

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

**BEFORE JUSTICE (RETD.) C.V. BHADANG, PRESIDENT AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

ITA NO. 1302/MUM/2025

:

A.Y. : 2010-11

Income Tax Officer-13(2)(1),
Mumbai. (Appellant)

Vs. Sumangal Commodities Pvt. Ltd.
A Wing, 1st Floor, Shah Arked 1, Rani
Sati Marg, Malad, Mumbai 400 097.
PAN : AAGCS4844K (Respondent)

Appellant by : Shri Swapnil Choudhary

Respondent by : Shri Rahul Hakani

Date of Hearing : 16/10/2025

Date of Pronouncement : 16/10/2025

ORDER

PER JUSTICE (RETD.) C.V. BHADANG, PRESIDENT :

By this appeal Revenue is challenging the order dated 26.02.2024 passed by the National Faceless Appeal Centre (NFAC) ('CIT(A)' for short) thereby deleting the addition of Rs. 1,30,90,000/- made by the Assessing Officer ('AO' for short) under Section 68 of the Income Tax Act, 1961 ('Act' for short) vide order dated 29.12.2017. The appeal relates to assessment year 2011-12.

2. The brief facts are that the Respondent-assessee filed its Return of Income (RoI) for the relevant year declaring an income of Rs.1,22,960/-. The return was not subjected to any scrutiny assessment.

3. Subsequently, a search and seizure operation was carried out on 05.02.2016 in the case of Mr. Vipul Vidur Bhatt, who is stated to be a known entry provider, and it was revealed that assessee was a beneficiary of bogus accommodation entries managed through the entities controlled by Mr. Bhatt. In particular, the information related to introduction of alleged unaccounted income of Rs.1,30,90,000/- as share capital/share premium through entities associated with Mr. Bhatt. It appears that in the statement of Mr. Bhatt recorded under Section 132(4) of the Act, Mr. Bhatt had admitted to operating 347 dummy concerns to provide bogus entries to beneficiaries for a commission.

4. On the basis of the information, the AO reopened the assessment by issuing statutory notices under Section 148 of the Act after obtaining the necessary sanction. The reasons recorded were supplied to the assessee to which the assessee raised objections, which have been disposed of by a speaking order dated 22.12.2017. The AO refused to accept the objections raised to the reopening. During the reassessment proceedings, it was contended on behalf of the assessee that the share capital/share premium was received through the Directors as well as their friends and relatives. The amount was received through banking channel. The AO, however, did not accept the creditworthiness and the genuineness of the transaction and proceeded to make the impugned addition of Rs.1,30,90,000/- as unexplained cash credit.

5. In appeal, the learned CIT(A) has deleted the same. The learned CIT(A) has, *inter alia*, placed reliance on the decision of Bombay High Court in *Commissioner of Income Tax-5, Mumbai vs Jet Airways (I) Ltd., 331 ITR 236 (Bombay)* and the decision of this Tribunal in *Torm Shipping India (P.) Ltd. vs Income Tax Officer, Mumbai (ITA Nos. 1272 & 1273/Mum/2013 dated*

14.10.2016). The learned CIT(A) has held that the AO has failed to establish the live link between the information and the alleged escapement of income and that the impugned addition made merely by stating that assessee has not proved the creditworthiness of the investors cannot be sustained.

6. We have heard parties. Perused record.

7. In this case, there is a delay of 301 days in filing the appeal. The appellant is seeking condonation of delay. It is pointed out that two appeals were filed in respect of the Respondent for assessment years 2011-12 and 2012-13 on 25.04.2024. In response, one acknowledgement number was generated. However, the ITA number was generated only for assessment year 2012-13, which was due to certain technical glitches. In such circumstances, the appellant was advised to file another appeal for assessment year 2011-12, which was eventually filed on 25.02.2025 resulting into the delay.

8. Upon hearing the parties, we find that the appellant has made out sufficient cause for not filing the appeal within time. The delay deserves to be condoned. Ordered accordingly. The appeal is heard on merits.

9. At the outset, it was pointed out that the tax on the disputed amount in this case is Rs.43,48,171/-, which is below Rs. 50 lacs. The learned AR for the Respondent-assessee has placed reliance on the Circular No. 5/2024 dated 15.03.2024 issued by CBDT in order to submit that the appeal is not maintainable. He pointed out the order dated 16.10.2024 passed by the coordinate Bench in assessee's own case in ITA No. 2213/Mum/2024 for

assessment year 2010-11 in which the appeal filed by the Revenue came to be dismissed on the basis of Circular No. 5/2024.

10. The learned DR has submitted that the subject matter of the appeal falls within the exception as provided in para 3.1 of Circular No. 5/2024. In particular, it was contended that the case would be covered by clause (c) & (h) of para 3.1 of the Circular No. 5/2024.

11. We find that clause (h) refers to cases involving organized tax evasion, which is not demonstrated in this case. The information received was from the Investigation Wing of the Department itself and would not be covered by clause (c) of para 3.1 of Circular No. 5/2024. In such circumstances, we find that the appeal by the Revenue would not be maintainable on account of low tax effect. The appeal is accordingly dismissed. However, the Revenue is given liberty to move appropriate application for recall of the present order in accordance with law if it is subsequently found that the issue contested in the appeal is covered by any of the exceptions of CBDT Circular No. 5/2024.

12. Ordered accordingly.

Order pronounced in the open court on 16/10/2025.

Sd/-
(PRABHASH SHANKAR)
ACCOUNTANT MEMBER

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Mumbai; Dated : 16/10/2025

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Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The PCIT/CIT concerned
4. DR, ITAT, Mumbai
5. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai