

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 233/MUM/2025  
Assessment Year: 2008-09**

Churu Trading Co Pvt. Ltd.,  
PAN – AAACC4853G (Since merged  
with Sprit Infrapower &  
Multiventures Pvt. Ltd.)  
18<sup>th</sup> floor, A Wing, Marathom  
Futurex, N.M. Joshi Marg,  
Lower Parel,  
Mumbai-400013.

**PAN NO. AALCS 5905 J**  
**Appellant**

vs. Addl./Joint/Dy./Asst. CIT,  
Income-tax Officer, National e-  
Assessment Centre, Ward-8(2)(1),  
6<sup>th</sup> floor, Aayakar Bhavan,  
Churchgate,  
Mumbai-400021.

**Respondent**

Assessee by : Mr. Nishit Gandhi  
Revenue by : Mr. R.A. Dhyani, CIT-DR

Date of Hearing : 11/06/2025  
Date of pronouncement : 17/06/2025

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 29.11.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2008-09, raising following grounds:



### **ON JURISDICTION**

1.1 The learned Commissioner of Income tax (Appeals), NFAC [“Ld. CIT (A)”] erred in confirming the action of the Assessing Officer (AO) in initiating reassessment proceedings and framing assessment of the Appellant by invoking the provisions of Section 147 r.w.s.143(3) of the Income tax Act, 1961 [“the Act”].

1.2 While doing so, the Ld. CIT (A) failed to appreciate that the assessment itself made along with the addition made therein was beyond the scope of assessment under section 147 of the Act and the necessary pre-conditions for initiating reassessment proceedings and completion of the assessment were not fulfilled and the requisite procedure was not followed while framing the impugned re-assessment.

1.3 In the facts and circumstances of the case and in law, the impugned Notice u/s 148 and consequent order are bad in law and void for want of jurisdiction and therefore deserve to be quashed and it is prayed accordingly.

1.4 It is submitted that in the facts and the circumstances of the case, and in law, the assessment order is bad, illegal and void.

### **ON NATURAL JUSTICE**

2.1 In the facts and circumstances of the case and in law, the order passed by the Ld

CIT(A) affirming the order of the Ld. AO deserves to be quashed since:

(a) The same is passed in violation of principles of Natural Justice;

(b) Without giving due consideration to the submissions filed by the Assessee before the Ld. CIT(A) at the time of physical hearing before COVID19; and

(c) The order is passed without granting a personal hearing before passing the Order

2.2 In the facts and circumstances of the case and in law, the order passed by the Ld. CIT(A) affirming the assessment order be quashed.

ON MERITS:



3.1 On facts and circumstances of the case, the Ld CIT(A) erred in upholding the addition made by the Ld. AO in gross violation of extant law though the same was in respect of sale of shares of a listed company held over one year and correctly claimed exempt u/s.10(38).

3.2 While doing so the Ld. CIT(A) erred in:

(a) Concluding that the investment in shares is out of books despite the Appellant submitting all documentary evidences being reflected under Assets, Contract Notes, Demat and Bank Account and despite the same having been reflected in the accounts though under a different head of Assets (b) Sustaining the addition made u/s 69 of the Act without appreciating that the said section is not applicable to the present situation and is not invocable in the present case; and;

(c) No defect or violation of conditions specified in section 10(38) of the Act have been found by the Ld. AO and therefore the denial of exemption is contrary to law.

3.3 It is submitted that in the facts and in the circumstances of the case, and in law, no such addition was called for.

*Book Profit - Provision for Non Performing Assets written back*

4.1 The Ld. CIT (A) erred in confirming the action of the AO in making an addition to the Book Profits u/s. 115JB of the Act on account of write back of Provision for Non Performing Assets (NPA), based on RBI Prudential Norms for NBFC.

4.2 While confirming the said addition, the Ld. CIT(A) failed to appreciate that:

(a) The said provision is a mere appropriation after Profit Before Tax (PBT) and below the line item, as per the Prudential Norms prescribed for NBFC issued by RBI

(b) When the said Provision was made, the same was not claimed as a deduction earlier from the Book Profit, hence adding the same again would amount to double taxation of the said notional item;

(c) The addition is contrary to law and judicial precedent laid down by the Hon'ble Supreme Court in this regard; and d) In any case, the said provision written back is not real income and



*to that extent not chargeable tax and both the lower authorities failed to appreciate this aspect of the matter*

*4.3 It is submitted that in the facts and in the circumstances of the case, and in law, no such addition was called for.*

*5. The Ld CIT (A) erred in upholding the order of the Ld. AO in levying interest u/s.234A, u/s.234B & u/s.234C of the Act.*

2. Briefly stated, facts of the case are that the assessee filed its return of income on 30.09.2008 declaring total loss of Rs.102,94,65,859/- under normal provisions of the Income-tax Act, 1961 (in short 'the Act') and book profit of Rs.1,29,96,263/- u/s 115JB of the Act. The assessment u/s 143(3) of the Act was completed on 31.12.2010 determining total loss at Rs.2,90,34,638/- under normal provisions and book profit at Rs.2,11,29,924/- u/s 115JB of the Act. Subsequently, the case of the assessee was reopened by way of issue of notice u/s 148 of the Act dated 21.03.2013. After issue of statutory notices and taking into consideration submission of the assessee, the Assessing Officer completed the reassessment on 24.01.2014 determining total income at Rs.5,14,30,252/- under normal provisions and book profit at Rs.1,08,70,39,615/-. Aggrieved, the assessee filed appeal before the Ld. CIT(A), however, he noted that despite providing number of opportunities, no compliance was made on the part of the assessee and therefore, he decided the appeal on the basis of the material available on record.



3. Before us, the Ld. counsel for the assessee referred to ground No. 2.1 of the appeal and submitted that the Ld. CIT(A) had not considered the submissions filed by the assessee at the time of physical hearing before Covid-19 period and order has been passed without granting personal hearing.

4. We have heard the rival submissions advanced by the learned counsel for the parties in respect of Ground No. 2 of the present appeal and have carefully perused the material placed on record. It is brought to our notice that the assessee had filed a detailed written submission dated 06.04.2015 before the jurisdictional First Appellate Authority. Although the said submission was originally filed in physical form, the appeal proceedings were subsequently transferred to the Faceless Appeal Centre. It is the specific contention of the assessee that the written submissions so filed were not taken into consideration by the Learned Commissioner of Income Tax (Appeals) [Ld. CIT(A)] while adjudicating the appeal.

4.1 It is a settled principle of law that effective opportunity of hearing must be afforded to a party, and that an order passed without due consideration of the submissions advanced amounts to denial of natural justice. In the instant case, there is no indication that the Ld. CIT(A) has dealt with or even adverted to the aforesaid submissions made by the assessee. In such circumstances, we are



constrained to hold that the impugned order suffers from procedural impropriety and cannot be sustained.

4.2 Accordingly, we deem it just and proper to set aside the impugned order passed by the Ld. CIT(A) and remand the matter to him for fresh adjudication. The Ld. CIT(A) shall consider the submissions made by the assessee, afford due opportunity of hearing, and thereafter pass a reasoned and speaking order in accordance with law.

4.3 In view of our decision to remand the matter, the other grounds raised by the assessee on merits are rendered academic at this stage and, therefore, are not being adjudicated upon.

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

**Order pronounced in the open Court on 17/06/2025.**

**Sd/-  
(RAJ KUMAR CHAUHAN)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 17/06/2025  
Rahul Sharma, Sr. P.S.



**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**