

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**  
**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER**  
**ITA Nos. 1870, 1869 & 1868/MUM/2025 (AY : 2020-21 to 2022-23)**  
*(Physical hearing)*

Priti Suresh Purohit A D Singh Chawl Gaon Devi Road, Poisarkandivalci, Mumbai-400101. [PAN No. CNSPP3748P]	Vs	ACIT, Central Circle-5(4), 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai
Appellant / Assessee		Respondent / Revenue

Assessee by	Sh. Jay Bhansali, Advocate
Revenue by	Sh. Mahesh Dattatraya Londhe, Sr. DR
Date of hearing	01.07.2025
Date of pronouncement	09.07.2025

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. These three appeals by same assessee are directed against the separate orders of Id. CIT(A) all dated 25.02.2025 for A.Y. 2020-21, 2021-22 & 2022-23. In all appeals, the assessee has raised certain common grounds of appeal in all three years, facts in all years are almost same except variation of figure of addition under section 69A, thus, with the consent of parties all the appeals were clubbed, heard together and are decided by common order to avoid the conflicting decision. For appreciation of facts, facts in appeal for A.Y. 2020-21 in ITA No. No. 1870/M/2025 is treated as lead case. The assessee has raised following grounds of appeal:

**1. Reopening proceedings are bad in law**

1.1 Commissioner of Income-tax (Appeals) (hereinafter referred to as "the CIT(A)) failed to appreciate that the action of the Assessing Officer (hereinafter referred to as "the AO") in reopening the case of the assessee vide notice dated 25.01.2023 under section 148 of the Income-tax Act, 1961

(hereinafter referred to as "the Act") is bad in law. The reasons given are wrong, contrary to facts of the case and against the provision of law:

1.2 The CIT(A)/AO failed to appreciate that the notice dated 25.01.2023 under section 148 of the Act was required to be issued in a faceless manner in accordance with the e-Assessment of Income Escaping Assessment Scheme, 2022 prescribed under section 151A of the Act and therefore the said notice issued by the Jurisdictional Assessing Officer is bad in law. Consequently, the reassessment order dated 09.03.2024 under section 147 of the Act is liable to be quashed;

1.3. The CIT(A)/AO failed to appreciate that the purported approval of Pr. CIT (Central-3), Mumbai for issuing notice dated 25.01.2023 under section 148 of the Act is non-est in as much as it has been issued without bearing a Documentation Identification Number in contravention to Circular No. 19 of 2019 dated 14th August 2019. In any case, the CIT(A) / AO failed to appreciate that the said sanction is mechanical in nature as no prudent person duly instructed in law based on the reasons recorded could sanction such invalid reopening proceedings. Consequently, the reassessment order dated 09.03.2024 under section 147 of the Act is liable to be quashed;

**2. Addition under section 69A of the Act amounting to Rs. 4,78,580/-**

2.1 The Commissioner of Income-tax (Appeals) [hereinafter referred to as "the CIT(A)] erred in confirming the action of the Assessing Officer [hereinafter referred to as "the AO"] in taxing a sum of Rs. 4,78,580/-, being income from execution of a labour contract and offered to tax, under section 69A of the Act. The reasons given are wrong, contrary to facts of the case and against the provision of law;

2.2. The CIT(A)/ AO failed to appreciate that the assessee was not required to maintain books of accounts and that in the absence of books of account being maintained by the assessee, provisions of section 69A of the Act could not be invoked;

3. The CIT(A) erred in upholding the action of the AO in initiating penalty proceedings under section 274 r.w.s. 271AAC of the Act. The reasons given are wrong, contrary to facts of the case and against the provision of law;

4. The above grounds/sub grounds of appeal are without prejudice to each other;

5. The appellant craves the leave to add, amend or alter all or any of the grounds of appeal.

2. Brief facts of the case are that assessee is individual, filed her return of income under section 139(4) on 31.03.2021 declaring income of Rs. 1,91,600/-. The case of assessee reopened on the basis of search carried out in case of MCGM group Mumbai on 25.02.2022 wherein the assessee was also covered. The case of assessee was reopened after taking prior approval of Principal Commissioner of Income Tax (PCIT), Central Circle -3, Mumbai. Notice under section 148 dated 12.06.2023 was served upon the assessee. In response to notice under section 148, the assessee filed her return of income declaring income of Rs. 1,91,600/- i.e. the same return which was filed originally. During the assessment, the assessing officer recorded that assessee has shown contract receipt of Rs. 4,78,580/- and offered it under presumptive tax scheme under section 44AD. The assessing officer noted that assessee has shown such income from labour contract and job work, the claim of assessee was not accepted by assessing officer on the basis of the fact that during the search action, statement of assessee was also recorded under section 132(4) wherein, she disclosed that she is a house wife and does not have any source of income. The assessing officer extracted relevant part of her statement in para 3.1 of assessment order. On the basis of such adverse observation, the income from labour contract and job work offered under section 44AD was not accepted. The assessing officer issued a fresh show cause notice dated 15.02.2024 to furnish detail of presumptive turnover of Rs. 4,78,580/- that is contract agreement, party-wise detail, bills or vouchers, bank statement with highlighting receipt of payment. In

response to such show cause notice, the assessee filed her reply dated 20.02.2024. In the reply, the assessee stated that she has offered income under presumptive scheme, under which there is no requirement of maintenance of books of account. The assessee also referred Circular No. 5 of 2010 issued by Central Board of Direct Taxes (CBDT). The reply of assessee was not accepted by the assessing officer; he noted that perusal of bank statement shows that there is nodebit entry relating to expenses of labour. Without any expenses no business can be carried out. The assessee failed to substantiate claim of labour contract. The assessing officer treated the entire receipt as unexplained money under section 69A.

3. Aggrieved by the additions in the assessment order, the assessee filed appeal before Id. CIT(A). Before Id. CIT(A), the assessee filed detail written submission. In challenging the reopening under section 147 as well as issuance of notice under section 148 and addition on merit. The submission of assessee is recorded in para 5 at page no. 9 to 26 of order of Id. CIT(A). The assessee in its submission submitted that assessee has shown presumptive income under section 44AD of Rs. 1,25,570/-, income from other sources of Rs. 70,735/-, thus, gross total income of Rs. 1,96,305/- and after claiming deduction under Chapter VIA of Rs. 4,702/- shown taxable income at Rs. 1,91,603/-. During the year, the gross total turnover of assessee was Rs. 4,78,580/-. The assessee has declared presumptive business income under section 44AD of Rs. 1,25,570/-. The assessee is a small labour contractor. The assessee received labour contract from Art Cottage Co-operative Housing Society Ltd. of Rs. 1,52,850/- on which TDS

under section 194 of Rs. 3,057/- was deducted which is reflected in Form 26AS. There was other small receipt from other contract in cash of Rs. 3,25,730/- which is also offered for taxation under section 44AD. The assessee stated that her husband is civil contractor and she undertaken small labour contract with the support of her husband and executed such contract with also in the same business. No books of account were maintained by assessee. The assessee furnished his reply in response to show cause notice before assessing officer. The assessing officer rejected the reply of assessee and treated the entire receipt as unexplained. On the objection of assessing officer that assessee has not debited any expenses. The assessee explained that such expenses were incurred in cash which was met out from the cash receipt as well as some other cash withdrawal and there is no question of any entry as the assessee is not required to maintain any books of account. To support her submission, the assessee relied upon various case laws wherein it was held that books of account are not required under section 44AD returns. In her submission dated 25.01.2025, the assessee further submitted that 8% of total turnover of Rs. 4,78,580/- is only of Rs. 38,286/-, whereas the assessee offered income at Rs. 1,25,570/- which is much higher than the ratio of required presumptive scheme. During the search action, no unexplained cash has been found, so provision of section 69A cannot be applied. On the reliance of statement of assessee during the assessment, the assessee relied on the decision of Calcutta High Court in CIT vs Tara Chand Mahipal 65 taxmann.com 29 (Cal) wherein it was held that mere statement cannot be a material or information since it has to relate to some other

evidence, unless it is corroborated with other evidence it cannot be a basis for computation. Mere statement cannot be a basis for computation of income. Decision of Gujarat High Court in PCIT vs Nageswar Enterprise 122 taxmann.com 41 wherein the assessing officer made addition in the hands of assessee firm for unaccounted investment and purchases merely on the basis of statement of partner of assessee before Directorate of Revenue Independent (DRI) and no other evidence were brought on record, so additions were deleted.

4. The Id. CIT(A) on considering the assessment order and the submission of assessee including Circular of CBDT No. 5 of 2010 noted that assessee in her statement, recorded under section 132(4) stated that she is house-wife and does not have any source of income and not filed return of income. However, the assessee has shown contract receipt of Rs. 4,78,580/- under section 44AD. No supporting evidence in support of claim of presumptive income under section 44AD is filed. Further, there is no bank entry of expenses. Even during appellate proceeding, the assessee has not furnished any documentary evidence. The Id. CIT(A) referred the decision of Apex Court in CIT vs P. Mohana Kala 291 ITR 278, wherein it was held that money came by way of cheque and paid through process of banking transaction itself is of no consequences. The assessee is not carrying out any business activity. The assessee has not fulfilled this requirement of provision of business income under presumptive basis as there is no business activity. On the basis of aforesaid observation upheld the addition made by assessing officer. Further, aggrieved the assessee is filed present appeal before Tribunal.

5. I have heard the submissions of learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue. The Id. AR of the assessee submits that he has raised legal issue on validity of reopening as well as issuance of notice by jurisdictional assessing officer and approval by PCIT for issuing notice under section 148 as it does not contain documentation identification number (DIN). The Id AR of the assessee also raised plea against the issuing of notice in jurisdictional Assessing Officer (JAO) instead by a faceless manner [Faceless Assessing Officer (FAO)]. At the time of hearing the Id AR of the assessee was apprised that issue of DIN and issuance of notice by FAO vs JAO is pending adjudication before Hon'ble Apex Court and this SMC bench is not going to hear and decide such issue till the decision by Hon'ble Supreme Court. The Id AR of the assessee submits that he has very good case on merit and he may be heard on merit alone.
6. On merit, the Id. AR of the assessee made his submission on the line of contention of assessee before lower authorities. The Id. AR submits that assessee is offering income under presumptive basis and similar income has been accepted in subsequent assessment year that in A.Y. 2023-24 in assessment order passed under section 143(3) on 31.12.2024. Copy of assessment order is filed. The Id. AR by referring the contents of assessment order submits that case of assessee for A.Y. 2022-23 was also selected for compulsory scrutiny on the basis of same search action. The assessee offered similar business income under section 44AD which has been accepted. The copy of income computation form and demand notice is also filed. The Id. AR

submits that once the presumptive income has been accepted in A.Y. 2022-23, the assessee cannot be treated differently in other years. As per scheme of section 44AD, the assessee is not required to maintain books of account. The TDS made by parties is duly reflected in Form 26AS. The assessee is small contractor and doing business with the help of her husband. Copy of Form 26AS is also placed on record. The Id. AR of the assessee submits that in case of Barkha Kishore Kumar Agarwal vs ACIT in ITA No. 1873, 1874 & 1875/M/2025 which is also based on similar search action, wherein the addition under section 69A was deleted. The Id. AR further submits that CBDT in its Instruction No. 286 of 2003 has also instructed its field officer that instead of taking confession, the assessing officer should rely on evidence gathered during search or survey action. The statement per se cannot be treated as evidence unless it is corroborative by other evidence. There is no other evidence except statement of assessee. Such statement is not correct. In the statement it is recorded that the assessee has not filed return of income, however, the assessee filed return of income for assessment year under consideration much prior to search action. The income offered by assessee is supported by TDS deducted by prayer on the payment of contract receipt. The Id AR of the assessee prayed for allowing to submit his short-written synopsis. The Id AR of the assessee filed his written synopsis on 04.0.2025 again making certain submissions on the issue which was not heard at the time of submissions. To support his various contention, the Id. AR of the assessee relied upon the following case laws:

- Hexaware Technologies Limited vs ACIT & Ors. (464 ITR 430) (Bom)

- Ganesh Nivrutti Jagtap Vs. ACIT (WPL No. 10683 of 2023) (Bom)
- DCIT Vs. Ameer Flexibles India Pvt. Ltd. (ITA No. No. 3842/Mum/2024)(Mum-Trib)
- ITO Vs. Vimal Kumar Totla (ITA No. 3252/M/2024) (Mum-Trib)
- Barkha Kishore Kumar Agarwal Vs. ACIT (ITA No. No. 1873, 1874 & 1875/M/2025)(Mum-Trib)
- Rucha Consultancy LLP Vs. DCIT (174 taxmann.com 221) (Mum-Trib)
- Dineshkumar Verma Vs. ITO (ITA No. No. 1183/M/2019) (Mum-Trib)
- Shri Sandeep S. Sharma Vs. ITO (ITA No. No. 4801/M/2024)(Mum-Trib)
- Instruction F. No. 286/2/2003-IT (INV.II)
- ACIT vs Legend Developers & Constructions Kurnool (ITA 743, 752/Hyd/2018)
- Shri Kokkarne Prabhakara Vs. ITO (ITA No. No. 1239/Bang/2019)(Bang-Trib)

7. On the other hand, Id. Sr. DR for the revenue supported the order of lower authorities. The Id. Sr. DR submits that during the assessment as well as in First Appellate Proceeding, the assessee failed to substantiate her claim of business activity on which presumptive tax benefit was claimed. The Id. CIT(A) in his order has clearly held that mere banking transaction itself is of no consequences. The Id. Sr. DR submits that he may be allowed to file short written synopsis in response to various submissions of Id. AR of the assessee. The Id. Sr. DR for the revenue was allowed one week time to file his written synopsis if any. No such written synopsis was filed by Id Sr DR of the revenue.
8. I have considered the rival submissions of the parties and have gone through the orders of lower authorities carefully. I have also deliberated on the

various case laws. There is no much dispute on the facts of present case. In my view short dispute in the present appeals are as to whether the assessee's income is liable to be considered under section 44AD and/ or if not acceptable, addition under section 69A is justifiable. I find that revenue has not disputed the income of assessee from "other sources" which is in the form of interest income. The total receipt from contract as per details in Form-26AS is only of Rs.152,850/- and the assessee also claimed cash receipt of Rs. 3,25,730/- from small labour contract, thus aggregate of Rs.4,78,580/-. From business receipt the assessee has shown net income of Rs. 1,25,570/-, which is more than 26% of business receipt. Though, as per contention of the assessee she is not supposed to maintain books of account if the assessee is offering income under section 44AD. I am conscious of the facts that the assessing officer has not accepted income of assessee offered under section 44AD by taking view that the assessee does not fulfilled the conditions of eligible business. One of the reasons to suspect the activities of civil contract business is that during search action statement of assessee was recorded wherein she disclosed that she is house wife and not earning any income, but filing return of income. On the basis of such statement the assessing officer asked the assessee to furnish the details of business income. I find that there is no other corroborative evidence against the assessee's own statement. Search was carried on 25.01.2023, however, the return of income was filed on 31.03.2021, much prior to the search action. The case of assessee was reopened on the basis of search action and addition in re-assessment order is passed under section 69A. I also find that

the assessee has also shown similar business income under section 44AD in AY 2023-24, which has been accepted in the assessment order, passed under section 143(3) dated 31.12.2024.

9. I find that the assessee before the assessing officer contended that she is doing small contract business and also claimed that TDS of Rs. 3057/- was deducted by payer from the contract receipt i.e. by Art Cottage Co-operative Housing Society Ltd. of Rs. 1,52,850/-, TDS is reflected in Form 26AS. There was other cash receipt from other contract in cash of Rs. 3,25,730/-. Thus, the assessee has reasonably explained the source of cash, which is also offered for taxation under section 44AD. In my view the assessee has discharged her primary onus in explaining source of money on which profit under section 44AD was offered to tax. The detail of payer is available in Form 26AS. Mere statement of assessee is not sufficient to make addition under section 69A. Once, the assessee has discharged her onus, there is no other burden on the assessee, the onus shifted on the assessing officer to prove otherwise by making further investigation and to bring adverse material. Similar view was taken by Hon'ble Punjab & Haryana High Court in CIT Vs Jawahar Lal Oswal (2016) 382 ITR 253/76 taxmann.com 168 (P&H). Thus, in my view income offered by assessee under presumptive income under section is liable to be accepted. In the result, the grounds of appeal raised by the assessee are allowed.
10. In the result, the appeal of the assessee for AY 2020-21 in ITA No.1870/Mum/2025 is allowed.

**ITA No. 1868 & 1869/Mum/2025 for AY 2022-23 & 2021-22**

11. As recorded above, the assessee has raised similar grounds of appeal as raised in appeal for AY 2020-21, which I have allowed, thus, these appeals are also allowed with similar observation.

12. In the result, all the appeals of the assessee are allowed.

Order was pronounced in the open Court on 09/07/2025.

**Sd/-**

**PAWAN SINGH  
JUDICIAL MEMBER**

MUMBAI, Dated: 09/07/2025  
*Biswajit*

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.

By Order

Assistant Registrar  
ITAT, Mumbai