

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

<b>ITA Nos. 2286 &amp; 2287/Bang/2024</b>
<b>Assessment Years : 2011-12 &amp; 2012-13</b>

Shri Alok Anand, 71, Forest Approach, Woodford Green, London ig89bp. <b>PAN: AMVPA4599B</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 5(3)(1), Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Nagaraj K H, CA
Revenue by	:	Shri N. Balusamy, JCIT-DR

Date of Hearing	:	14-05-2025
Date of Pronouncement	:	11-08-2025

**ORDER**

**PER SOUNDARARAJAN K., JUDICIAL MEMBER**

These are the appeals filed by the assessee challenging the orders of the NFAC, Delhi both dated 30/08/2024 in respect of the A.Ys. 2011-12 and 2012-13 and raised the following grounds.

**ITA No. 2286/Bang/2024:**

*“01. The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in law and facts by confirming the assessment order passed by the learned Income Tax Officer, Ward 5(3)(1), Bengaluru as the same is without jurisdiction and opposed to law, probabilities, evidences and facts and circumstances of the case.*

*02. The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in*

*confirming the assessment order passed by the learned Income Tax Officer, Ward-5(3)(1), Bengaluru as the same is opposed to principles of natural justice.*

*03. The learned Income Tax Officer, Ward-5(3)(1), Bangalore has erred in making additions of Rs. 1,41,60,440/- towards investments in mutual funds as unexplained income and the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming additions of Rs. 43,15,000/- as unexplained income [i.e. Cash Deposits of Rs. 22,90,000/- and bank transfers/capital introduction of Rs. 20,25,000/-].”*

**ITA No. 2287/Bang/2024:**

*“01. The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in law and facts by confirming the assessment order passed by the learned Income Tax Officer, Ward 5(3)(1), Bengaluru as the same is without jurisdiction and opposed to law, probabilities, evidences and facts and circumstances of the case.*

*02. The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming the assessment order passed by the learned Income Tax Officer, Ward-5(3)(1), Bengaluru as the same is opposed to principles of natural justice.*

*03. The learned Income Tax Officer, Ward-5(3)(1), Bangalore has erred in making additions of Rs. 85,73,110/- towards investments in mutual funds as unexplained income and the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming additions of Rs. 33,62,775/- as unexplained income [i.e. Cash Deposits of Rs.1,88,000/- and bank transfers of Rs. 31,74,775/-].”*

**2.** Both these appeals are heard together and are being disposed of by way of this common order for the sake of convenience. We will take up the appeal in ITA No. 2286/Bang/2024 as the lead case and the decisions arrived will mutatis mutandis apply to the other appeal.

**3.** The brief facts of the case are that the assessee had not filed his return of income and the AO based on the information received from ITO(Inv) Unit-1 & AIU, Pune that the assessee had made cash deposits of Rs. 2,08,000/- and had a total credit of Rs 64,14,009/ in his bank account and also huge investments were made in fixed deposits and mutual funds amounting to Rs. 1,41,61,440/-, initiated proceedings u/s. 147 and notice u/s. 148 was issued on 30/03/2018. The assessee had not filed any return in response to the notice issued u/s. 148 of the Act. Subsequently, notice u/s. 142(1) was issued calling for the details from the assessee. The assessee had not responded to any of the notices and therefore the final opportunity notice was issued on 28/08/2018. The AO had issued a show cause notice on 17/12/2018 in which the AO had directed the assessee to furnish the following details.

- 1. Copy of return of income along with Computation*
- 2. Form16 & 26As details*
- 3. Details of investments in Mutual Funds and sources of Investments during the period 2010-11.*
- 4. All Bank account statements for the F.Y.2010-11.*

**4.** The assessee had not responded to the said show cause notice. Therefore the AO had treated the cash deposits of Rs. 2,08,000/- as well as the investment of Rs 1,41,68,440/ in mutual funds as unexplained income and unexplained investment from other sources.

**5.** As against the said orders, the assessee filed appeals before the Ld.CIT(A). The Ld.CIT(A) after getting remand report from the AO as well as the reply received from the ICICI Bank had concluded that the assessee had not invested in any of the mutual funds and therefore the addition could not be made on the investment in mutual funds. But the Ld.CIT(A) thereafter got the details of the Bank statements and worked out the cash deposits and transfer credits which was utilised for share trading and treated the both as unexplained cash credit and unexplained transfer credits. The Ld.CIT(A) arrived the quantum of such deposits at Rs. 43,15,000/- and concluded the said sum was used in the investment of shares which was not explained. The Ld.CIT(A) finally deducted this unexplained investments in

shares from the total unexplained investments made in the mutual funds of Rs. 1,41,60,440/- and granted relief of Rs. 99,45,440/-. The Ld.CIT(A) had also computed the net profit from share trading and bank interest and added the said amount of Rs1,42,852/ as income from Business and Profession. The Ld.CIT(A) further directed the AO to add the commission received from the Insurance company as income. Insofar as the cash deposit of Rs. 2,08,000/-, the Ld.CIT(A) had granted a relief of Rs 1,58,000/ and confirmed the balance of Rs 91,000/. The Ld.CIT(A) had not accepted the other grounds raised by the assessee.

**6.** As against the said order, the assessee is in appeal before this Tribunal.

**7.** The assessee filed the appeals before this Tribunal with a delay of 26 days and filed an application to condone the said delay. We have perused the reasons furnished in the said delay condonation applications and since the delay is only a minimal one, we are condoning the said delay and proceeded to decide the appeals on merits.

**8.** At the time of hearing, the Ld.AR submitted that the Ld.CIT(A)'s order confirming the addition based on the deposits made into the bank account is against the reasons stated in the assessment order and therefore the Ld.CIT(A) has no power to assess the income under the different head under Section 148 proceedings. The Ld AR further submitted that the AO had taken the issue of the investments in mutual funds while issuing notice u/s 148 and not made any allegation about the cash deposits made in the bank accounts for the purpose of utilising in the share trading. The Ld.AR also filed paper books and also enclosed the copy of the notices issued u/s. 148 of the Act by the ITO, Ward – 3(4), Saharsa (Bihar) and the ITO, Ward – 5(3)(1), Bangalore dated 31/03/2018 and 29/03/2018 respectively in which the Authorities had, not at all pointed out about the unexplained income. The Ld.AR also invited our attention to the show cause notice dated 17/12/2018 in which the AO had sought for the details of the investment in

mutual funds and sources for the said investment during the period and, therefore submitted that the AO had not sought for the source for the cash deposits made into the bank accounts and therefore the Ld.CIT(A) suomoto cannot estimate the income which was utilised for share trading when the notice issued u/s. 148 of the Act does not specify the unexplained investment in shares. The Ld.AR therefore submitted that the order of the Ld.CIT(A) is liable to be set aside and prayed to allow the appeals. The Ld.AR also submitted that the other additions confirmed by the Ld.CIT(A) also not sustainable.

**9.** The Ld.DR relied on the orders of the lower authorities and submitted that the assessee had not responded to the various notices issued by the AO as well as by the Ld.CIT(A) and therefore prayed to confirm the order of the Ld.CIT(A).

**10.** We have heard the arguments of both sides and perused the materials available on record.

**11.** The assessee was having a PAN AMVPA4599B which was lying with the ITO, Ward-3(4), Saharsa while issuing notice u/s 148. Thereafter, the assessee got his job at Bangalore and from the assessment year 2016-17, he filed his return of income. During his earlier days, he traded in the shares and opened a demat account with Sharekhan and did intraday trading. Out of the said intraday trading, the assessee also earned a small amount of profit and since the said amount is below the taxable limit, he has not filed his return during the earlier years. Thereafter, the assessee had shifted his employment to Bangalore and he came to know about the assessment order made u/s. 144 r.w.s. 147 of the Act by the AO on 27/12/2018. From the said order, the assessee came to know that notices u/s. 148 was issued by the ITO, Ward - 3(4), Saharsa (Bihar) on 31/03/2018 and the ITO, Bangalore on 30.03.2018. Later on a show cause notice dated 17/12/2018 was issued by the ITO, Ward - 5(3)(1), Bangalore. The said two notices were available in the e-filing portal of the assessee. In

the said order, the AO had made an addition of Rs. 1,41,60,440/- on the allegation that the assessee had made investments in mutual funds. The AO also made an addition of Rs. 2,08,000/- being the cash deposits. Therefore the authorities had proposed to make the assessment u/s. 147 of the Act on the ground that there are investments in mutual funds for which the sources were not properly explained. Subsequently, from A.Y. 2023-24, the assessee is working with M/s. Shell India Markets Pvt. Ltd. at United Kingdom.

**12.** The Ld.CIT(A) after considering the said ground raised by the assessee and the additional documents filed by the assessee, sought for the remand report from the AO and the AO in the remand report had not substantiated the additions by giving comments on the assessee's denial and also not commented anything on merits about the additional evidence adduced by the assessee during the appeal proceedings. Therefore the Ld.CIT(A) had come to the conclusion that the AO is not correct in alleging that the investments are made in mutual funds. Having given such a finding, the Ld.CIT(A) instead of allowing the appeal proceeded to decide about the investments made in shares.

**13.** The Ld.CIT(A) further verified the bank accounts and the assessee's accounts with share broker and arrived a conclusion that the assessee had made substantial investments in shares. The Ld.CIT(A) based on the credits available in the bank account of the assessee which was utilised for share trading, had come to the conclusion that the source for such credits were not explained by the assessee and therefore treated the said deposits as unexplained investment in shares. The Ld.CIT(A), therefore, made the addition insofar as the cash deposits of Rs 43,15,000/- are concerned which was utilised in the share trading as unexplained investment. The Ld.CIT(A), out of the addition of Rs 1,41,60,440/ made by the AO as investments in Mutual Funds deducted the cash deposits of Rs. 43,15,000/- arrived by him and treated the same as unexplained investment in shares and granted the relief of Rs 99,45,440/.

**14.** We are not in agreement with the above finding of the Ld.CIT(A), for the reason that the AO had initiated proceedings u/s 148 of the Act by alleging that the assessee had invested in Mutual Funds which could not be substantiated by the AO before the Ld.CIT(A) in his remand report. This was also accepted by the Ld.CIT(A). In such circumstances the Ld.CIT(A) could have allowed the appeal filed by the assessee by saying that there are no evidence available with the AO. Instead of doing that, the Ld.CIT(A) had given a finding that the assessee had credits in his bank accounts which are utilised for trading in shares and the source for the said credits could not be explained and therefore treated the said deposits used for share trading as unexplained investment. The said finding is not correct in so far as this assessment is concerned. This is an assessment made under Sec 148, based on some materials found out by the department. The materials found out by the Authorities are that the assessee had invested in Mutual Funds and based on that proceedings were initiated. The initiation of the said proceedings are also approved by the higher authorities. Nowhere the AO had proposed to treat the cash deposits as unexplained investment in shares. In such circumstances we do not understand how the Ld.CIT(A) can assess the cash deposits, suo moto for the first time, as unexplained investment in shares without following the procedures prescribed to reopen the assessment u/s. 148 of the Act. Before invoking the section 148 of the Act, there are so many procedures prescribed under the Act, and without complying with the said procedures, assessment cannot be reopened u/s. 148 of the Act. Insofar as the addition confirmed by the Ld.CIT(A), is on different footing and the investment made in mutual funds for which notice u/s.148 was issued but relates to the investment made in shares and therefore the addition confirmed by the Ld.CIT(A) could not be sustained. We therefore set aside the addition made by the Ld.CIT(A) on the ground that the said investments in shares are not the subject matter for initiating proceedings u/s. 148 of the Act.

**15.** Similarly the other additions made by the Ld.CIT(A) also does not stand in view of the reasons as stated above. The further direction given by

the Ld.CIT(A) to treat the insurance commission received as income for the first time in the appellate proceedings also does not survive.

**16.** Insofar as the addition of Rs. 2,08,000/-, the Ld.CIT(A) after considering the explanations, arrived a quantum of Rs. 91,000/- as unexplained income since the same was not properly explained. Even before us, the assessee was not able to furnish any valid explanations and therefore, we are confirming the order of the Ld.CIT(A) insofar as the addition of Rs. 91,000/- is concerned.

**17.** In the result, the appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 11<sup>th</sup> August, 2025.

Sd/-  
(LAXMI PRASAD SAHU)  
Accountant Member

Sd/-  
(SOUNDARARAJAN K.)  
Judicial Member

Bangalore,  
Dated, the 11<sup>th</sup> August, 2025.  
/MS /

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|---------------|------------------------|
| 1. Appellant  | 2. Respondent          |
| 3. CIT        | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A)              |

By order

Assistant Registrar,  
ITAT, Bangalore