

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

**BEFORE MS. KAVITHA RAJAGOPAL, JM
AND
SMT. RENU JAUHRI, AM**

ITA No. 3195 to 3201/Mum/2023
(Assessment Year: 2009-10 to 2015-16)

Krishan Khadaria B-11, Oberoi Sky Garden, 3RS Cross Lane (Back Road), Lokhandwala Complex, Andheri (West), Mumbai – 400053.	Vs.	Dy. CIT (CC) 4(3) Room No. 1921, 19 th Floor, Air India Building, Nariman Point, Mumbai – 400021.
PAN/GIR No. AAHPK3724G		
(Assessee)	:	(Respondent)

ITA No. 3572 and 3571/Mum/2023
(Assessment Year: 2011-12 and 2012-13)

&

ITA No. 3570 and 3569/Mum/2023
(Assessment Year: 2014-15 and 2015-16)

DCIT-CC-4(3) Room No. 1921, 19 th Floor, Air India Building, Nariman Point, Mumbai – 400021.	Vs.	Krishan Raghunath Prasad Khadaria B-11, Oberoi Sky Garden, 3RS Cross Lane (Back Road), Lokhandwala Complex, Andheri (West), Mumbai – 400053.
PAN/GIR No. AAHPK3724G		
(Assessee)	:	(Respondent)

Assessee by	:	Shri. Ashok Bansal, CA a/w. Shri. Ajay Daga, CA
Respondent by	:	Shri. Biswanath Das – CIT DR

Date of Hearing	:	27.01.2025
Date of Pronouncement	:	28.03.2025

ORDER

Per Bench:



ITA No. 3195 to 3201/Mum/2023 (A.Y. 2009-10 to 2015-16)
ITA No. 3572 & 3571/Mum/2023 (A.Y. 2011-12 & 2012-13)
ITA No. 3170 & 3569/Mum/2023 (A.Y. 2014-15 & 2015-16)
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These captioned appeals are cross appeals filed by the assessee and the revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) 52, Mumbai ('ld. CIT(A)' for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2009-2010 to 2015-16

2. As the facts are identical in all these appeals, we hereby pass a consolidated order by taking ITA No. 3195/Mum/2023 as a lead case.

ITA No. 3195/Mum/2023; A.Y. 2009-10

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

"1. The ld. CIT(A) erred in holding that assessment was validity made.

- 1.i. *In doing so, the ld. CIT(A) did not appreciate that the material found in the course of search action on the appellant did not support the allegation that he was indulged in providing accommodation entries of bogus LTCG by manipulating scrips of companies under his control and earning commission therefrom and, therefore, the said material did not trigger assessment u/s 153A of the Act.*
- 1.ii. *Further in doing so, the ld. CIT(A) did not appreciate that even if jurisdiction u/s 153A of the Act was rightly assumed, the completed assessment in absence of any incriminating material found in the course of search could not have been disturbed.*

2. The ld. CIT(A) erred in holding that opportunity of cross-examination of Shri R. K. Kedia & persons connected with him was provided to the appellant.

- 2.i. *In doing so, the ld. CIT(A) did not appreciate that to comply with the principles of natural justice, providing such opportunity at Delhi Office of the Deptt. and that too before an Officer other than the AO was only a pretence of formality and no real opportunity of cross-examination was afforded to the appellant.*

3. The ld. CIT(A) further erred in holding that even if opportunity of cross-examination of the said persons was not given and/or their statements were not provided to the appellant for his rebuttal, the assessment was still in accordance with law.

- 3.i. *In doing so, the ld. CIT(A) did not appreciate that no corroborative material was brought on record by the AO in support of statements of the said persons which were heavily relied upon by him in drawing adverse inference and the AO by not providing the said statements & not affording the opportunity of cross-examination, which was very much imperative in the facts & circumstances of the case, has violated the principles of natural justice which has rendered the assessment as null & void.*



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4. The *Id. CIT(A)* erred in confirming the actions of the AO in holding appellant to be a part of racketeers involved in providing accommodation entries of LTCG and in bringing to tax alleged commission earned from the said activities though restricting the said commission income to 1% of the total trade value as against 4.75% considered by the AO.

- 4.i. In doing so, the *Id. CIT(A)* did not appreciate that the AO in holding the appellant to be part of the racketeers has merely relied on the statements of Shri Raj Kumar Kedia and of his main employee Shri Manish Arora and that too by drawing incorrect inference in as much as what was stated in the statements as referred to in the assessment order is that Shri Raj Kumar Kedia is the person who managed & controlled share prices of some companies for reaping bogus LTCG including the companies under the control & management of the appellant and nowhere it is stated that the appellant was involved in rigging the prices of shares and, therefore, there was no warrant to infer that the appellant is part of the said racket.
- 4.ii. In any event, the *Id. CIT(A)* did not appreciate that no incriminating material was found in the search action on the appellant nor any corroborative material was brought on record warranting the said allegation.
- 4.iii. Further in any event, the *Id. CIT(A)* did not appreciate that the commission, if any, could have been earned on the value of long-term capital gain & that too which is routed through the appellant and could not have been earned on the trade value.
- 4.iv. Nevertheless, the *Id. CIT(A)* erred in applying the rate of commission at 1% as against the rate of 0.15% accepted by the Hon. ITAT, Mumbai in the case of Shri Mukesh Chokshi Vs. DC(CC) 46 in ITA No. 833-839/M/2013 dt. 04.05.2016 arising out of similar allegation of providing accommodation entries of capital gain.

Your appellant, therefore, submits that the assessment order made in pursuance of notice u/s 153A of the Act be quashed and in the alternative suitable relief be allowed.”

4. The revenue has raised the following grounds of appeal which are common for all the assessment years except with variance in figures. For the sake of convenience, we are reproducing the grounds raised in ITA No. 3572/Mum/2023:

“On the facts and in the circumstances of the case, Ld CIT(A) erred in deleting addition to the extent of Rs.3,46,03,793/- made towards commission income, by restricting rate of percentage at 1% of transaction amount as against commission income computed by the A.O. @ 4.75% of transaction amount, without properly appreciating the facts of the case.”

5. Brief facts of the case are that the assessee is an individual and also a partner in various firms and also director in various companies and had filed his return of income for the year under consideration, dated 30.03.2010 declaring total income at Rs.4,87,610/- out of income from salary, house property, capital gain on sale of shares and the same was processed



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u/s. 143(1) of the Act. Pursuant to a search and seizure action carried out in the case of Raj Kumar Kedia Group, dated 13.06.2014, by DDIT (Investigation), Unit 3(3), Delhi u/s. 132 of the Act, information received was that the said group is engaged in providing accommodation entries to various beneficiaries across the country by way of bogus long term capital gain ('LTCG' for short) by trading in shares alleged to be penny stocks in companies which are controlled and managed by the Syndicate of the said group. The assessee's residential premises was also covered under the search carried out on 13.06.2014 along with the premises of the assessee's acquaintance viz. Shri Rajesh Omprakash Agrawal, Shri Natwarlal Daga and Shri Rajkumar B. Mal. The learned Assessing Officer ('ld. AO' for short) observed that based on various incriminating materials found and seized during the search, it was evident that the said group was engaged in providing accommodation entries on a large scale and further the said material also had information relating to the assessee. The ld. AO issued notice u/s. 153A of the Act to the assessee, dated 29.07.2015, and in response to the same, the assessee filed a copy of the original return of income, declaring total income at Rs.4,87,615/-. The ld. AO also issued notice u/s. 143(2) and 142(1) duly issued and served upon the assessee. The ld. AO then passed the assessment order dated 29.12.2016, u/s. 143 r.w.s. 153A of the Act, where the total income of the assessee was determined at Rs.6,94,347/- after making an addition/disallowance on the unaccounted commission income earned from bogus transaction in various penny stocks @ 4.75% for the year under consideration, on the total value of transaction at Rs.682,04,93,591/-



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spread across for the period from 2009-2010 to 2015-16, where the total addition for all these years aggregated to Rs.33,39,73,446/-.

6. Aggrieved the assessee was in appeal before the first appellate authority, who vide order dated 12.07.2023, restricted the estimation of commission income @ 1% as against the addition made by the Id. AO @ 4.75%.
7. The assessee as well as the revenue are in cross appeals before us, challenging the order of the Id. CIT(A).
8. We have heard the rival submissions and perused the materials available on record. It is observed that during the search carried out in the case of Shri R. K. Kedia, detailed ledger accounts were seized which contained the following details:

- 1.1 *The ledger accounts runs into 870 number of pages having a total of 224 ledgers of 30 groups.*
- 1.2 *The ledger accounts have been maintained on Tally Software and the transactions are recorded along with detailed narration and voucher number.*
- 1.3 *The ledger accounts cover the period from 01.04.2008 to 31.03.2015.*
- 1.4 *The transactions recorded under the head "Thakur" depicting cash payments run into hundreds of crores amongst various entry operators.*
- 1.5 *Several RTGS transactions have been set off against the Cash/ Thakur transactions which indicate that the ledger accounts pertain to accommodation entries provided by Shri R. K. Kedia in collaboration with various entry operators in different parts of the country.*
- 1.6 *The ledger accounts have been prepared with the intention to keep a record of how much money has been received/ paid to / from various fellow entry operators based in different cities so as to determine the actual balances for the purpose of settling the accounts with different operators.*
- 1.7 *The transactions shown by way of bank / RTGS are duly verified and the same match with the transactions appearing in the bank accounts and the books of accounts of various concerns. So, the seized documents are very well corroborated with the multiple bank account statements and the financials / books of accounts of various concerns and, therefore, there is no scope for questioning the veracity of evidence and the truth of transactions reflected therein.*
- 1.8 *Shri R.K. Kedia, in his statement on oath recorded during the course of search, has admitted and elaborated the aforesaid ledger accounts seized from his premises and the true nature of transactions appearing therein. It has been categorically admitted*



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by him and his employees involved in recording these transactions that these account reflect the true nature of accommodation entry racket run by him in collaboration with various entry operators based at different cities all over the country (A copy of statement of Shri Manish Arora and Shri R.K. Kedia is enclosed herewith for ready reference).

1.9 It is pertinent to note that the aforesaid seized documents and the statement on oath of Shri R.K. Kedia have been independently corroborated with the evidence gathered from the analysis of various penny stock scrips. The financial statements of such scrips along with the trade data on the browses of the companies have independently established that such scrips were being used solely for the purpose of generating illicit long term capital gains in the hands of beneficiaries to help them build capital and evade tax. Such racket was being operated by a group of entry operators to earn commission from the beneficiaries against the accommodation entries provided by them to the beneficiaries.

1.10 In view of the above, the various evidences gathered from multiple sources and corroborated by one another establish beyond doubt that Shri R.K.Kedia and other entry operators were involved in providing accommodation entries to various beneficiaries across the country.

1.11 Shri R.K.Kedia while elaborating the modus-operandi and the transactions recorded in the above ledger accounts has also identified the various individuals based at Mumbai, Kolkata and other cities who have carried out these transactions. These transactions are independently corroborated with the bank statements appearing in the statements / books of accounts of such other individuals. Therefore, the involvements of such other individuals in the racket of providing accommodation is also established beyond doubt.”

9. The Id. AO also observed that in the seized ledger accounts there were 3 ledger accounts pertaining to the assessee along with the assessee’s group concerns which have been tabulated herein as under:

2.2. Account in the name of Khadaria_Cheque A/c.

<i>Name of the Account</i>	<i>Khadaria_Cheque A/C: (Group Venkatesh Sales)</i>
<i>Period of entries</i>	<i>01.04.2008 TO 13.06.2013</i>
<i>Total debit side</i>	<i>Rs.28,00,000/-</i>
<i>Total credit side</i>	<i>Rs.28,00,000/-</i>
<i>Closing balance</i>	<i>Zero</i>
<i>Thakur entries total</i>	<i>Rs. NIL</i>

2.3. Account in name of Khadaria:

<i>Name of the Account</i>	<i>Khadaria (Group Venkatesh Sales)</i>
<i>Period of entries</i>	<i>01.04.2008 - 31.01.2014</i>



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Total debit side	Rs. 36,99,83,746/-
Total credit side	Rs. 38,59,68,239/-
Closing balance	Rs. 1,59,84,493/-
Thakur entries total	Rs.8,76,50,000/-

2.4. Account in name of Khadaria_Gwarja:

Name of the Account	Khadaria_Gwarja (Group Venkatesh Sales)
Period of entries	17.04.2013 - 17.09.2013
Total debit side	Rs.31,16,02,472/-
Total credit side	Rs.31,16,02,472/-
Closing balance	Zero
Thakur entries total	Rs. 16,34,68,316

2.5 Account in name of Khadaria_New Loan A/C:

Name of the Account	Khadaria_New Loan A/C (Group Venkatesh Sales)
Period of entries	01.04.2008 - 31.04.2014
Total debit side	Rs. 3,44,70,155/-
Total credit side	Rs. 2,31,20,155/-
Closing balance	Rs. 1,13,50,000/-
Thakur entries total	Rs.NIL

2.6 Account in name of Khadaria_NML:

Name of the Account	Khadaria NML (Group Venkatesh Sales)
Period of entries	01.04.2008 - 30.06.2013
Total debit side	Rs.26,84,533/-
Total credit side	Rs.26,84,533/-
Closing balance	Zero
Thakur entries total	Rs.NIL

10. During the assessment proceedings, the ld. AO had sought for the details pertaining to the assessee's involvement in the said transactions based on the above information and also the statement on oath of Shri R. K. Kedia which was corroborated with the bank statement appearing in the statement/books of accounts of the various individuals. It is also observed that four scripts of the companies viz.: (a) Nouveau Global Ventures Limited (b) Matra Kaushal Enterprises Ltd. (c) Pearl Agriculture Ltd [now known as Mukta Agriculture Ltd.] (d) Pearl Electronics Ltd. [now known as Mystic Electronics



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Ltd.] were found to be penny stocks and merely paper companies for the purpose of availing bogus LTCG which the Id. AO submits that the same was admitted by Shri R K Kedia and his associates. The Id. AO discussed the financials of these companies and stated that Shri R K Kedia in his statement has admitted that these companies were controlled and managed by the assessee who was a close friend of Shri R K Kedia and was into the business of providing accommodation entries. It is also observed that Shri Manish Arora who was the main employee of Shri R K Kedia maintains the record of unaccounted transactions and has also admitted to the fact that these transactions were bogus. Also the statement of Shri Natwarlal Daga is also in support of the fact that he was also an entry operator based in Mumbai and was helping Shri R K Kedia. In arranging investors for preferential issues in the assessee's companies mentioned above on the instruction of the assessee. The Id. AO held that the assessee could not justify the huge rise in the price of the shares of these companies except for the fact that these are controlled arrangement for manipulation of prices for the purpose of providing bogus LTCG to various beneficiaries/preferential allottees. The statement of Shri Rakesh Sehewal, who was an employee of the assessee was also recorded in which he has admitted to the fact that the assessee is an accommodation entry provider and that he was handling the cash transaction of the assessee. The said person has also explained the *modus operandi* of these bogus transactions in the statement recorded by the Id. AO. The Id. AO observed that there was no substantial business transaction that has taken place by these companies and that they were operating merely for the purpose of providing accommodation entries for providing profitable exit entry to various



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beneficiaries of bogus LTCG. The statement of Shri R K Kedia revealed that he is a commission agent for providing accommodation entries such as bogus LTCG, share capital/premium, etc., for various beneficiaries through various entry operators for bringing unaccounted money of these beneficiaries in their books for evading tax involving a syndicate of such operators who are based in Delhi, Kolkata and Mumbai where the Investigation Directorate initiated action which involved a large volume of transactions exceeding Rs.5,000 crores. The Id. AO stated that some of the beneficiaries have admitted that they have obtained these entries by paying commission of 5% to 6% of the entry amount in cash as per the investigation report by the investigation wing. The total value of such bogus transactions of the four companies pertaining to the assessee are tabulated herein under:

<i>Sr. No.</i>	<i>Scrip Code</i>	<i>Name of the Scrip</i>	<i>Full Name of Penny Stock</i>	<i>Total Value of Manipulative Trade (Rs.)</i>
1.	531465	NOUVEAU	NOUVEAU GLOBAL VENTURES LTD.	203,87,23,071
2.	526671	MKEL	MATRA KAUSHAL ENTERPRISE LTD.	331,40,59,825
3.	535204	PEARL AGRI	PEARL AGRICULTURE LTD	59,41,69,145
4.	535205	PEARLELEC	PEARL ELECTRONICS LTD	87,35,57,789
<i>TOTAL MANIPULATIVE TRADE</i>				682,05,09,830

11. The assessee denied the allegation raised by the Id. AO and stated that Shri R K Kedia had merely given a general statement that even the assessee's companies were engaged in bogus transactions. The assessee without prejudice stated that the total commission cannot exceed 1% in the case of intermediaries' hands where the statement of Shri R K



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Kedia has also admitted to 4.5% or 4.25% commission to promoters or other intermediaries. Further, the assessee contended that the Id. AO has not specified the quantum and description of the transaction and also the period of the said transaction has not been specified in the said notice. The assessee further contended that the details of beneficiaries who have paid the commission to the assessee was also not confronted to the assessee by the Id. AO. The Id. AO has also relied on the statement of Smt. Juhi Verma, where she has admitted to the documents related to the assessee with regard to the shares of Nouveau Global Ventures Limited during search. As the assessee could not controvert the above said facts, the Id. AO made an addition on the commission @4.75% on the bogus transactions from A.Y. 2009-10 to 2015-16 which are tabulated herein under:

<i>A.Y.</i>	<i>F.Y.</i>	<i>Name of the Scrip</i>	<i>Quantity Traded</i>	<i>Value of Trade</i>	<i>Commission @4.75%</i>
2009-10	2008-09	NOUVEAU	1,72,526	43,73,307	2,07,732
2010-11	2009-10	NOUVEAU	32,83,658	21,84,61,404	1,03,76,917
2011-12	2010-11	NOUVEAU	63,12,472	92,27,67,788	4,38,31,470
2012-13	2011-12	NOUVEAU	5,47,68,229	62,01,88,207	2,94,58,940
2013-14	2012-13	MKEL	34,400	8,13,297	38,632
		NOUVEAU	47,80,355	6,54,45,716	31,08,672
		PEARLAGRL	12,971	1,34,777	6,402
		PEARLELEC	1,038	5,807	276
		TOTAL	48,28,764	6,63,99,597	31,53,981
2014-15	2013-14	MKEL	47,33,339	2,58,74,04,816	12,29,01,729
		NOUVEAU	36,70,349	12,81,07,599	60,85,111
		PEARLAGRL	15,98,183	43,59,40,586	2,07,07,178
		PEARLELEC	14,57,629	43,57,12,204	2,06,96,330
		TOTAL	1,14,59,500	3,58,71,65,205	17,03,90,347



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2015-16	2014-15	MKEL	1,26,37,646	72,58,41,713	3,44,77,481
		NOUVEAU	22,84,435	7,93,79,049	37,70,505
		PEARLAGRL	3,74,132	15,80,93,782	75,09,455
		PEARLELEC	8,09,529	43,78,23,537	2,07,96,618
		TOTAL	1,61,05,742	1,40,11,38,081	6,65,54,059
GRAND TOTAL			9,69,30,391	6,82,04,93,590	32,39,73,446

12. The Id. CIT(A) in the appeal filed by the assessee restricted the commission income to 1% as per the following finding. The relevant extract of the finding of Id. CIT(A) is reproduced herein under:

“6.22.1. I have examined the above claim of the appellant. The AO has brought out that Shri NatwarLal Daga, who is also an entry operator based in Mumbai and is helping Shri Raj Kumar Kedia, admitted that he had arranged investors for preferential issue in the assessee company on the instructions of Shri Krishan Raghunath Prasad Khadaria. Besides Sh. R K Kedia has also confirmed the involvement of the appellant. Although Matra Kaushal Enterprises Ltd. was used for the purpose of bogus LTCCG, the appellant was not a director in the said entity. Unlike in the case of M/s Nouveau Global Ventures Limited, M/s Pearl Agriculture Limited (presently known as M/s Mukta Agriculture Limited) &M/s Pearl Electronics Limited (Presently known as M/s Mystic Electronics Limited) where the appellant has both active shareholding and is also a director along with family members and exercises control over them, it appears that the case of Matra Kaushal Enterprises Ltd.is different. Thus, the appellant’s request to grant parity with Sh. Suresh Jajodia does have some force, as far as this entity is concerned. At the same time, the evidences / deposition do show that the appellant has a role in arranging bogus LTCCG in Matra Kaushal Enterprises Ltd. even though he may not be a promoter / director.

6.22.2. Unlike in the case of Sh. Suresh Jajodia, the evidences clearly indicate that three companies (M/s Nouveau Global Ventures Limited, M/s Mukta Agriculture Limited &M/s Mystic Electronics Limited) which are discussed are owned / managed by the appellant himself. Thus, he enjoys greater control over the affairs and the logical conclusion would be that he would be entitled to larger returns.

6.23. During the course of appellate proceedings, my ld. Predecessor was of the view that the commission income needs re-working based on the LTCCG and estimation of other commission income (share capital, unsecured loans, etc.). In this regard, remand report was called for from the AO vide letter dt.



28.05.2019 & 07.06.2019. However, it is seen that despite several reminders including 02.01.2020 & 15.01.2023 no remand report has been received till date. Since the commission estimation is based on judgment (having reference to the underlying material available), I am of the view that the appellate proceedings could be continued and concluded based on the available data. The estimation of commission income at 1% based on the transactions, would be reasonable and adequate in my view and cover up for any other addition which may be required

6.24. In the replies of Sh. R. K. Kedia referred above, he has stated about commission of 5 to 6 % received but he has also stated above the commission of operator being in the nature of 4 to 4.25% for LTCG. As regards STCG, he has stated that he pays 2% to the operator. It is well known that the operator in turn would also be incurring various expenses. Thus, in my view, it would be prudent to restrict the addition of commission income to 1% of such transactions instead of 4.75%. The argument of the appellant that it should be 0.15% is not acceptable as the appellant itself has raised in its ground of appeal to restrict the addition to 1% commission income. The reasons have been discussed in various parts of this order.

2011-12	NOUVEAU	63,12,472	92,27,67,788	4,38,31,470	92,27,677
2012-13	NOUVEAU	5,47,68,229	62,01,88,207	2,94,58,940	62,01,882
2013-14	MKEL	34,400	8,13,297	38,632	8,132
	NOUVEAU	47,80,355	6,54,45,716	31,08,672	6,54,457
	PEARLAGRI	12,971	1,34,777	6,402	1,347
	PEARLELEC	1,038	5,807	276	58
	Total	48,28,764	6,63,99,597	31,53,981	6,63,995
2014-15	MKEL	47,33,339	2,58,74,04,816	12,29,01,729	2,58,74,048
	NOUVEAU	36,70,349	12,81,07,599	60,85,111	12,81,075
	PEARLAGRI	15,98,183	46,59,40,586	2,07,07,178	46,59,405



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	<i>PEARLELEC</i>	14,57,629	43,57,12,204	2,06,96,330	43,57,122
	<i>Total</i>	1,14,59,500	3,58,71,65,205	17,03,90,347	3,58,71,652
2015-16	<i>MKEL</i>	1,26,37,646	72,58,41,713	3,44,77,481	72,58,417
	<i>NOUVEAU</i>	22,84,435	7,93,79,049	37,70,505	7,93,790
	<i>PEARLAGRI</i>	3,74,132	15,80,93,782	75,09,455	15,80,937
	<i>PEARLELEC</i>	8,09,529	43,78,23,537	2,07,96,618	43,78,235
	<i>Total</i>	1,61,05,742	1,40,11,38,081	6,65,54,059	1,40,11,380
		9,69,30,891	6,82,04,93,590	32,39,73,446	6,82,04,933

6.25. *In line with the discussions above, the addition for AY 2009-10 is sustained at Rs. 43,733/- instead of Rs. 2,07,732/- made by the AO."*

13. The learned Authorised Representative ('ld. AR' for short) for the assessee restricted his arguments to ground no. 2 and 3 of the appeal, where the impugned order was challenged on the violation of principles of natural justice, where the assessee was not given proper opportunity to cross examine Shri. R. K. Kedia and other persons whose statements were relied upon by the lower authorities. The ld. AR further contended that only one opportunity was provided to the assessee at the Delhi office of the Department before the Officer other than the jurisdictional AO was extended with a very short period of notice which is evident from the assessment order, where the ld. AO has mentioned that as the matter was time barring, it will not be possible to provide any further adjournment or opportunity to cross examine. The ld. AR further stated that the



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as ld. AO as well as assessee are based in Mumbai, cross examination should be accorded to the assessee at Mumbai and not at the Delhi office. The ld. AR further stated that it is very crucial for the assessee to examine Shri. R. K. Kedia for the reason that the letter dated 15.12.2016, the assessee has clearly stated that Shri. R. K. Kedia when enquired by the assessee who confessed that the assessee's company names were given generally along with other company names and that he had confirmed that no transactions have taken place involving the companies which are managed and controlled by the assessee. The ld. AR prayed that the assessment order be quashed on the ground of violation of principles of natural justice.

14. The learned Departmental Representative (ld. DR for short) on the other hand controverted the said fact and stated that the assessee was provided an opportunity to cross examine at the Delhi office but the same was not availed by the assessee. Further, the ld. DR contended that in the present circumstances of the case, there are incriminating materials to show that the assessee was involved in bogus transactions which the assessee has failed to rebut by way of cogent evidences and submitted that the ld. AO has merely not relied on the statements of the parties but has also corroborated the same with incriminating materials found during search of various parties including the assessee. The ld. DR relied on the order of the ld. CIT(A), who has given a categorical finding on the issue of violation of principles of natural justice and also relied on the assessment order and prayed that the ld. AO's order be upheld.

15. In the above factual matrix of the case, we observed that addition by way of commission income has been made in the hands of the assessee by the ld. AO @4.75% and the same



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was restricted by the Id. CIT(A) to 1%. Before getting into the merits of the case, we deem it fit to decide the grounds raised by the assessee as to the violation of principles of natural justice, where the assessee has been denied the opportunity of cross examining the parties whose statement has been relied upon by the lower authorities. It is also evident from the assessment order that the Id. AO has provided the assessee the opportunity to cross examine Shri. R. K. Kedia on 20.12.2016 at the Delhi office and the assessment order was dated 29.12.2016, which clearly states that sufficient opportunity was not provided to the assessee for cross examining the parties whose statement has been extensively relied upon by the Id. AO. It is a settled proposition of law that the assessee should be given effective opportunity to rebut the allegations raised by the department by furnishing all the statements recorded by the Id. AO, so that, the assessee is well informed of such allegations in order to prepare himself for contradicting those facts that are against him. This is the fundamental right of the assessee which cannot be dispensed off by the authority in whatsoever manner may be. The Id. CIT(A) having co-terminus power with that of the Id. AO has also not considered the same and has held that when the statement relied upon by the Id. AO are corroborated with the other evidences then the denial of right of cross examination cannot be taken as a plea by the assessee, in our view is unjustifiable.

16. From the above observation, we are of the considered view that all these matters are to be remanded back to the file of Id. AO for the purpose of providing the assessee opportunity to cross examine the parties whose statements have been relied upon by the by the Id. AO and also furnishing the copies of the statements recorded by the Id. AO



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by giving sufficient time and notice to the assessee. We hereby partly allow ground no. 2 and 3 raised by the assessee. As we have remitted these issues back to the file of ld. AO for *denovo* assessment, we have not expressed our views on any of these issues on the merits of the case which are to be decided afresh by the ld. AO.

17. In the result, the appeal filed by the assessee is allowed for statistical purpose.

ITA No. 3196 to 3201/Mum/2023; (A.Y.: 2010-11 to 2015-16)

18. The findings recorded in ITA No. 3195/Mum/2023 for A.Y. 2009-10 shall apply mutatis mutandis to these appeals also.

ITA No. 3572 and 3571/Mum/2023; (A.Y.: 2011-12 and 2012-13)

ITA No. 3570 and 3569/Mum/2023; (A.Y.: 2014-15 and 2015-16)

19. As we are remanding the assessee's appeals back to the file of ld. AO, we also deem it fit to remand the revenue's appeal to the file of ld. AO for *denovo* assessment.

20. In the result, the appeals filed by the revenue are allowed for statistical purpose.

Order pronounced in the open court on 28.03.2025

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai; Dated: 28.03.2025

Karishma J. Pawar (Stenographer)

Copy of the Order forwarded to:

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



ITA No. 3195 to 3201/Mum/2023 (A.Y. 2009-10 to 2015-16)
ITA No. 3572 & 3571/Mum/2023 (A.Y. 2011-12 & 2012-13)
ITA No. 3170 & 3569/Mum/2023 (A.Y. 2014-15 & 2015-16)
Krishan Khadaria

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai