

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "C" BENCH : MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

ITA No.	A.Y.	Appellant	Respondent
737/Mum/2025	2016-17	ACIT-4(2)(1), Room No. 669, Aayakar Bhavan, Mumbai -400020.	IIFL Securities Ltd., 8 th Floor, Hubtown Solaris, Near Andheri East West Flyover, Mumbai-400069 [PAN: AAACI7397D]
722/Mum/2025	2016-17		

Assessee by : Shri Pritesh Mehta
Revenue by : Shri Chetan M. Kacha

Date of Hearing : 23-04-2025
Date of Pronouncement : 29-04-2025

ORDER

PER VIKRAM SINGH YADAV, A.M :

These are two appeals filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’], dated 02-12-2024, pertaining to Assessment Year (AY) 2016-17.

2. At the outset, the Ld.DR submitted that the Revenue has inadvertently filed two appeals against the impugned order pertaining to AY. 2016-17 and, therefore, the appeal in ITA No. 737/Mum/2025 may be taken up for adjudication and the other appeal in ITA No.722/Mum/2025 may be considered as ‘withdrawn’. The Ld.AR did not object to the same, hence,

the appeal of the Revenue in ITA No. ITA No.722/Mum/2025 is dismissed as withdrawn.

3. In ITA No. 737/Mum/2025, the Revenue has taken the following grounds of appeal:

“1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is right in deleting the addition of Rs.6,78,65,920/- made by the AO?

2. Whether on the facts and circumstances of the case and in law, the CIT(A) is right in holding that the Assessing Officer's findings regarding unexplained cash credits under Section 68 of the Income Tax Act, 1961, were substantiate?

3. Whether on the facts and circumstances of the case and in law, the CIT(A) erred in disregarding the substantive evidence of tax evasion and procedural compliance provided by the AO?

4. The appellant craves leaue to add, amend, alter, and/or vary any of the grounds of appeal before or at the time of hearing.”

4. Briefly the facts of the case are that the assessee had originally filed its return of income on 26-11-2016 which was selected for scrutiny and the order was passed by the AO u/s. 143(3) of the Act on 12-12-2018. Subsequently, the case of the assessee was reopened u/s. 147 of the Act, after recording reasons and notice u/s. 148 of the Act was issued and served on the assessee on 31-03-2021. In response to the notice, the assessee filed its return of income on 13-04-2021. Thereafter, notices issued u/s. 143(2) and 142(1) of the Act were issued and the assessment proceedings were completed u/s. 147 r.w.s. 144B of the Act vide order dt. 25-03-2022. As per the AO, the assessee was served with the draft assessment order vide show cause dt. 19-03-2022 wherein the assessee was asked to submit its response by 24-03-2022. However, the assessee did not make any compliance and thereafter, the impugned order was

passed on 25-03-2022. As per the AO, the assessee has been found to be a beneficiary of accommodation entries from shell entities, namely, Lavender Promoters Pvt. Ltd., and Swar Vincom Pvt. Ltd., amounting to Rs. 6,27,34,000/- and given the fact that the assessee failed to establish the identity, creditworthiness and genuineness of the transactions, the amount was treated as 'un-explained cash credit' u/s. 68 of the Act and same was brought to tax in the hands of the assessee. Further as per the AO, the assessee has shown a loan of Rs. 51,24,000/- to Jignesh Shah and it has been found during the course of search and survey proceedings that the said Jignesh Shah provided accommodation entry in the guise of bogus Long Term Capital Gain [LTCG], unsecured loan, synchronized trading of shares of various listed companies and the assessee was asked to furnish its reply and also to furnish requisite documentary evidences to substantiate its claim. However, the assessee denied to have any such transaction and hence, the loan amounting to Rs. 51,24,000/- remain un-explained as per section 68 of the Act and the same was brought to tax in the hands of the assessee. Further, an amount of Rs. 7,920/- was brought to tax being accommodation entry through Shri Naresh Jain since the assessee failed to substantiate the same, accordingly, the AO determined the income of the assessee at Rs. 89,63,06,900/-.

5. Being aggrieved, the assessee carried the matter in appeal before the Ld.CIT(A), who has since deleted the additions so made by the AO and against the said findings, the Revenue is in appeal before us.

6. During the course of hearing, the Ld. DR taken us through the findings of the Ld.CIT(A), which reads as under:

“6. Analysis and Decision:

6.1 I have thoroughly examined the assessment order passed by the Assessing Officer and the submissions made by the appellant. The facts and grounds of appeal raised have been analyzed in the light of the provisions of the Income Tax Act, 1961 and relevant judicial precedents.

6.2 The reassessment for AY 2016-17 was initiated by the AO under Section 147 of the Income Tax Act based on information received from the Investigation Wing. The AO made three major additions to the appellant's income:

1. Unexplained Cash Credits u/s 68: Rs. 6,27,34,000 alleged to have been routed through shell companies providing accommodation entries. The AO concluded that the appellant failed to establish the identity, creditworthiness, and genuineness of the transactions.

2. Fictitious Loan (Section 68): Rs. 51,24,000 claimed as a loan to Jignesh Shah, a known provider of accommodation entries. The AO held this amount as unexplained cash credit, citing the appellant's failure to discharge the burden of proof.

3. Accommodation Entry: Rs. 7,920 linked to Naresh Jain, also identified as an accommodation entry provider.

The AO treated these as unexplained income and added to the total income against which the appellant has filed the present appeal.

6.3 The grounds of appeal raises the following three core issues for adjudication:

1. Validity of Reopening Under Section 147: Whether the reassessment proceedings were initiated based on tangible material and independent satisfaction of the AO.

2. Sustainability of Additions Under Section 68: Whether the additions made by the AO were substantiated with adequate evidence and justified under the provisions of the Act.

3. Adherence to Principles of Natural Justice: Whether the AO provided the appellant with sufficient details, an opportunity for rebuttal, and the right to cross-examination, as required by law.

6.4 Coming to the Validity of Reopening (Grounds 1-3), it is seen that the AO reopened the assessment based on information from the Investigation Wing alleging that the appellant was a beneficiary of suspicious transactions routed through shell entities. The AO recorded reasons to

believe that income chargeable to tax had escaped assessment and issued notices under Section 148, fulfilling the procedural requirements.

However, the appellant contended that the reasons for reopening were vague and based solely on information received from the Investigation Wing, without independent application of mind by the AO. Further, the entities mentioned in notices u/s 142(1) are different from the ones mentioned in the assessment order passed u/s 147. It is settled law that the reopening must be based on tangible material and independent satisfaction. In this case, the AO failed to provide specific details connecting the appellant to the alleged transactions, raising questions about the adequacy of the reasons for reopening. While the procedural requirements under Section 147 were met, the reliance on "borrowed satisfaction without any corroborative inquiry and transactional analysis weakens the substantive validity of the reassessment.

6.4. On the merits of additions (Grounds 4-10), it is observed that the AO made additions under Section 68, alleging that the appellant engaged in transactions with shell entities. However, the following issues were observed:

- The appellant consistently denied having any transactions with the entities named in the assessment order and argued that its books of accounts were audited and complied with SEBI norms.*
- Despite repeated requests, the AO did not provide specific details of the alleged transactions, such as PAN, addresses, or evidence linking the appellant to these entities.*
- No opportunity for cross-examination of the parties named in the assessment order was granted, In fact, the names of the entities got changed in the final assessment order passed.*
- The AO failed to conduct any independent verification of the transactions or substantiate the connection between the appellant and the shell entities. The assessment order heavily relied on generalized conclusions drawn from the Investigation Wing's report, without corroborating evidence.*

6.5. On the issue of adherence to principles of natural justice, the appellant argued that it was denied the opportunity to rebut the allegations effectively. Neither the AO provided adequate details nor did he grant cross-examination rights, which are essential. Denial of these rights vitiates the assessment process.

6.6 In the light of the foregoing, while the reopening of the assessment under Section 148 was procedurally valid, the additions made under

Section 68 are unsustainable. The AO failed to substantiate the allegations with specific evidence, provide an opportunity for rebuttal, or independently verify the transactions. These procedural lapses and evidentiary gaps render the additions legally untenable.

6.7 Therefore, the additions made under Section 68, amounting to Rs. 6,78,65,920/-are deleted due to lack of evidence and violation of natural justice.”

7. It was submitted that as apparent from the order of the Ld.CIT(A), the substantial additions made by the AO has been deleted by the Ld.CIT(A) for the reason that the AO failed to substantiate the allegations with specific evidences, that the assessee has not been provided any opportunity for rebuttal and AO failed to conduct any independent verification of the transactions and substantiate the connection between the appellant and the shell entities. It was submitted that as evidence from the assessment order, in spite of issuance of notices from time to time as well as show-cause notice along with the draft assessment order, the assessee has failed to file the necessary explanation and/or documentation in response to the notices issued by the AO and, therefore, basing the tangible information available on record, the AO has proceeded and passed the impugned order. Referring to submission dated 25/03/2022 filed by the assessee, it was submitted that merely basis the same, the Ld CIT(A) has deleted the additions so made by the AO. It was submitted that the assessee was issued a show-cause dt. 19/03/2022 wherein the assessee was asked to submit its response by 24/03/2022, however, the assessee did not make any compliance and thereafter, the impugned order was passed on 25/03/2022. It was further submitted that the Ld.CIT(A) has co-terminus powers with that of the AO and, therefore, he could have called for necessary information from the assessee and the remand report from the AO and thereafter, decided the matter on merits of the case, however, nothing has been done by the Ld CIT(A) and merely on

the basis of denial by the assessee that it has not carried out any such transactions, the additions have been deleted. In any case, nothing has been submitted by the assessee before the Ld.CIT(A) in terms of any documentary evidence to rebut the findings of the AO and there is thus no factual and legal basis for the Ld.CIT(A) to delete the additions so made by the AO. It was accordingly submitted that the order of the Ld.CIT(A) be set aside and that of the AO be sustained.

8. Per contra, Ld. AR has supported the order and findings of the Ld. CIT(A). It was submitted that on perusal of the reasons so recorded before the reopening of the assessment proceedings and the addition which has finally been made by the AO, it can be noted that there is complete variance in terms of the entities which are mentioned in the reasons and the entities which have finally been alleged by the AO from whom the assessee has received the accommodation entries. It was submitted that in response to notice issued by the AO, the assessee specifically requested the AO to provide additional information such as PAN, address of the parties with whom the assessee has been alleged to have entered into the transactions. However, no such information has been provided by the AO. It was submitted that without considering the submissions so made by the assessee seeking the requisite information, the AO issued show cause and thereafter went ahead and passed the assessment order. Therefore, the order so passed is clearly without giving notice/adequate opportunity and deserves to be set aside, which has rightly been done by the Ld.CIT(A). It was submitted that the AO failed to appreciate that the assessee has not carried out any transaction with Lavender Promoters Pvt. Ltd., and Swar Vincom Pvt. Ltd., or Shiv Shakti Trading Co., proprietor, Raja Roy and the addition has been made without due application of mind. It was further submitted that the assessee has also not carried out any transaction with

Shri Jignesh Shah and the same has again be made without due application of mind and without providing an opportunity of cross-examination and without providing the specific details of the parties so alleged, with whom the assessee has carried out the alleged transactions. Similarly it was submitted that the assessee has not taken or given any accommodation entry to Shri Naresh Jain and the addition so made has rightly been set aside by the Ld.CIT(A). He accordingly supported the order so passed by the Ld.CIT(A).

9. We have heard the rival contentions and carefully pursued the material available on record and entire matrix of the case. We find that it is case where the matter has been reopened u/s 147 basis search action in case of Shri Jignesh Shah and Shri Sanjay Shah and report of the investigation Wing where the assessee has been alleged to be beneficiary of suspicious transactions routed through shell entities/entry operators amounting to Rs 6,78,65,920/-, the reasons were recorded and notice u/s 148 was issued and served on the assessee on 31/03/2021. Thereafter, on perusal of records and in particular, the paperbook filed by the ld AR and ld DR, we find that there were subsequent notices issued on 26/11/2021, 30/12/2021, 18/11/2022 and show-cause dated 19/03/2022; and response/submissions filed by the assessee dated 20/12/2021, 20/01/2022 and 25/03/2022. In its response dated 20/01/2022, the assessee has submitted that it has not carried out any transactions with Naresh Jain, Shiv Shakti Trading or Jignesh Shah and has requested the AO to provide PAN/address of these persons to identify such persons in its books of accounts given that it has over 10 lacs stock broking customers over 1000 branches. Thereafter, in its submissions dated 25/03/2022, the assessee has again requested for such information and the contents thereof read as under:

“1. The assessee had over 25 lakh customers for its lending activities with over 1000 branches. In respect of the alleged transaction with Lavender Promoters Private Limited amounting to Rs.3,40,84,000/-, we request you to provide the details such as PAN, address, Client ID, etc so as to enable the assessee to trace the transactions done by them, if any, in the books of accounts of the assessee. In the absence of any such details, it is very difficult to trace the transactions done, if any, by the said party.

2. The assessee had over 25 lakh customers for its lending activities with over 1000 branches. In respect of the alleged transaction with Swar Vincom Private Limited amounting to Rs.2,86,50,000/-, we request you to provide the details such as PAN, address, Client ID. etc so as to enable the assessee to trace the transactions done by them, if any, in the books of accounts of the assessee. In the absence of any such details, it is very difficult to trace the transactions done, if any, by the said party.

3. In respect of the alleged transaction with Jignesh Shah amounting to Rs.51.24.000/-, we request you to provide the details such as PAN, address, Client ID, etc so as to enable the assessee to trace the transactions done by them, if any, in the books of accounts of the assessee. In the absence of any such details, it is very difficult to trace the transactions done, if any, by the said party.

4. In respect of the alleged transaction with Naresh Jain amounting to Rs.7,920/-, we request you to provide the details such as PAN, address, Client ID, etc so as to enable the assessee to trace the transactions done by them, if any, in the books of accounts of the assessee. In the absence of any such details, it is very difficult to trace the transactions done, if any, by the said party.

5. We state that all transactions done by the assessee in respect of its customers are done through banking channels only after complying with KYC norms of SEBI.

6. As such, the assessee has not availed any accommodation entries from any party or done any fictitious loan transactions.

We once again request you to provide the details such as PAN, address, Client ID etc so as to enable the assessee to trace the transactions done by them, if any, in the books accounts of the assessee.”

10. We also find that the assessment order u/s 147 r/w 144B has been passed on the same date, i.e, 25/03/2022, the day the information was last sought by the assessee. We, therefore, have a situation where the

assessee has sought information on 20/01/2022 and thereafter on 25/03/2022 and the assessment order has been passed on 25/03/2022 without providing such information to the assessee. In the show-cause so issued on 19/03/2022 along with draft assessment order, the assessee was provided time to respond by 24/03/2022 and given that the AO didn't receive the response from the assessee, the AO proceeded with the assessment proceedings and passed the assessment order, however, the fact of the matter is that the assessee did seek the information on the earlier occasion as well, however, the AO has not provided such information and proceeded with the framing of the draft assessment order and thereafter, the final assessment order.

11. Now, coming to the findings of the Ld.CIT(A), we find that the Ld. CIT(A) has deleted the addition for the following reasons as evident from the impugned order:

- *“The appellant consistently denied having any transactions with the entities named in the assessment order and argued that its books of accounts were audited and complied with SEBI norms.*
- *Despite repeated requests, the AO did not provide specific details of the alleged transactions, such as PAN, addresses, or evidence linking the appellant to these entities.*
- *No opportunity for cross-examination of the parties named in the assessment order was granted, In fact, the names of the entities got changed in the final assessment order passed.*
- *The AO failed to conduct any independent verification of the transactions or substantiate the connection between the appellant and the shell entities. The assessment order heavily relied on generalized conclusions drawn from the Investigation Wing's report, without corroborating evidence.”*

12. We find that as far as seeking the requisite information is concerned, no doubt, the assessee has requested twice before the AO to share the requisite information. However, as far as denial of entering into alleged transactions with the entities/persons as so stated in the assessment order which are at variance with the entities mentioned in one of the notices and which has formed the basis of the additions, it is a contention which has been raised for the first time before the Ld.CIT(A) and before accepting such a contention, the Ld.CIT(A) should have sought the necessary information from the AO and confront the same to the assessee before accepting such a contention. Where the complete information itself as so claimed is not on record and not called for and examined by the Ld. CIT(A), we are unable to apprehend how the Ld.CIT(A) has accepted the contention so advanced by the assessee that it has not entered into any such transactions. In any case, it is assessee's own claim before the AO where it has sought complete information and in absence of which, how it has denied such transactions is again not clear to us. Similarly, the opportunity of cross-examination is a contention which has been raised before the Ld.CIT(A) for the first time and not before the AO and therefore, how the Ld.CIT(A) has accepted such a contention that the assessee has been denied the opportunity of cross examination where no such request was made at first place by the assessee. In light of the same, the basis and the reasoning so adopted by the Ld.CIT(A) is not borne out of the records and therefore, the same cannot form the basis for deleting the addition so made by the AO and deserve to be set-aside.

13. Having said that, the fact that the matter remains that the assessee deserves to know and have access to the relevant information in possession of the AO basis which the addition has been made in its hands in order to prepare its response and rebuttal as so advised. Where the AO

has not provided such information and the assessee seeks to challenge such action before the Ld.CIT(A), the question that arises is whether the Ld.CIT(A) should seek such information from the AO and confront the assessee and thereafter, decide the matter on merits of the case after calling for the remand report or merely rely on the pleadings made by the assessee that it has not been provided such information and quash the action of the AO in absence of such information being provided to the assessee. No doubt, the assessment order so passed by the AO is under challenge before the Ld.CIT(A) and he has the powers to confirm, reduce, enhance or annual the assessment. However, as part of exercise of such powers, the Ld.CIT(A) has to arrive at a finding which is supported by appropriate reasoning and basis of arriving at such a finding and for that purposes, it would have been appropriate that the necessary information forming the very basis of the addition should be called from the AO, the assessee be confronted with such information and sought its response and remand report of the AO be called and thereafter, the matter should have been decided. It is a settled proposition that the ld CIT(A) has the necessary powers to make such further enquiry as he thinks fit and can also direct the AO to make further enquiry before he disposes the assessee's appeal and as the ld Sr DR rightly submitted that the ld CIT(A) also has the necessary powers which the AO could have exercised. However, in the instant case, we find that no such enquiry has been conducted by the ld CIT(A) nor directed by the ld CIT(A) and merely basis the pleadings made by the assessee which are also not supported by the material available on record as we have seen supra, the appeal of the assessee has been allowed by deleting the addition so made by the AO.

14. In light of aforesaid, we are of the considered opinion that the order of the Ld.CIT(A) be set-aside and the matter be remanded to the file of the AO

for fresh examination as per law after providing all relevant information/documentation which has formed the basis of reopening and after providing reasonable opportunity to the assessee. The assessee is at liberty to file necessary submissions/documentation and raise necessary contentions as so advised.

15. In the result, the appeal of the Revenue in ITA No. 737/Mum/2025 is allowed for statistical purposes.

Order pronounced in the open court on 29-04-2025

Sd/-
[SANDEEP GOSAIN]
JUDICIAL MEMBER

Sd/-
[VIKRAM SINGH YADAV]
ACCOUNTANT MEMBER

Mumbai,
Dated: 29-04-2025

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai