

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"B" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No. 6531/MUM/2024**  
**(Assessment Year : 2012-13)**

**N J Developers,**

118, Vardhman Indl Estate, S.V. Road,  
Dahisar East,  
Mumbai-400068.  
PAN: AAJFN 0863 H

..... Appellant

v/s

**Income Tax Officer-42(1)(3), Mumbai**  
**(earlier jurisdiction was with ITO-**  
**32(2)(2)),**

735, 7<sup>th</sup> floor, Kautilya Bhavan, Bandra Kurla  
Complex, Bandra,  
Mumbai-400051.

..... Respondent

Assessee by : Shri K. Gopal  
Revenue by : Ms. Monika Pande, Sr. DR

Date of Hearing – 04/02/2025

Date of Order – 06/02/2025

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

1. The assessee has filed the present appeal challenging the impugned order dated 25/10/2024, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2012-13.

2. In this appeal, the assessee has raised the following grounds: –

*"1. The National Faceless Appeal Centre [hereinafter referred to as 'NFAC'] erred in passing the order dated 25.10.2024 without providing the Appellant a reasonable opportunity of being heard. Hence, the appellate order passed by the NFAC is in breach of principles of natural justice and the same may be set aside.*

*2. The NFAC erred in confirming the action of the Assessing Officer determining the total income of Rs.1,53,00,000/- as against returned income at Rs.NIL/- by making an addition of Rs.1,53,00,000/- under section 68 of Act, without appreciating the facts and circumstances of the case. The said addition made under section 68 of the Act is not justified and the same may be deleted.*

**Addition made under section 68 of the Act is unjustified**

*3. The NFAC has failed to appreciate that the Appellant has taken unsecured loans amounting to Rs.1,30,00,000/- from Marine Gems and Rs.23,00,000/- from Maniratnam Exim Pvt. Ltd. which are duly supported with relevant documentary evidence. Thus, the addition of Rs. 153,00,000/- made by treating the said loans as unexplained cash credit under section 68 of the Act is not at all justified and the same may be deleted.*

**The addition under section 68 of the Act is in breach of the principles of natural justice.**

*4. The NFAC failed to appreciate that the addition of Rs. 1,53,00,000/- was made under section 68 of the Act only relying on the statement of third party for which no cross examination was provided to the Appellant. Hence, the addition of Rs.1,53,00,000/- made by the Ld.A.O. under section 68 of the Act is in breach of the principles of natural justice and the same may be deleted."*

3. At the outset, we find that the learned CIT(A) dismissed the appeal filed by the assessee against the addition of INR 1,53,00,000 made on account of unsecured loans received by the assessee, by observing as follows: –

*"1. Grounds nos. 1,2 &3 objects to addition of Rs. 1,53,00,000/- being bogus loans taken from Gautam Jain and associates..A search & seizure action u/s 132 of the I T Act 1961 was carried out by the DGIT(Inv.), Mumbai on Gautam Jain Group of cases on 03.10.2013. On the basis of statement of Shri Gautam Jain & Group and various other persons recorded as well as detailed enquiries made by the Wing, information was passed on to the AO that Shri Gautam Jain Group was indulging in providing accommodation entries like bogus purchase/Sales, unsecured loans, share capital etc. Further, from the details received from, the DGIT(Inv.), Mumbai it is seen that the assessee, M/s N.J Developers is also one of the beneficiary who has obtained accommodation entries of Rs. 1,53,00,000/- under the grab of 'Unsecured Loan', during the*

*F.Y. 2011-12 relevant to the year under consideration, from Marine Gems(Rs. 1,30,00,000/-) and Maniratnam Exim Pvt.Ltd. (Rs.23,00,000/-)group concerns of Shri Gautam Jain Group. 2. In the statement on oath by Shri Promod Kumar Ranha it is admitted against question no.53 that 'All the local purchases, local sales and loan entries appearing in my books of accounts of the concerns controlled by him are totally bogus entries which were done against cash taken/given against such entries and that none of these entries reflect any genuine transaction at all'. Considering all the factual aspects discussed in earlier paragraphs coupled with the statement recorded on oath and modus operandi of this transaction. It is clear that the assessee had entered into bogus transaction of unsecured loan (without interest) to the extent of Rs. 1,53,00,000/- and thus, the same is treated as unexplained cash credit u/s 68 of the I T Act. Accordingly, an amount of Rs. 1,53,00,000/- is treated as deemed income of assessee for the year under consideration. The addition made by the AO is liable to be confirmed. 3. The AO proved beyond doubt that the assessee furnished inaccurate particulars of income thereby concealing true income. The assessee's ground on initiating penalty proceedings u/s 271(1)(c) is dismissed."*

4. From the aforementioned findings of the learned CIT(A), vide impugned order, it is evident that neither the detailed submissions filed by the assessee were considered by the learned CIT(A) nor material found during the search, on the basis of which re-assessment proceedings were initiated in the case of the assessee, were examined by the learned CIT(A). During the hearing, the learned Authorised Representative submitted that prior to the transition of the appeal to the National Faceless Appeal Centre, the assessee filed its submissions on 11/10/2018, forming part of the paper book from pages 47-52, which have not been considered by the learned CIT(A) and the additions made by the AO were merely affirmed.

5. It is trite that the power of the learned CIT(A) is co-terminus to the AO, however, in the present case the learned CIT(A) did not examine any of the contentions raised by the assessee and nor call for any further information to uphold the addition made by the AO. Therefore, in view of the above, we deem it appropriate to restore the issues raised in the present appeal to the file of

the learned CIT(A) for *de novo* adjudication after examination of all the documents/submissions filed by the assessee. The learned CIT(A) shall be at liberty to call for any further information from the assessee and in this regard, the due opportunity to respond be also provided to the AO as per law. Needless to mention, no order shall be passed without affording the reasonable and adequate opportunity of hearing to the parties. With the above directions, the impugned order is set aside and the grounds raised by the assessee are allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 06/02/2025.

**Sd/-**

**AMARJIT SINGH  
ACCOUNTANT MEMBER**

**MUMBAI, DATED: 06/02/2025**

*Rahul Sharma, Sr. P.S.*

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

**Sd/-**

**SANDEEP SINGH KARHAIL  
JUDICIAL MEMBER**

By Order

Assistant Registrar  
ITAT, Mumbai