

आयकरअपीलीयन्यायाधिकरणन्यायपीठ, मुंबई।
IN THE INCOME-TAX APPELLATE TRIBUNAL “E” BENCH,
MUMBAI
BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

आयकरअपीलसं./ITANo.5342/MUM/2024
(निर्धारणवर्ष / Assessment Year: 2000-01)

KabirMulchandani C/o R.C Kapoor & Co, Chartered Accountants D-36, South Extension Part-II, New Delhi 110049	v/s. बनाम	ACIT (OSD-II) CR-7, Mumbai ACIT (OSD-II) CR-7, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABPM1224B		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

निर्धारितकीओरसे /Assessee by:	Shri Sanjeev Kapoor, CA (Virtually appear)
राजस्वकीओरसे /Revenue by:	Shri. Hemanshu Joshi, SR DR

सुनवाईकीतारीख /Date of Hearing	09.07.2025
घोषणाकीतारीख/Date of Pronouncement	06.10.2025

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Commissioner of Income Tax, Appeal- 52, Mumbai [Ld. CIT(A)], dated 13.08.2024 passed u/s. 250 r.w.s. 254 of the Income Tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year 2000-01.

2. The assessee has raised the following grounds in this appeal.

“1) That the order of the learned Commissioner of Income Tax Appeal-52 [hereinafter referred to “CIT(A)”], is bad in law and on the facts of the case.

2) That the learned CIT(A) erred in confirming the addition u/s 2(22)(e) of the Income Tax Act, 1961 (“Act”) as the employer company affected the payment of Rs. 23,21,000/- (comprising of Rs. 6,000/-, Rs. 23,00,000/- & Rs. 15,000/-) against the

sum of Rs. 32,92,500/- credited to the account of the assessee towards salary payable.

3) That the learned CIT(A) erred in confirming the addition u/s 2(22)(e) of the Act as there was no clear advance and the payments were affected against the salary due to the assessee.

4) That the learned CIT(A) has erred in treating the passbook as the books of account of the assessee and confirming the addition u/s 68 of the Act on account of any credit appearing therein.

5) That the sum of Rs 18,75,000/- were received from United Credit Securities Ltd. That no attempt was made by the learned assessing officer to independently confirm the same from the broker company. That the writing of the cheque number in the ledger extract would not change the nature of the transaction, and therefore the addition of Rs. 18,75,000/- is unjust and arbitrary.

6) That no finding was given by the learned CIT(A) regarding confirming the addition of Rs. 282/-.

7) That the assessee craves leave to add, amend or withdraw any ground of appeal at the time or before the hearing of the appeal.”

3. Brief facts of the case are that the assessee did not file its return for AY 2000-01 on or before 31.03.2000 and therefore a notice u/s. 142(1) was issued by the Ld. AO on 18.06.2001 calling upon the assessee to file his return. The assessee filed return on 16.04.2002 declaring income of Rs. 57,57,600/-. Ld. AO observed that the return was filed after 31.03.2002, the last date for the filing the return for AY 2000-01 and, therefore, the same was treated as non-est. Thereafter, assessment u/s. 144 was finalised vide order dated 20.01.2003 determining the assessee's income at Rs. 3,14,32,820/- after making the following additions:

	Income from salary	Rs. 1,6032,600
	Income From other Sources	
(i)	Deemed Income	Rs. 1,20,03,200/-
(ii)	Income from household withdrawal	Rs. 7,00,000/-
(iii)	Unexplained expenditure u/s. 69C	Rs. 5,34,738/-
(iv)	Unexplained cash credit u/s. 68	Rs. 21,62,282/-
	Total	Rs. 3,14,32,820/-

4. Aggrieved with the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A), who dismissed the same in limine order dated 11.12.2003. The assessee filed an appeal before the Tribunal against the order of Ld. CIT(A). Vide order dated 11.05.2007 of the coordinate bench, the appeal of the assessee was allowed for statistical purposes and CIT(A) was directed to decide the matter afresh after providing adequate opportunity to the assessee. Thereafter, an order u/s. 250 r.w.s. 254 was passed by the Ld. CIT(A) on 13.08.2024 after giving proper opportunity to the assessee. Vide this order, Ld. CIT(A) partly allowed the assessee's appeal. Aggrieved with the order of Ld. CIT(A) dated 13.08.2024, assessee has filed an appeal before the Tribunal.

5. Before us, Ld. AR submitted that the following additions were sustained by the Ld. CIT(A) against which the assessee is in appeal.

Sr.No.	Particulars	Addition by AO	Deleted by CIT(A)	Addition Sustained
1	Deemed Dividend Income	12,003,200	(9,682,200)	2,321,000
2	Unexplained Cash credits			
	a. Dated 04.05.1999	282	--	282
	b. Dated 13.11.1999	1,875,000	--	1,875,000

Rest of the additions made by the Ld. AO have been deleted by the Ld. CIT(A). Accordingly, the assessee is in appeal before us in respect of only two issues which are as under.

1. Addition on account of deemed dividend income – Rs. 23,21,000/-.
2. Unexplained cash credit u/s. 68 – Rs. 18,75,000/-

Ground No. 1,2& 3: Addition on account of deemed dividend – Rs. 23,21,000/-

6. Brief facts related to this issue are that the Ld. AO noted from the ledger account of M/s. Baron International Ltd. that the assessee had received several amounts during the year with a peak of Rs. 1,20,03,200/- and there was a debit balance of Rs. 32,92,000/- at close of the year. He held that since assessee is a person with a beneficial ownership of shareholding of the company, with not less than 10% of the voting power, any sum given by way of advance or loan will amount to deemed dividend u/s. 2(22)(e) of the Act. Since as on 31.03.1999, the company had accumulated profit of Rs. 52,89,920/- & accumulated profit as on 31.03.2000 in not known as the company did not file its return, the amount of Rs. 1,20,03,200/- was added to the assessee's income as deemed dividend after invoking the provisions of section 2(22)(e) of the Act.

6.1. After considering the assessee's submissions Ld. CIT(A) finally upheld the addition to the extent of Rs. 23,21,000/- and deleted the balance addition of Rs. 96,82,200/-. Vide written submissions filed on 01.07.2025, the assessee has submitted before us as under:

“Payment against salary payable -- Rs. 23,21,000/-

The payment of Rs. 6,000/- (05.04.1999), Rs. 23,00,000/- (07.04.1999)& Rs. 15,000/- (30.06.1999) were made against salary payable for Rs. 32,92,500/- Consequently, the said payments totalling to Rs. 23,21,000/- were due discharge of the amount payable of Rs. 32,92,500/-.

As a necessary corollary the payments resulted in discharge of the amount payable and never resulted in any debit balance in the name of the appellant in the books of accounts of Baron International Limited. The copy of the ledger account of the appellant in the books of Baron International Limited has already been furnished

supra in support of the contention. The above stated facts are clearly evident from the ledger account and need no further evidence to substantiate the same.

Therefore, in view of the above stated facts, the addition of Rs. 23,21,000/- as deemed dividend is liable to be deleted in toto.”

6.2. Ld. DR has argued that assessee has not shown evidence to demonstrate the fact that the impugned sum was paid on account of salary.

6.3. We have considered the rival submissions and perused the material available on record. It is seen that the assessee is in receipt of salary income from Baron International Ltd. A copy of the computation of income and return filed by the assessee have been placed on record to show that salary income of Rs. 57,60,000 has been received by the assessee from the company during the year. Accordingly, we are of the considered opinion that no addition on account of Rs. 23,21,000/- received on account of salary payable is called for u/s. 2(22)(e) of the Act by treating the amount as deemed dividend.

7. **Ground No. 4&5: Addition of Rs.18,75,000/- u/s. 68 of the Act.**

Brief facts in this regard are that there was an entry of Rs. 18,75,000/- received through cheque in assessee's bank account. As the assessee did not furnish details regarding the source of this entry, Ld. AO treated the same as unexplained and made addition u/s. 68 of the Act.

7.1. The assessee submitted before Ld. CIT(A) that this amount was received from the stock broker M/s. United Credit Securities Ltd to whom an amount of Rs.22,96,110/- was advanced on 15.04.1999 vide cheque for purchase of shares of M/s. Prime Securities Ltd. Ld. CIT(A) however did not accept the assessee's

contention and confirmed the addition u/s. 69A (as against section 68 invoked by the AO) with the following observations:

“9.9. As regards Rs. 18,75,000/-, my Id. Predecessor had pointed out that no supporting evidence could be produced to show that the credit was a refund from the stock-broker. The situation remained unchanged. Only one page of ledger of United Credit Securities Ltd. in the books of the appellant has been produced. There is no authentication of the same and there are no independent corroborative evidences in respect of the claim of the appellant. The entry in the ledger is titled as "Ch. No Being received towards sale of share (No 1) No cheque number is shown there and the details of sales of shares are not produced. No such share sale forms part of computation of income. Hence, I am of the view of that the AO has rightly taxed the sum of Rs. 18,75,000/-. The addition is upheld.”

7.2. Before us, Ld. AR has submitted that copy of broker's ledger account which shows that payment was made by cheque on 15.04.1999 of Rs. 22,96,110/- and an amount of Rs. 18,75,000/- was received back through cheque which is duly reflected in the bank account. A copy of the broker's note has also been furnished. As regards details of cheque received, in has been clarified by Ld. AR that details of incoming cheque are not mentioned by the bank in the statement of account.

7.3. Ld. DR on the other hand, has strongly relied on the orders of lower authorities and has submitted that ledger account is not authenticated nor details of cheque received mentioned. In view of categorical findings of the CIT(A), the additions deserve to be upheld.

7.4. We have heard the rival submissions and perused the material placed before us. Ld. AR has placed reliance on several decisions of the coordinate benches in support of his claim that the assessee had duly discharged its onus to prove the genuineness of the impugned transaction.

7.5. In view of above facts and circumstances, we are of the considered opinion that once the assessee had submitted its explanation with regard to the impugned entry, the onus shifted on the Ld. Assessing Officer. Hence, in the absence of any evidence to the contrary brought on record by the Ld. AO, the addition of Rs. 18,75,000/- u/s. 68 or 69A was not justified and is hereby deleted.

7.6. Accordingly, this ground is also decided in favour of the assessee.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 06.10.2025.

Sd/-

ANIKESH BANERJEE

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 06.10.2025

Divya R. Nandgaonkar

Stenographer

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

**सत्यापित प्रति//True Copy//
आदेशानुसार/ BY ORDER,**

**सहायक पंजीकार(Asstt. Registrar)
आयकर अपीलीय अधिकरण/
ITAT, Bench, Mumbai**