आयकर अपीलीय अधिकरण, सूरत न्यायपीठ, सूरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.86/SRT/2026
Assessment Year: 2016-17

Daman Ganga Recycled Resources LLP, Survey No.1525, Ambheti Koparti Road via Vapi, Vapi- 396195 Gujarat	**बनाम/** Vs.	Assistant Commissioner of Income Tax Vapi Circle, Income Tax Office, 8th Floor, Fortune Square-II, Above TBZ, Chala, Vapi, Gujarat - 396191
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AAHFD0888L		
Assessee by	Shri Sakar Sharma, AR	
Revenue by	Shri Ashish Kumar, Sr. DR	
Date of Hearing	18.08.2026	
Date of Pronouncement	15.10.2026	

आदेश / O R D E R

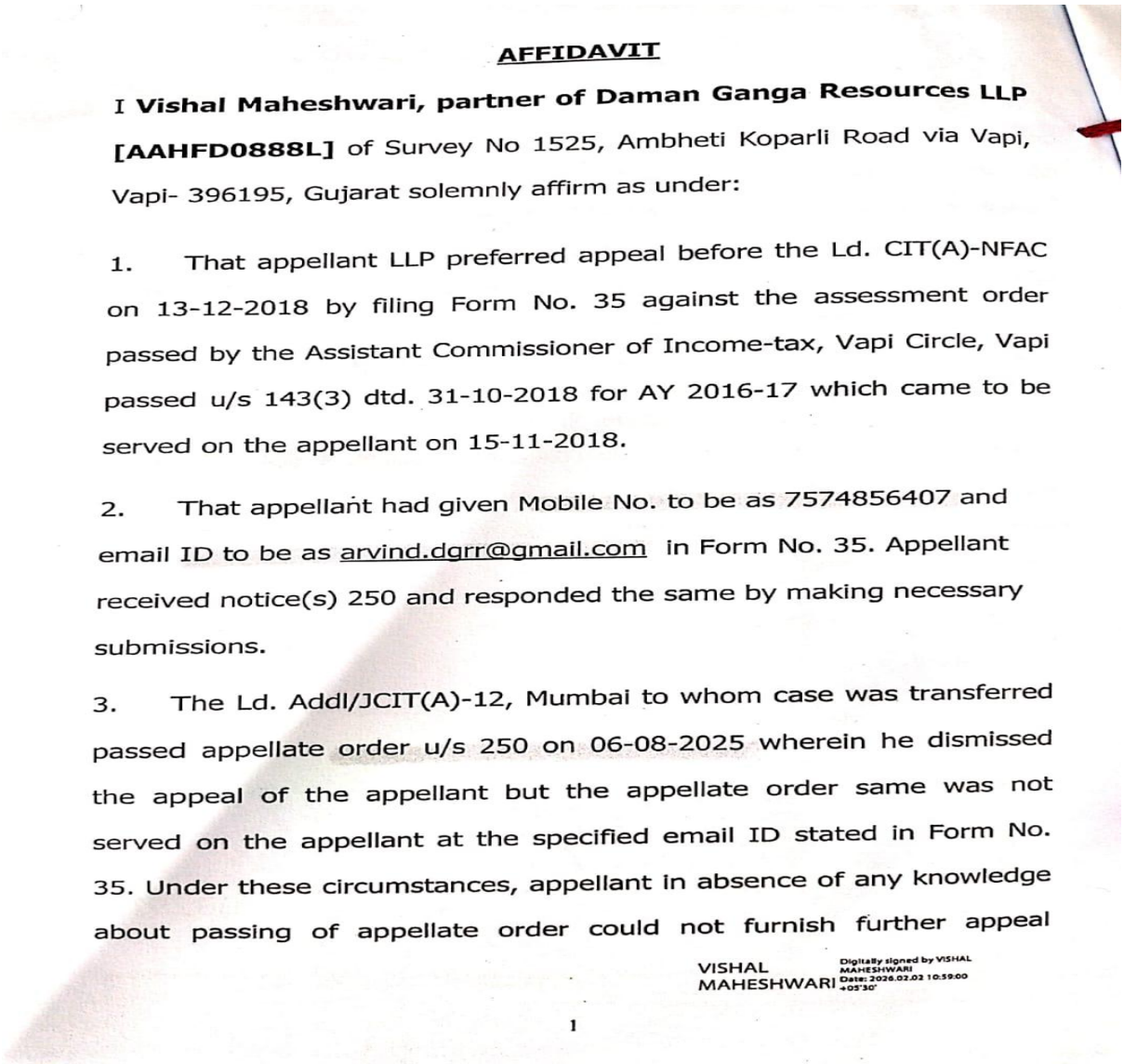
Per B.M. Biyani, A.M.:

Feeling aggrieved by the order of first appeal dated 06.08.2025 passed by learned Commissioner of Income-tax-Addl/JCIT(A)-12, Mumbai ["Ld. CIT(A)"], which in turn arises out of the assessment-order dated 31.10.2018 passed by learned Assistant Commissioner of Income-tax, Vapi Circle, Vapi

www.taxcode.in

["Ld. AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2016-17, the assessee has filed this appeal.

2. The Registry has informed that the present appeal is delayed by 90 days and therefore time-barred. The assessee has filed an application/ affidavit for condonation of delay; the same is scanned and re-produced below for an immediate reference:



AFFIDAVIT

I **Vishal Maheshwari, partner of Daman Ganga Resources LLP [AAHFD0888L]** of Survey No 1525, Ambheti Koparli Road via Vapi, Vapi- 396195, Gujarat solemnly affirm as under:

1. That appellant LLP preferred appeal before the Ld. CIT(A)-NFAC on 13-12-2018 by filing Form No. 35 against the assessment order passed by the Assistant Commissioner of Income-tax, Vapi Circle, Vapi passed u/s 143(3) dtd. 31-10-2018 for AY 2016-17 which came to be served on the appellant on 15-11-2018.

2. That appellant had given Mobile No. to be as 7574856407 and email ID to be as arvind.dgrr@gmail.com in Form No. 35. Appellant received notice(s) 250 and responded the same by making necessary submissions.

3. The Ld. Addl/JCIT(A)-12, Mumbai to whom case was transferred passed appellate order u/s 250 on 06-08-2025 wherein he dismissed the appeal of the appellant but the appellate order same was not served on the appellant at the specified email ID stated in Form No. 35. Under these circumstances, appellant in absence of any knowledge about passing of appellate order could not furnish further appeal

VISHAL MAHESHWARI Digitally signed by VISHAL MAHESHWARI Date: 2026.02.02 10:59:00 +05'30'

1

before the Hon'ble ITAT within the permissible time which expired on 31-10-2025.

4. That the Assessing Officer made addition of Rs. 50,00,000/- u/s 50B which has been sustained by the Ld. Addl/JCIT-12, Mumbai on account of non appreciation of accounting and taxation principles in right perspective. On the facts and circumstances of the case, addition ought not to have been made/ sustained by the authorities below.

5. That Appellant came to know about passing of the appellate order when penalty notice came to be served on the appellant and appellant visited Income-tax Portal to know the status of appeal. At this stage appellant, downloaded the appellate order and initiated steps for filing of appeal by approaching a chartered accountant. Copy of penalty notice is annexed as **Annexure-A**.

6. That appellant preferred appeal before the Hon'ble Income-tax Appellate Tribunal, Surat online vide e-filing acknowledgement No. 1800061006 on 29-01-2026. For the purpose of computing limitation, the appellant has taken date of appellate order and has stated the same in the Form No. 36 even though the appellant came to know about passing of appellate order only on visiting the Income-tax Portal

VISHAL MAHESHWARI
Digitally signed by VISHAL MAHESHWARI
Date: 2026.02.02 10:59:18 +05'30'

on receipt of penalty notice. Based on this, the appeal is delayed by 90 days.

7. That I submit that delay in filing of appeal is for bonafide and justified reasons as explained herein above and therefore, delay in filing of appeal needs to be condoned. Support is drawn from the jurisdictional High Court judgment in the case of **Vareli Textile Industries vs. Commissioner of Income-tax [2006] 154 Taxman 33 (Gujarat)/[2006] 284 ITR 238 (Gujarat)/[2006] 201 CTR 403 (Gujarat)[06-02-2006]** wherein Hon'ble Court held that meritorious case is not to be thrown out on ground of limitation .

I, therefore, request the Hon'ble Tribunal to admit the appeal for adjudication and condone the delay in filing of appeal in the interest of justice. I submit that there was no apparent negligence on my part in delayed filing of appeal.

I confirm that what has been stated above is true and correct.

Date: 02-02-2026
Place: Vapi

VISHAL MAHESHWARI
Digitally signed by VISHAL MAHESHWARI
Date: 2026.02.02 11:02:25 +05'30'

(Vishal Maheshwari)
Partner-Appellant

3

3. During hearing, the averments made by assessee in above affidavit, which are self-explanatory and do not require repetition, were discussed. The Ld. DR for revenue did not raise any objection to condonation of delay and left the issue to the wisdom of Bench. Section 253(5) of the Act empowers the ITAT to admit an appeal after expiry of the prescribed time, if it is satisfied that there was a "sufficient cause" for not presenting the appeal within that time. Further, it is a settled position by Hon'ble Supreme Court in **Collector, Land Acquisition Vs. Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387** that whenever substantial justice and technical considerations are opposed to each other, the cause of substantial justice must be preferred by adopting a justice-oriented approach. We have considered the explanation advanced by assessee and, in absence of any contrary fact or material on record, we find that the assessee was prevented by "sufficient cause" from filing the present appeal within time. Therefore, taking into account the facts of case, the provision of section 253(5) and the decision of Hon'ble Supreme Court **(supra)**, we condone the delay admit the appeal and proceed to adjudicate the same on merits.

4. The background facts leading to present appeal are as under:

(i) The assessee is a Limited Liability Partnership, assessed in the status of firm, which was engaged in the business of manufacturing of Kraft Paper/recycling products. For AY 2016-17, the assessee filed its return of income on 08.10.2016 declaring a total income of Rs.

36,64,664/-. The case was selected for limited scrutiny through CASS and the Ld. AO issued notices u/s 143(2)/142(1).

(ii) During the year under consideration, the assessee sold its manufacturing division to M/s Maheshwari Logistics Pvt. Ltd. on a going concern basis, vide Business Transfer Agreement dated 30.09.2015 ["BTA"], for a lumpsum consideration of Rs. 4,75,00,000/- , out of which Rs. 50,00,000/- had already been received by the assessee as advance prior to the transfer. The assessee offered short-term capital gain of Rs. 62,37,948/- by deducting a net worth of Rs. 4,12,62,052/- from the consideration of Rs. 4,75,00,000/-. The net worth so adopted was arrived at by taking the net worth of Rs. 3,62,62,052/- as per the audited balance sheet of the division as on 30.09.2015 and adding back the advance of Rs. 50,00,000/- received from the purchaser, which was included in the current liabilities in that balance sheet.

(iii) The Ld. AO held the transaction to be a slump sale u/s 2(42C) and took the view that, under Explanation 1 to section 50B, the net worth has to be taken as per the values appearing in books of account without any further adjustment. Accordingly, the Ld. AO adopted the net worth of Rs. 3,62,62,052/- as the cost of acquisition and made an addition of Rs. 50,00,000/- to the short-term capital gain returned by assessee.

(iv) Aggrieved, the assessee carried matter in first-appeal. The Ld. CIT(A), however, upheld the addition and dismissed assessee's appeal.

(v) Still aggrieved, the assessee has come in present appeal before us.

5. The assessee has raised following ground:

> *"1. The Ld. Addl/JCIT erred on facts and in law in upholding the addition of Rs. 50,00,000/- u/s 50B without appreciating the fact that Sundry Creditors included Rs. 50,00,000/- received as advance against transfer of undertaking on the date of transfer and, therefore, said amount was to be excluded from the amount of sundry creditors and was to be considered as sale consideration of Rs. 4,75,00,000/- as it would form part of income liable to tax on which appellant duly paid capital gain in accordance with the provisions of the Act and therefore, was ought not to have been added separately"*

6. We have heard the learned Representatives of both sides and carefully considered their submissions; the papers filed by them and the orders passed by lower authorities.

7. The sole issue for our consideration is whether the addition of Rs. 50,00,000/- made by Ld. AO and upheld by Ld. CIT(A) in computing capital gain on the slump sale u/s 50B is justified?

8. At first, we re-produce below the relevant portion of assessment-order, wherein the Ld. AO has given the reasons for impugned addition:

> *"4.5.3 However, in the present case, the assessee firm had made further adjustment to the net worth of the business calculated as per books by adding Rs. 50,00,000 to the Net worth so calculated. The explanation of the assessee for adding Rs. 50,00,000 is that the net worth calculated is less by Rs. 50,00,000/- which is the advance received by our firm from M/s Maheshwari Logistics Pi Private Limited and which has been reflected in Current Liabilities for the Balance Sheet as on 30/09/2015. The assessee has stated that Current Liabilities includes Rs. 50,00,000 advance received against such sale from M/s Maheshwari Logistics Pvt Ltd and such advance has been added to determine the correct net worth of the division. From the perusal of the section*

50B, it becomes clear that the values as appearing in the books of accounts are to be considered and no other adjustments are allowed to be made.

4.5.4 The assessee firm claims that the current liability includes Rs. 50,00,000 advance and therefore, the net worth is reduced. But at the same time, since the advance has been received in the bank account of the firm, the current asset of the firm also increases. Thus, there is increase in the current asset as well as current liability of the division by an equal amount of Rs. 50,00,000; which shall have no effect on the net worth of the division.

4.5.5 Also, Section 50B(3) of the Income Tax Act, 1961 provides that the assessee shall furnish a report of an accountant certifying that the net worth, as calculated, is correct. No such report has been filed by the assessee, along with its return of income.

4.5.6 Therefore, the amount of Rs. 50,00,000 added by the assessee firm in its net worth for calculating the short term capital gains is disallowed and the net worth of Rs. 3,62,62,052 as per the values appearing in the books of accounts is deemed to be the cost of acquisition for calculating short term capital gains. Further, from the above discussions on this issue, I am satisfied that the firm has furnished inaccurate particulars of income of Rs. 50,00,000 and therefore, penalty proceedings u/s 271(1)(c) of the Act are separately initiated.

(Addition: Rs. 50,00,000)"

9. The Ld. CIT(A), after re-producing the above findings of Ld. AO and the submission of assessee, upheld the addition with the following adjudication:

"7.3. The entire sale consideration is Rs. 4,75,00,000/-, which includes the advance amount of Rs. 50,00,000/-. Therefore, the amount of Rs. 50,00,000/- cannot be separated out or excluded for the purposes of determining either the consideration received or the net worth. It forms an integral part of the full consideration, and treating it separately is contrary to the scheme of Section 50B of the Act. The timing of the payment (whether in advance or at execution) does not change the character of the total sale consideration. Advance received prior to completion of sale does not cease to be part of consideration, and hence cannot be excluded.

7.4. As per section 50B the net worth has to be calculated as it existed before entering into slump sale agreement. The advance received thereafter cannot have bearing on the net worth calculation. If the claim of appellant that the part of slump sale consideration received as advance should be reduced from net worth could result in weird scenario. For example, if in the instant case 100% of the net consideration was received as an advance then the short term capital gain would become negative.

7.5. It is also to be noted that AO has correctly stated that if the appellant's submission that the liability has to be increased by Rs. 50,00,000 by treating same as advance in the books of accounts is accepted then the current asset of appellant would also increase by Rs. 50,00,000/- in the books of appellant as there would be a credit entry in the bank account. Thus, increase in current liability as well as current asset will have nullifying effect in the calculation of net worth u/s 50B of the Act.

7.6. As regards the appellant's claim that Form 3CEA was duly filed on 08.10.2016, it is noted that mere filing of Form 3CEA does not validate a computation of net worth that is inconsistent with the method prescribed in Section 50B. The form serves a declaratory and certification purpose, and its presence does not override the statutory provision that net worth shall be computed as per book values only. In the present case, the adjustment of Rs. 50,00,000/- to the liabilities is not permissible under Explanation 1 to Section 50B, regardless of its treatment in the accountant's certificate. Therefore, reliance placed on Form 3CEA is misplaced.

8. In view of the above discussion, I find no merit in the claim of the appellant for adjusting Rs. 50,00,000/- to the book value of net worth. The computation of capital gains as done by the AO is in accordance with the provisions of Section 50B of the Act. The advance received of Rs. 50,00,000/- was already part of the total slump sale consideration, and any adjustment to net worth is statutorily impermissible. Accordingly, the addition of Rs. 50,00,000/- made by the AO to the short-term capital gain is sustained, and the Ground No. 1 stands Dismissed."

10. During hearing before us, Ld. AR for assessee submitted that the character of the transaction as a slump sale u/s 2(42C) and the applicability of section 50B are not in dispute. Referring to clause 3.1(a) of Article III of the BTA, the Ld. AR submitted that the lumpsum consideration was Rs. 4,75,00,000/-, of which Rs. 50,00,000/- had already been paid by the purchaser on 21.09.2015. The amount was recorded as "Advance from Customers" under current liabilities in the audited Balance-Sheet of the division as on 30.09.2015.

11. The Ld. AR further submitted that the book net worth of Rs. 3,62,62,052/- stood reduced by the aforesaid advance, although the amount

represented part of the sale consideration and not an independent liability of the undertaking. Accordingly, the assessee added the amount back while computing net worth. Without prejudice, it was submitted that if the book net worth were adopted without adjustment, the balance consideration of Rs. 4,25,00,000/- receivable from the purchaser (and not Rs. 4,75,00,000/-) should be considered, resulting in the same capital gain of Rs. 62,37,948/-. The Ld. AR also submitted that the accountant's report in Form No. 3CEA had been filed on 08.10.2016. Ld. AR thus contended that the short-term capital gain was correctly computed and offered by assessee and the addition of Rs. 50,00,000/- made/sustained by lower authorities deserves to be deleted.

12. Ld. DR for revenue, on the other hand, supported the orders of the lower authorities. It was submitted that Explanation 1 to section 50B requires net worth to be computed with reference to the values appearing in the books of account and does not permit the adjustment claimed by the assessee. The Ld. DR further contended that receipt of the advance increased current assets and current liabilities equally and, therefore, did not affect net worth. Accordingly, the Ld. DR submitted that the addition had been rightly sustained.

13. We have considered rival submissions of both sides and perused the material on record. At first, we find that clause 3.1(a) of Article III of the BTA specifies the lumpsum consideration at Rs. 4,75,00,000/- and expressly

records that Rs. 50,00,000/- had already been paid. It is also undisputed that the book net worth of Rs. 3,62,62,052/- adopted by the Ld. AO was computed after deducting current liabilities of Rs. 28,72,66,148/-, which included the aforesaid advance of Rs. 50,00,000/-. Thus, the dispute concerns the treatment of the advance while computing capital gain, and not the amount of the agreed consideration.

14. Under section 50B, the capital gain arising from a slump sale is computed by reducing the net worth of the undertaking, deemed to be its cost of acquisition, from the full value of consideration received or accruing as a result of the transfer. The computation must, therefore, reflect the true character of the transaction and must not treat the same amount inconsistently while determining the consideration and the net worth.

15. In present case, the amount of Rs. 50,00,000/- was admittedly received from the purchaser as part of the agreed consideration of Rs. 4,75,00,000/-; the Ld. CIT(A) has also so held in Para 7.3 of the impugned order. It was not an independent liability owed by the undertaking to a third party. Once the entire consideration of Rs. 4,75,00,000/- is taken into account, retaining the advance as a liability for reducing the net worth, despite its admitted character as part of the consideration, results in an inconsistent computation. This approach increases the capital gain to Rs. 1,12,37,948/- [Rs. 4,75,00,000/- minus Rs. 3,62,62,052/-], as against Rs.

62,37,948/- returned by assessee, solely on account of the treatment of the advance.

16. We have also considered the objection of the lower authorities that Explanation 1 to section 50B requires net worth to be computed with reference to book values. The issue here is not a general departure from the statutory method of computing net worth. It is the treatment of an amount that admittedly forms part of the sale consideration and at the same time appears as a liability in the balance sheet. On the facts of present case, the advance cannot be treated as a liability of the undertaking for reducing the net worth when the very same amount is also included in the sale consideration.

17. The contention of the Ld. AO, endorsed by the Ld. CIT(A), that receipt of the advance increased current assets and current liabilities equally and had no impact on net worth, also does not hold good on the facts recorded in the assessment-order. In the notice u/s 142(1) dated 11.10.2018, re-produced in Para 4.2 of the assessment-order, the Ld. AO recorded that the amount of Rs. 50,00,000/- had been withdrawn by the partners before the transfer of business and formed part of the sale consideration. Thus, the Ld. AO's own record shows that the amount did not remain in the current assets of the division on the date of transfer, whereas the corresponding liability continued to reduce the net worth. The premise that the increase in

current assets and current liabilities nullified each other is, therefore, not borne out by the record.

18. The position may also be appreciated in a simpler way. If the advance receipt as well as the withdrawal of that money by partners are ignored from Balance-Sheet, the net worth of the division would be Rs. 4,12,62,052/-, the entire consideration of Rs. 4,75,00,000/- would have been received on transfer, and the resultant capital gain would be Rs. 62,37,948/- only. Thus, the capital gain does not depend on the timing of the payment of consideration. This also shows that the apprehension of the Ld. CIT(A), that the assessee's approach could result in a negative capital gain if the entire consideration were received in advance, is not correct.

19. As regards the accountant's report in Form No. 3CEA, the assessee claimed before the Ld. CIT(A) that the report had been filed on 08.10.2016. The Ld. CIT(A) did not dispute the filing, and the Ld. DR has not brought any contrary material on record. In any case, the impugned addition was not made on account of non-furnishing of the report. Accordingly, the objection regarding non-furnishing of the report does not survive on the facts before us.

20. In view of the foregoing discussion, we hold that the addition of Rs. 50,00,000/- is not sustainable on the facts and circumstances of present case, and the short-term capital gain of Rs. 62,37,948/- returned by assessee is accepted. We, therefore, set aside the order of Ld. CIT(A) and

direct the Ld. AO to delete the addition of Rs. 50,00,000/-. **The sole ground of assessee is accordingly allowed.**

21. In result, this appeal is allowed.

Order pronounced in open court on 15/10/2026

Sd/-	**Sd/-**
(SUCHITRA KAMBLE)	(B.M. BIYANI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Surat

दिनांक /Dated : 15/10/2026

* Kishore, Sr. P.S.

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Surat
5. Guard File

By Order,

Sr. Private Secretary,
I.T.A.T., Surat