academic and need not be addressed.

5. The Department is in appeal before us against the order passed by Ld. CIT(A) giving relief to the assesse.

6. On going through the contents of the order passed by Ld. CIT(A), we observe that the relief was granted by Ld. CIT(A) by observing that all additions made by the Assessing Officer for the impugned assessment year were based on information available on AIR and such additions were not based on any incriminating material found during the course of search proceedings under Section 153A of the Act. The above factual finding has also not been disputed by the Ld. D.R. before us during the course of appellate proceedings. We observe that it is a well settled law that in case of unabated assessment years, no addition can be made in such cases de hors any incriminating material found during the course of search. In the instant facts, there is no dispute that the additions were not made by the Assessing Officer on the basis of any incriminating material found during the course of search, but the additions were made only on the basis of Annual Information Return (AIR) data in the ITD system. Therefore, looking into the instant facts, we find no infirmity in the order of Ld. CIT(A), so as to call for any interference.

7. In the result, the appeal of the Department is dismissed for A.Y. 2011-12.

Now we come to the Department's appeal for A.Y. 2012-13 in IT(SS)A No. 44/Ahd/2020

8. The Revenue has raised the revised grounds of appeal:

> *"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the total unsecured loan for the A.Y. was of Rs. 3,29,49,233/- and out of which only an amount of Rs. 1,03,21,945/- was new/fresh unsecured loan despite the fact that the assessee has not submitted complete details of the loan outstanding as on 31.03.2012 before the CIT(A) as per the Return of Income filed by the assessee for the year under consideration.*
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> *2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition of Rs. 3,29,49,233/- on account of unsecured loan u/s 68 of the I.T. Act to Rs. 1,03,21,945/-, treating the same as new/fresh unsecured loan taken during the year without appreciating the fact that neither during the assessment proceedings nor during the appellate proceedings the assessee could quantify the amount of fresh unsecured loan taken during the AY 2012-13.*
>
> *3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition of Rs. 3,29,49,233/- on account of unsecured loan to Rs.1,03,21,945/- u/s 68 of the I.T. Act treating the same as new/fresh unsecured loan taken during the year without appreciating that the assessee neither during the assessment proceedings nor during the appellate proceedings could prove the identity, credit worthiness and genuineness of unsecured loan as shown in the Return of Income filed for the AY: 2012-13.*
>
> *4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-4, Surat ought to have upheld the order of the Assessing Officer.*
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> *5. It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that the AO may be restored to the above extent."*

9. The brief facts in relation to this assessment year are that on August 30, 2013, a search action under Section 132 of the Income Tax Act, 1961, was conducted concerning the Vaghela Group, which included the case of the assessee. Following this search, income tax proceedings were initiated under Section 153A of the Act. The assessee eventually filed a return for

A.Y. 2012-13 on June 26, 2015, reporting a total income of Rs. 7,96,010/-. Subsequently, notices under Sections 143(2) and 142(1) were issued and served to the assessee. On August 3, 2015, another notice under Section 142(1), accompanied by a detailed questionnaire, was sent, but there was no compliance from the assessee's side. The assessee, whose income sources included business and other avenues, was summoned on January 8, 2015, under Section 131 to produce necessary documents, but the assessee failed to comply. Throughout the assessment process, multiple requests for clarification and documentation were sent to the assessee, including inquiries about cash deposits and transactions based on Annual Information Returns (AIRs). The Assessing Officer questioned several substantial transactions involving the purchase of immovable properties totaling Rs.73,879,600/-, but the assessee failed to provide satisfactory explanations or supporting documents for these transactions. Consequently, this amount was added back to the income by the Assessing Officer who also initiated separate penalty proceedings under Section 271(1)(c) for concealment of income. In addition to the real estate transactions, the assessee claimed an unsecured loan amounting to Rs.3,29,49,233/-, but failed to furnish supporting documentation or explanations regarding the identity and creditworthiness of the lender. This amount was also treated as unexplained income under Section 68 by the Assessing Officer and added to the income of the assessee and penalty proceedings were initiated for concealment of income, separately. The assessment was finalised on the original reported income of Rs.7,96,010/-, in which additions were towards amounts from the unaccounted land purchases (Rs.73,879,600/-), unexplained cash credits

(Rs.46,800/-), and the disallowed unsecured loan (Rs.3,29,49,233/-), at a total assessed income of Rs.10,76,71,643/-.

10. The assessee filed before Ld. CIT(Appeals) against the aforesaid assessment order. We are only concerned with addition related to unsecured loans for a sum of Rs. 3,29,13,945/- and hence we shall discuss that part of order of Ld. CIT(Appeals) which pertains to this addition. During appellate proceedings, the particulars of unsecured loans were presented by the assessee and on persual of details furnishes by the assessee, Ld. CIT(Appeals) observed that the unsecured loans as of March 31, 2012, included various individuals and entities, **with significant amounts carried over from the previous year**. The total amount of unsecured loans was documented as Rs.3,29,13,945/-, with specific loans from individuals such as Aakash Builders and multiple other creditors contributing to this figure. The appellant argued that a **substantial portion of these loans were carried over from prior years, and therefore they should not be classified as unexplained credits for the current year**. The assessee contended that the maximum addition under Section 68 could not exceed Rs.1,03,21,945/-, which represented the differential amount, as the Assessing Officer (AO) **had already deemed the larger amount of Rs.3,16,92,000/- received until March 31, 2012, as unexplained in a prior assessment**. Ld. CIT(Appeals) observed that that the assessee had not adequately provided necessary documentation, such as account copies and loan confirmations from the creditors, to establish the identities and creditworthiness of the parties involved. In the interest of fairness, Ld.

CIT(Appeals) directed the AO to review the loans thoroughly and limit any additions **to those related to new or fresh unsecured loans taken during the year**. The appellant was instructed to furnish appropriate details, including loan confirmations and evidence of the parties' creditworthiness, for the AO's examination. Therefore, the appeal for A.Y. 2012-13 was partially allowed by Ld. CIT(Appeals), with a direction to sustain only the additions based on **fresh loan** taken by the assessee during the impugned year under consideration and giving relief with respect to previously carried-over amounts.

11. The Revenue is in appeal before us against the aforesaid order passed by Ld. CIT(A).

12. None appeared on behalf of the assessee before us. On going through the facts of the instant case we are of the considered view that the Ld. CIT(A) has taken a reasonable approach by holding that in absence of details regarding the unsecured loans like copy of accounts and loan confirmation from concerned creditors, the assessee has not been able to prove the identity and creditworthiness of the parties for the impugned year under consideration. Further, we observe that the Ld. CIT(A) has taken a reasonable approach while directing the Assessing Officer to only restrict the additions in respect of new or fresh unsecured loans taken by the assessee during the impugned year under consideration and giving relief with respect to loans which were carried over from the prior years. Accordingly, we find no infirmity in the order Ld. CIT(A) so as to call for any interference.

13. In the result, the appeal of the Revenue is dismissed for A.Y. 2012-13.

Now we come to Assessee's Appeal in ITA No. 1562/Ahd/2019 for A.Y. 2014-15

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

> *"1. The Ld. CIT(A)-12, Ahmedabad has dismissed the appeal filed against the order dated 19.01.2016 for want of payment of advance tax by invoking the provisions of Sec. 249(4)(b) of the I.T. Act. The appeal may please be restored to the file of the Ld. CIT(A) on fulfilment of the payment of self-assessment tax as required u/s. 249(4)(b).*
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> *2. The Ld. CIT(A)-12, Ahmedabad may please be directed to hold that the non-payment of advance tax is a curable defect for the admission and adjudication of appeal and on the defect being cured, the appeal ought to be restored and be adjudicated in accordance with the law.*
>
> *3. Your appellant craves liberty to add, alter, delete or substitute any of the grounds of appeal herein above contained."*

15. The brief facts of the case are that the assessee did not file return of income during the impugned year under consideration, despite deriving income from house property, business, and other sources. Following a search under section 132 of the Income Tax Act concerning the Vaghela Group on August 30, 2013, a notice under section 153A was issued for the assessment years 2008-09 to 2013-14. Subsequently, the case was selected for scrutiny for the assessment year 2014-15 and on December 1, 2014, a notice under section 142(1) was served, requesting the assessee to file return of income by December 8, 2014, but the assessee did not respond. A follow-up notice under section 274 regarding non-compliance was issued on

December 22, 2014, but the assessee again failed to respond to the said notice. Further notices under section 281B were issued, as well as summons under section 131 on January 8, 2015, both of which went unresponded by the assessee. Subsequently, a show cause notice regarding penalty under section 271(1)(b) was sent on May 8, 2015, to which the assessee did not reply. The Assessing Officer made several queries regarding cash deposits in various bank accounts, but the assessee failed to provide any explanation. On August 20, 2015, the Assessing Officer issued a show cause notice under section 276C(1), indicating potential prosecution for willful tax evasion. Despite multiple notices and requests for compliance under section 142(1), including discrepancies noted in sales turnover and Annual Information Returns (AIRs), the assessee consistently failed to respond to notice issued by the Assessing Officer. The Assessing Officer observed that there was was substantial undisclosed income, as the assessee admitted to unaccounted business income amounting to Rs.3,50,04,000/- during the search proceedings but did not file a return for the assessment year 2014-15. This led to several penalties being initiated for concealment of income by the Assessing Officer. In the assessment order, the Assessing Officer added the following amounts to the income of the assessee: (i) Rs. 2,11,77,337/- for undisclosed land sales, (ii) Rs. 5,99,200/- as unaccounted cash credits, (iii) Rs. 3,50,04,000/- for undisclosed business income, (iv) Rs. 23,31,500/- for unexplained cash deposits, (v) Rs. 15,00,000/- for cash found during the search, and (vi) Rs. 23,84,870/- for jewelry found, resulting in a total assessed income of Rs. 6,29,96,907/-. Penalty proceedings under various sections of the Income Tax Act were initiated for each of these defaults.

16. In appeal, Ld. CIT(Appeals) observed that the assessment was completed, determining the total income at Rs. 6,29,96,907/-, based on incriminating evidence uncovered during the search and other information in the Department's records. This included unaccounted land sales, unexplained cash credits, and undisclosed business income. The demand raised was substantial, amounting to Rs. 1,77,42,736/-, as the assessee had not filed any return nor made any claim for advance or self-assessment tax payments. Thus, the appeal could not be admitted under the provisions of section 249(4)(b) of the Act. The authorized representative of the assessee **were asked to provide evidence of any advance tax or self-assessment tax paid. During a submission made on July 23, 2019, it was stated that the appellant was facing severe financial difficulties and had not filed a return under section 139 of the Act**. **However, Ld. CIT(Appeals) observed that the assessee had neither paid the outstanding self-assessment tax nor did he have the intention to do so in the near future, as confirmed in a written communication received shortly thereafter from AR of the assessee**. Given these circumstances, Ld. CIT(Appeals) was of the view that since the assessee had not filed return of income despite there being substantial unaccounted income, the appeal fell squarely under the provisions of section 249(4)(b), which stipulates that no appeal shall be admitted unless the advance tax owed has been paid. Ld. CIT(Appeals) noted that the assessee had failed to comply with the requirement to file a return or pay the necessary taxes, and there was no evidence that the assessee would meet his tax obligations in the future as well. Therefore, Ld. CIT(Appeals) held that the discretion

provided in the relevant provisions was not warranted in this case and the appeal was not admitted and was dismissed for statistical purposes. While passing the order, Ld. CIT(Appeals) made the following observations:

> *"3.3 As return of income was not filed by the appellant, the appeal filed is covered by the provisions of section 249(4)(b) by virtue of which no appeal u/s 246A of the Act shall be admitted unless at the time of filing of appeal the assessee has paid an amount equal to the amount of advance tax which was payable by him. It has been also provided that on an application made by the appellant the CIT(A) may, for any good and sufficient reason to be recorded in writing, exempt him from operation of the provisions of Clause (b) to section 249(4).*
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> *3.4 In this regard I note that the appellant was liable to pay tax and file the return of income, that he did not file the return of income u/s 139 and even in response to various notices issued and that the appellant was required to pay advance tax (and self-assessment tax). In view of the letter dated 27/08/2019, I am of the considered opinion that even if the appeal for A.Y. 2014-15 is kept in further abeyance, the appellant would not be paying the tax equal to advance tax which was liable on him. Further, in view of non-compliance during the assessment proceedings and non-payment of even self-assessment tax for A.Y.2013-14, I do not find the case to be fit where the discretion as stipulated in the proviso to sec. 249(4) should be exercised in favour of the appellant."*

17. The assessee is in appeal before us against the order passed by the Ld. CIT(A), refusing to admit the appeal of the assessee on account of non-payment of tax under section 249(4) of the Act.

18. Before us, none appeared on behalf of the assessee to explain as to why the assessee had failed to pay taxes (and for that matter the assessee had also not filed the Return of Income for the impugned year under consideration) and in absence of any explanation on behalf of the assessee, despite granting several opportunities of hearing to the assessee, we are of the considered view that there is no infirmity in the order of Ld. CIT(A) so as to call for any interference.

19. In the case of **Khushmanlal Hiralal 57 ITD 531 (AHD.),** a search of the assessee's premises was conducted on 24.09.1987. The assessee filed his return of income for the assessment year 1988-89 on 21.03.1991. The Assessing Officer completed the assessment under section 143 on 31.12.1991 by making certain additions. The assessee filed appeal before Commissioner on 30.11.1992, objecting to the various additions. The Commissioner (Appeals) noted that the assessee had not paid the tax due on returned income at the time of filing the appeal and that under section 249(4)(*a*) as amended with effect from 01.04.1989, the appeal could not be admitted because of that lapse. The assessee contended that assessee's lapse in not paying the tax on the returned income was *bona fide* and it should be condoned. The Commissioner (Appeals), rejecting the assessee's contention, declined to entertain the appeal, holding that with effect from 01.04.1989, the Commissioner (Appeals) had no power to condone that lapse. On second appeal, the assessee contended that the Commissioner (Appeals) ought to have condoned the lapse on the ground that assessment proceedings could be presumed to have started with the search conducted on 24.09.1987, *i.e*., much before the amended provisions of section 249(4)(*a*) came into effect on 01.04.1989. While dismissing the appeal of the assessee, the Ahmedabad ITAT made the following observations:

> *"There was no dispute that the assessee had not paid tax on the returned income before filing of the appeal on 3-2-1992, nor any advance tax or tax on account of self-assessment had been paid by the assessee. As such the provisions of section 249(4)(a) were clearly attracted in the case of the assessee. Being a creature of the Act, the Commissioner (Appeals) has to function within the parameters of the statute and as such has no inherent*

powers in the matter of entertaining an appeal. He does not have power to transgress the limits placed by the statute. Under the circumstance the Commissioner (Appeals) was justified in not entertaining the appeal filed by the assessee. In the instant case, the return of income was filed on 21-3-1991 and the assessment proceedings started with the issue of notice under section 143(2) thereafter, that is much after 1-4-1989, when the amended provisions of section 249(4)(a) came into effect.

The assessee contention that the assessment proceedings started with the search of the assessee's premises on 24-9-1987 could not be accepted because such an interpretation would produce a manifestly absurd and unjust result which could never have been intended by the Legislature.
The Commissioner (Appeals) was, therefore, justified in not entertaining this appeal."

20. In the case of **Bharatkumar Sekhsaria 82 ITD 512 (MUM.),** the Mumbai ITAT made the following observations, which are pertinent to the issue in hand before us:

*"The provisions of section 249(4)(*a*) are mandatory and were clearly attracted in the case of the assessee. Prior to the Tax Laws (Amendment) Act, 1989 with effect from 1-4-1989, there was a discretion with the Commissioner (Appeals) to exempt the assessee from the operation of provisions of clause (*a*) of sub-section (4) of section 249 if the assessee produced before the Commissioner (Appeals) an evidence that he was prevented by some good and sufficient reasons for not making the payment on the returned income before filing the appeal. But such discretion has not been conferred on the Commissioner (Appeals) after the amendment. Therefore, the appeal of the assessee would is not maintainable if tax has not been paid on the returned income before filing the appeal. The amendment had been brought on the statute book with some specific purpose of discouraging the assessee from withholding tax due even on the returned income by filing an appeal before the concerned authority and to get the benefit on the basis of good and sufficient reasons for not making the payment on the returned income before filing the appeal. The object behind the amendment was to encourage tax compliance. The very purpose of the amendment to this section would be defeated if appeals are admitted even without making the payment of tax on the returned income on the basis of good and sufficient reasons for not making the payment. Therefore, these provisions must be interpreted in consonance with the aims and objects of the* Legislature *in enacting the provisions for furthering the objects and not to defeat them. The requirement of section 249(4) regarding payment of tax on income returned, etc., cannot be said merely to regulate the exercise of the assessee's pre-existing right of appeal but in truth whittles down*

the right itself and cannot be regarded as mere rule of procedure. The provisions of section 249(4) are substantive provisions. ***Therefore, in order to get his appeal admitted by the first appellate authority, the assessee must comply with the mandatory requirements of the provisions of section 249(4)(a) wherever these have application as to the payment of tax due on the returned income before the expiry of the period of limitation of filing the appeal. On failure of the assessee to comply with the requirement the first appellate authority is competent not to admit the appeal.***

The language of section 249(4)(a) is very plain and without any ambiguity. ***There are also no inconsistencies found in the words and expressions used in the section. A statute is an edict of the Legislature and conventional way of interpreting or construing statute is to seek the intention of its maker.*** *A statute is to be construed according to the intent of those that make it and the duty of adjudicator is to act upon the true intention of the* Legislature. *If a statutory provision is open to more than one interpretation, the Court has to choose that interpretation which represents the true intention of the* Legislature***. In the present case, section 249(4)(a) is not open to more than one interpretation, i.e., no appeal shall be admitted unless at the time of filing the appeal "where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him." The intention of the Legislature is very clear that the appeal would not be maintainable unless the tax is paid on the returned income.*** *The function of the Court is only to expound and not to legislate. Sometimes the words used by the* Legislature *do not always bear a plain meaning. Moreover, judges quite often differ on the issue whether certain words are plain and even when there is an agreement that the words are plain, difference of opinion may result on the question as to what the plain meaning is. In case of doubt, therefore, it is always safe to have an eye on the object and purpose of the statute or reason and spirit behind it.*

In the instant case, the words used by the Legislature in section 249(4)(a) bear a plain meaning, i.e., before filing the appeal tax must be paid on the returned income otherwise appeal is not maintainable. Even if there is any doubt, the Tribunal has to look into the object and purpose of the statute and the reason and the purpose behind it. Prior to the amendment, the assessees were not making the payment of taxes even on their returned income and their appeals were admitted just on the basis that the assessees were having good and sufficient reasons not to make the payment even on the returned income before filing the appeal*. The amendment to section 249(4)(a) was brought on the statute to meet this situation and to force such tax evaders to make the payment at least on the basis of their returned income before filing the appeal. So the provisions of section 249(4)(a) have to be construed in the light of general purpose and object of the statute. Now, if the appeal is admitted without the payment of taxes on the returned income, this would defeat the very purpose of the amendment to section 249(4)(a) which is with effect from 1-4-1989. It is a rule now firmly established that the intention of the* Legislature *must be found by reading the statute as a whole. It is also an established rule of law that a statute or any enacting provision therein must be so construed as to make it effective*

and operative. A statute is designed to be workable, and the interpretation thereof by a Court should be to secure the object unless crucial omissions, or clear directions make that end unattainable.

In the instant case, the intention of the Legislature *was quite plain,* i.e.*, to collect the taxes at least on the basis of returned income before filing the appeal. But if the appeal filed without making the payment of tax on the basis of returned income was to be taken as maintainable, it would defeat the obvious intention of the* Legislature *to force the collection of lawful taxes and would reduce the statute to futility. Therefore, the appeal is not maintainable where the taxes have not been paid on the basis of returned income before filing the appeal.*

*It is a well established rule that the taxing statute must be strictly construed. The provisions of section 249(4)(*a*) are mandatory and the intention of the* Legislature *is also very clear to enforce the payment of taxes before filing the appeal as per the returned income. There is no ambiguity in the language of the said section and the same is also not open to two interpretations. The intention of the* Legislature *to recover the tax on the returned income before filing the appeal to the Commissioner (Appeals) is clearly expressed in the language of section. Therefore, the same was not open to speculate as what would be the fairest and most equitable mode of collecting the tax. Therefore, as has been mentioned above, the object of the* Legislature *has to be kept in view and a construc-tion consistent with the object has to be placed on the words used if there is any ambiguity; but in the present case, there was no ambiguity in the language of the section and it was capable only of one interpretation that the tax must be paid on the returned income before filing the appeal. In view of the aforesaid discussion, there was no infirmity found in the order of the Commissioner (Appeals) and the same was to be upheld."*

21. In view of the facts of the instant case and the judicial precedents on the subject as highlighted above we find infirmity in the order of Ld. CIT(A) so as to call for any interference.

22. In the result, the appeal of the assessee is dismissed.

Now we come to the Assessee's Appeal in ITA No. 270/Ahd/2021 for A.Y. 2017-18

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

"1. The Ld. CIT(A)-12, Ahmedabad has erred in law and in facts in passing the impugned order ex-parte. The order of the Ld. CIT(A) is prayed to be set aside and an opportunity of representing his case may kindly be afforded.

2. The Ld. CIT(A)-12, Ahmedabad has erred in law and in facts in confirming the order of the Ld. A.O. made ex-parte u/s. 144 without appreciation of facts available on record. The Ld. CIT(A) ought to have held that the entire proceeds from the sale of immovable properties could not be subjected to tax and in computing the income from the sale, the cost ought to have been allowed.

3. The Ld. CIT(A)-12, Ahmedabad has erred in law and in facts in confirming the order of the Ld. A.O. made ex-parte in the addition of the sum of Rs. 29,76,220/- deposited in cash during the demonetization period as income u/s 68 of the I.T. Act.

4. Your appellant craves liberty to add, alter, amend, substitute or withdraw any of the ground(s) of appeal hereinabove contended."

24. The assessee is in appeal before us against the order passed by Ld. CIT(A).

25. Despite several opportunities of hearing, none has appeared on behalf of the assessee to present the case on merits. We observe that the Assessing Officer had made several addition on account of large value cash deposited by the assessee during the demonetization period (Rs.29,76,220/-) and also on account of sale of immovable property which was not reported by the assessee in the Income Tax Return (addition amounting to Rs.1,38,78,375).

26. Further, even before Ld. CIT(A) the assessee did not cause appearance and nor furnished any explanation regarding the above additions made by the Assessing Officer. Even before us, despite granting of several opportunities of hearing, the assessee has not caused appearance before us and has not furnished any explanation regarding the above additios.

Accordingly, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

27. In the result, the appeal of the assessee is dismissed for A.Y. 2017-18.

28. In the combined result, the appeal of the Department for A.Y. 2011-12 and 2012-13 are dismissed and the appeal of the assessee for A.Y. 2014-15 and 2017-18 are also dismissed.

This Order pronounced in Open Court on	**23/10/2024**

Sd/-	**Sd/-**
(ANNAPURNA GUPTA)	**(SIDDHARTHA NAUTIYAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 23/10/2024

TANMAY, Sr. PS ***TRUE COPY***

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

आदेशानुसार/ BY ORDER,

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