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

BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
And
SHRI TAPAS RAM MISRA, JUDICIAL MEMBER

ITA No. 2569/AHD/2026
(Assessment Year: 2010-11)

Shalin Jayantibhai Desai, 4, Harsh Park, Nr Tagor Nagar Old Padra Road, Vadodara-390015. [PAN : ABNPD5378 C]	Vs.	ACIT, Circle 4(2), Vadodara. Present Jurisdiction DCIT, Circle 1(1)(1), Vadodara.
(**Appellant**)	..	(**Respondent**)

Appellant represented by :	Shri Biren Shah, AR
Respondent represented by:	Shri Amit Pratap Singh, Sr. DR

Date of Hearing	15.10.2026
Date of Pronouncement	19.10.2026

O R D E R

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

This appeal has been filed by the assessee against the order dated 29.05.2026 passed by the Addl/JCIT Commissioner of Income Tax (Appeals) Aurangabad [hereinafter referred to as the 'Ld. CIT(A)'], under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') for Assessment Year 2010-11.

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

1) In law and in facts and circumstances of the case the order passed u/s 143(3) r.w.s. 147 of the Act is void since the addition for which proceedings were initiated u/s 147 have not been made in the impugned assessment order.

2) In law and in facts and circumstances of the case the Ld CIT(A) has erred in not following the ratio laid down by the jurisdictional HC in the case of Mohammad Junaid Dadani [2013] 30 taxmann.com 1 as also in the case of Jet Airways Ltd. 195 Taxman 117

3) The CIT(A) erred in dismissing the Appeal of the Assessee challenging the legal ground that the order passed u/s 143(3) r.w.s. 147 is without jurisdiction when the Assessee has already disclosed that LTCG of Rs. 1,17,49,792 is exempt u/s 10(38) of the Income Tax Act and therefore since no addition was made on the ground on which the assessment was reopened the entire proceeding become void.

4) The Ld. CIT(A) has erred in not appreciating the fact that the assessee had already its return disclosing all the facts pertaining to exempt long term capital gain. Accordingly the reassessment proceedings beyond a period of four years is void an initio. Hence the order passed u/s 143(3) r.w.s. 147 needs to be set aside.

5) Without prejudice to above, in law and in facts and circumstances of the case the addition of Rs. 7,36,392/- as made by the AO is bad in law and needs to be deleted.

6) 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 brief facts of the case are that the assessee is an individual deriving income from salary, capital gains and income from other sources. The assessee filed the return of income for A.Y. 2010-11 on 31.07.2010, declaring a total income of Rs. 1,09,22,320/-. The return was processed under Section 143(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). Subsequently, the Assessing Officer received information regarding long-term capital gains amounting to Rs. 1,17,49,792/-, which, according to the information available with the Department, had not been properly disclosed in the return of income. Accordingly, after recording the reasons and obtaining the necessary approval, the Assessing Officer issued a notice under Section 148 of the Act on 16.05.2016 for reopening the assessment under Section 147 of the Act. During the reassessment proceedings, the Assessing Officer examined the issue relating to long-term capital gains and verified the assessee's claim for deduction under Section 54F of the Act in respect of the sale of a plot of land situated at Sama, Vadodara. On verification of the records and details furnished by the assessee, the Assessing Officer observed that the assessee

owned more than one residential house property on the date of transfer of the original asset and was, therefore, not eligible for deduction under Section 54F of the Act. Accordingly, the deduction claimed under Section 54F amounting to Rs. 7,35,327/- was disallowed. The Assessing Officer also made an addition of Rs. 1,065/- under the head "Income from Other Sources". Accordingly, the assessment was completed under Section 143(3) read with Section 147 of the Act on 14.08.2017, determining the total income at Rs. 1,16,58,712/-.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A), dismissed the appeal of the assessee by observing as follows:

> *"...Decision and Findings: I have carefully considered Form No.35, statement of facts, assessment order, written submissions filed by the appellant, details/documents available on record and the grounds of appeal raised by the appellant. The issues involved in the present appeal primarily relate to validity of reassessment proceedings initiated u/s 147/148 of the Income Tax Act, 1961 and disallowance of deduction claimed u/s 54F of the Act. The appellant has also challenged addition of Rs. 1,065/- made under the head income from other sources along with consequential levy of interest.*
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> *7.1 The appellant has challenged the validity of reassessment proceedings mainly on the grounds that notice issued u/s 148 was beyond four years from the end of the relevant assessment year and that no addition was ultimately made on the exact issue recorded in the reasons. The appellant has further contended that all material facts relating to Long Term Capital Gain were fully and truly disclosed in the original return of income and therefore reopening was bad in law. The appellant has also submitted that reopening was initiated merely on the basis of information received by the department without independent application of mind by the Assessing Officer and therefore the reassessment proceedings were liable to be quashed. In support of such contentions, reliance has been placed upon various judicial pronouncements including CIT vs. Jet Airways (1) Ltd., Ranbaxy Laboratories Ltd. vs. CIT, CIT vs. Mohmed Juned Dadani, CIT vs. Sfil Stock Broking Ltd., CIT vs. Smt. Laxmi Mehrotra and other decisions referred to in the written submissions. The submissions of the appellant, assessment order, reasons recorded and material available on record have been carefully considered.*
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> *7.2 At the outset, it is observed that the original return of income for A.Y. 2010-11 was merely processed u/s 143(1) of the Income Tax Act and no scrutiny assessment u/s 143(3) was completed originally. Therefore, no opinion had earlier been formed by the Assessing Officer on the issues involved in the return of income and accordingly the principle of "change of opinion" does not arise in the present case.*

In the case of ACIT vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (291 ITR 500)(SC), the Hon'ble Supreme Court held that intimation u/s 143(1) cannot be treated as assessment and therefore question of change of opinion does not arise in such cases. The Hon'ble Supreme Court further held that at the stage of issuance of notice u/s 148, the only requirement is existence of relevant material on the basis of which a reasonable person could form belief regarding escapement of income. Thus, the contention of the appellant challenging reopening on the ground of change of opinion is devoid of merit and liable to be rejected.

7.3 The records further reveal that the Assessing Officer was in possession of specific information relating to escapement of income in the nature of Long Term Capital Gain amounting to Rs.1,17,49,792/- Based upon such information and verification of available records, the Assessing Officer recorded reasons and formed a prima facie belief that income chargeable to tax had escaped assessment within the meaning of section 147 of the Act. The appellant has contended that reopening was initiated merely on the basis of information without independent application of mind and therefore amounted to reopening on mere suspicion. However, the said contention is not found acceptable. It is observed that the Assessing Officer had before him specific information regarding substantial Long Term Capital Gain transactions and after examination of return data and available records formed prima facie belief regarding escapement of income. At the stage of initiation of proceedings u/s 147, the Assessing Officer is only required to form a prima facie belief on the basis of tangible material and not to conclusively establish escapement of income. Reliance is also placed on the decision in the case of Raymond Woollen Mills Ltd. vs. ITO (236 ITR 34)(SC), wherein it was held that at the stage of reopening, it is only required to be examined whether there existed prima facie material for formation of belief regarding escapement of income and sufficiency or correctness of such material cannot be gone into at that stage. Therefore, merely because the issue relating to Long Term Capital Gain was subsequently verified during reassessment proceedings, the same would not invalidate assumption of jurisdiction u/s 147 if at the stage of recording reasons there existed tangible 2026-27/1089277953(1)material leading to formation of belief regarding escapement of income.

7.4 Further, as per section 149(1)(b) of the Income Tax Act, as applicable for the relevant assessment year, notice u/s 148 could validly be issued within six years from the end of the relevant assessment year where income chargeable to tax escaping assessment amounted to or was likely to amount to Rs. 1 lakh or more. In the present case, the income believed to have escaped assessment was Rs. 1,17,49,792/-, which was substantially above the monetary threshold prescribed under section 149(1)(b) of the Act. The assessment year involved is A.Y. 2010-11 and notice u/s 148 was issued on 16.05.2016. Therefore, the notice issued u/s 148 was clearly within the statutory limitation period prescribed under the Act and accordingly the reassessment proceedings cannot be held to be barred by limitation.

7.5 The appellant has strongly relied upon decisions in the cases of CIT vs. Jet Airways (1) Ltd., Ranbaxy Laboratories Ltd. vs. CIT, CIT vs. Mohmed Juned Dadani and Monarch Educational Society in support of the contention that when no addition is made on the issue recorded in reasons, no other addition can be made in reassessment proceedings. The judicial decisions relied upon by the appellant have

been carefully considered. However, the same are distinguishable on facts and do not advance the case of the appellant.

In the present case, the original return was only processed u/s 143(1) and reopening was based upon tangible information available with the department regarding escapement of income in the nature of Long Term Capital Gain. Further, the issue forming basis of reopening was duly examined and verified during reassessment proceedings. During such reassessment proceedings, the Assessing Officer while examining computation of capital gains and connected records detected incorrect claim of deduction u/s 54F leading to escapement of income. It is further observed from the assessment order that the Authorized Representative of the assessee admitted during reassessment proceedings that the assessee was not eligible for deduction u/s 54F owing to ownership of more than one residential house property and that such deduction had been wrongly claimed in the return of income.

The relevant para of assessment order is reproduced as below:

6 During the course of assessment proceedings on verification of computation of income for A.Y. 2010-11, it was seen that the assessee has sold one plot of land having RS No.607 at Sama, Tal. & Dist. Vadodara admeasuring 2099 Sq.Ft. on 19-01-2010 for the consideration of Rs. 17,01,000/- on which stamp duty of Rs.83,500/- has been paid which is as per Jantri rate. The said plot of land was purchased by the assessee on 06-03-2003 for the consideration of Rs.4,53,961/- Including stamp duty and registration cost. The assessee has further incurred expenditure of Rs.2,29,039/- for the excavation and leveling cost and construction of compound wall etc. The total cost of purchase of the plot of land taken by the assessee is Rs.6,83,000/- and after taking indexation cost the assessee has claimed deduction of Rs.9,65,673/- has shown long term capital gain of Rs.7,35,327/-.The assessee has claimed further deduction of Rs.7,35,327/-U/s 54F of the Act as investment in Construction of house. On further verification it was found that the assessee having two house properties as on the date of sale of above mentioned plot of land. As per the provisions of section 54F of the Act, the deduction U/s 54F is not allowed if the assessee owns more than one residential house property other than the new asset on the date of transfer of the original asset. The assessee was therefore asked vide order sheet entry dated 18.07.2017 to showcase as to why the claim of deduction U/s 54F of the Act should not be disallowed since the assessee is having more than one residential house on the date of transfer and is therefore not eligible for claiming deduction U/s 54F of the Act of Rs.7,35,327/-. In response, the AR of the assessee on 25.07.2017 has submitted that the assessee is having more than one residential house as on the date of transfer and is therefore not eligible for the deduction U/s 54F of the Act of Rs.7,35,327/-. The deduction was erroneously claimed by mistake while filing the return of income and requested to disallow the deduction U/s 54F of the Act of Rs.7,35,327/-. In view of above mentioned facts, the wrong claim of deduction U/s 54F of the Act of Rs.7,35,327/- is disallowed and Long term capital gains on the sale of above mentioned plot of land is taken at Rs.7,35,327/- and added to the total income of the assessee. Penalty proceedings u/s 271(1)(c) r.ws. 274 of the Act, initiated separately for furnishing inaccurate particulars of income to the tune of Rs. 7,35,327/-.

Thus, escapement of income stood established during reassessment proceedings themselves. Therefore, it cannot be said that reassessment proceedings resulted in assessment of wholly unrelated income unconnected with issues examined during reassessment proceedings.

Accordingly, considering the peculiar facts of the present case including processing of return u/s 143(1), existence of tangible material at the stage of reopening, examination of the issue forming basis of reopening during reassessment proceedings and subsequent detection of incorrect claim of deduction u/s 54F leading to escapement of income, the judicial decisions relied upon by the appellant are distinguishable on facts and therefore do not help the case of the appellant

7.6 Further, Explanation 3 to section 147 specifically empowers the Assessing Officer to assess or reassess any income which comes to his notice during the course of reassessment proceedings notwithstanding that such issue was not specifically included in the reasons recorded initially. Accordingly, once jurisdiction u/s 147 was validly assumed on the basis of tangible material suggesting escapement of income, the Assessing Officer was fully empowered to examine and assess other escaped income detected during reassessment proceedings including incorrect claim of deduction u/s 54F and other additions made in the assessment order.

7.7 The appellant has further contended that reassessment beyond four years is invalid in absence of failure to disclose fully and truly all material facts necessary for assessment. This contention is also not acceptable. During reassessment proceedings, though the issue forming basis of reopening was duly examined and verified, the Assessing Officer on examination of computation of income and connected records detected that the assessee had wrongly claimed deduction u/s 54F despite statutory ineligibility arising from ownership of more than one residential house property on the date of transfer of original asset. Thus, reassessment proceedings resulted in detection of incorrect claim leading to escapement of income chargeable to tax. It is further observed from the assessment records that during reassessment proceedings, the Authorized Representative of the assessee admitted that the assessee was not eligible for deduction u/s 54F and that the said claim had been wrongly made in the return of income. Therefore, escapement of income stood established during reassessment proceedings themselves.

7.8 Accordingly, in view of the facts of the case, statutory provisions and judicial principles discussed hereinabove, it is held that the Assessing Officer had validly assumed jurisdiction u/s 147 of the Act and the notice issued u/s 148 dated 16.05.2016 was legally sustainable and within the limitation prescribed under section 149(1)(b) of the Act. The reassessment proceedings having resulted in detection of incorrect claim of deduction u/s 54F and other escaped income were validly concluded in accordance with law. Therefore, Ground Nos. 1 and 2 challenging validity of reassessment proceedings are dismissed.

During the course of reassessment proceedings, the Assessing Officer on verification of computation of income observed that the appellant had sold one plot of land situated at Sama, Vadodara for consideration of Rs. 17,01,000/- and after indexation had worked out Long Term Capital Gain at Rs.7,35,327/- Against capital

gain, the appellant claimed deduction u/s 54F on account of investment in construction of residential house. However, on further verification, it was noticed that the appellant was owning more than one residential house property on the date of transfer of the original asset. As per provisions of section 54F of the Act, deduction is not allowable where the assessee owns more than one residential house property other than the new asset on the date of transfer of the original asset.

8.1 The assessment records further reveal that during reassessment proceedings. the Authorized Representative of the appellant admitted that the appellant was owning more than one residential house property on the date of transfer and therefore was not eligible for deduction u/s 54F of the Act. It was further admitted that deduction u/s 54F had been erroneously claimed while filing the return of income and request was made before the Assessing Officer for disallowance of the same. In view of such categorical admission by the appellant himself and considering the clear statutory restriction contained in section 54F, the Assessing Officer was fully justified in disallowing deduction of Rs. 7,35,327/- claimed u/s 54F of the Act.

8.2 The appellant has not brought any material on record to controvert the factual finding recorded by the Assessing Officer regarding ownership of more than one residential house property on the date of transfer of original asset. Once the statutory conditions prescribed under section 54F are not fulfilled, the claim of deduction cannot be allowed merely because such claim was made in the return of income. Therefore, the disallowance of deduction u/s 54F amounting to Rs.7,35,327/- made by the Assessing Officer is found to be in accordance with law and is hereby confirmed.

8.3 So far as Ground No.4 relating to addition of Rs.1,065/- is concerned, it is observed that the said addition was made on the basis of income detected during reassessment proceedings and no substantive material has been brought on record by the appellant to demonstrate that the addition made by the Assessing Officer was factually incorrect. Accordingly, the addition of Rs. 1,065/- is also confirmed.

8.4 Therefore, Ground Nos.3 and 4 raised by the appellant are dismissed.

8.5 So far as levy of interest u/s 234B and 234C is concerned, the same is mandatory and consequential in nature. The Assessing Officer is directed to recompute interest, if any, while giving effect to this order in accordance with law. Accordingly, this ground of appeal is dismissed being consequential in nature.

8.6 As regards initiation of penalty proceedings u/s 271(1)(c) of the Act, it is observed that the assessment order merely contains direction for initiation of penalty proceedings separately. Since no penalty order has been passed as on date, the present ground challenging mere initiation of penalty proceedings is premature and does not call for adjudication at this stage.

8.7 Therefore, Ground Nos. 5 and 6 raised by the appellant are dismissed.

9. In the result, the appeal filed by the appellant is dismissed.

5. We have considered the grounds of appeal, the assessment order, the impugned order of the Ld. CIT(A), and the material available on record. **The principal issue for consideration is whether the reassessment proceedings initiated under Section 147 of the Income-tax Act, 1961, can be sustained when no addition was made in respect of the income forming the basis of reopening.** On perusal of the assessment order, it is observed that the reassessment proceedings were initiated on the basis of information relating to long-term capital gains of ₹1,17,49,792. However, the Assessing Officer did not make any addition in respect of the said amount. Instead, the Assessing Officer disallowed the deduction claimed under Section 54F amounting to ₹7,35,327 and made a further addition of ₹1,065 under the head "Income from Other Sources".

5.1 The Hon'ble Bombay High Court in *CIT v. Jet Airways (I) Ltd.* (2011) 331 ITR 236 (Bom) and the Hon'ble Gujarat High Court in *CIT v. Mohmed Juned Dadani* (2013) 355 ITR 172 (Guj) have held that where the Assessing Officer does not assess or reassess the income forming the basis of reopening, the reassessment cannot be sustained merely on the basis of additions made in respect of other issues. Explanation 3 to Section 147 does not dispense with this requirement.

5.2 In the present case, the assessment order does not demonstrate that any addition was made in respect of the long-term capital gains of ₹1,17,49,792 forming the basis of reopening. The disallowance under Section 54F and the addition of ₹1,065 relate to other issues. Accordingly, the reassessment cannot be sustained merely because the Assessing Officer made these additions during the reassessment proceedings.

5.3 In view of the above facts and the judicial principles laid down by the Hon'ble jurisdictional High Court in *Mohmed Juned Dadani* (supra), we hold that the reassessment order passed under Section 143(3) read with Section 147 of the Act is unsustainable in law. Accordingly, the reassessment order is quashed and the relevant grounds of appeal are allowed.

5.4 Consequently, the additions made in the reassessment order, including the disallowance of deduction under Section 54F amounting to ₹7,35,327 and the addition of ₹1,065 under the head "Income from Other Sources", cannot survive. The remaining grounds of appeal are rendered academic and are not adjudicated separately.

6. In the result, the appeal of the assessee is **allowed**.

The order pronounced in the open Court on 19.10.2026.

Sd/-	**Sd/-**
(TAPAS RAM MISRA)	**(DR. B.R.R. KUMAR)**
JUDICIAL MEMBER	**VICE-PRESIDENT**

(True Copy)

Ahmedabad; Dated 19.10.2026
MV

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) /The CIT(A)-
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, अहमदाबाद/ DR, ITAT, Ahmedabad
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायकपंजीकार (Dy./Asstt. Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad