

**IN THE INCOME-TAX APPELLATE TRIBUNAL “D” BENCH,
MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.681/MUM/2025
(A.Y. 2022-23)**

Roshan Babulal Jain Champion House, Bhavani Peth, Pune - 411 042, Maharashtra	v/s. बनाम	Deputy Commissioner of Income Tax, 8 th Floor, Pratishtha Bhavan, Old CGO Annexe, Maharishi Karve Road, Mumbai-400020, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ASEPS9930M		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri R. C.Doshi, (Virtually present)
Respondent by :	Shri Annavarani Kosuri, (Sr. DR)

Date of Hearing	16.09.2025
Date of Pronouncement	04.11.2025

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 11.12.2024 is filed by the assessee against the order passed by the Learned Commissioner of Income-tax, Appeal, CIT(A) 48, Mumbai [hereinafter referred to as “CIT(A)”] pertaining to assessment order passed u/s. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 16.02.2024 for the Assessment Year [A.Y.] 2022-23.



2. The grounds of appeal are as under:

1. *The Learned Commissioner of Income Tax (Appeals) has erred both on facts as well as in law confirming the addition of Rs. 49,00,000 to the total income of the Appellant. Appellant prays your Honour to direct the Learned Commissioner of Income Tax (Appeals) to delete the addition.*
2. *The Learned Commissioner of Income Tax (Appeals) has erred both on facts as well as in law in confirming the addition under Sec 69A of the Income Tax Act It is the contention of the Appellant that provisions of Sec 69A are not applicable to the facts of the case.*
3. *The Learned Commissioner of Income Tax (Appeals) has erred both on facts as well as in law is not considering the following additional Grounds of Appeal raised by Assessee before the Learned Commissioner of Income Tax (Appeals).*
 - a. *The order u/s 143(3) passed on 16/02/2024 bearing DIN No. ITBA/AST/F/17/2023-24/1061043902(1) is bad-in-law, illegal and void-ab-initio on various ground including -*
 - i. *Multiple DINs - The said order passed u/s. 143(3) bears multiple DIN No. ITBA/AST/F/17/2023-24/1061043902(1) ITBA/AST M/143(3)/2023-24/1061055589(1), ITBA/AST/M/143(3)/2023-24/1061055600(1), ITBA/AST/M/143(3)/2023-24/1061055610(1) which is not in accordance with mandatory circular issued by CBDT.*
 - ii. *The order is passed without providing full copy of statement of Ms. Meixia Huang director of Fengyuan India Private Limited recorded u/s 132(4). This is gross violation of Principles of natural justice.*

3. **Ground no.1 and 2** are interlinked and are adjudicated together. Brief facts of the case are that the assessee, an individual taxpayer engaged in the business of trading in Salt carried on under the name “Crest International” filed return of income for the impugned year declaring income of Rs. 5,74,474/-. Subsequently, the case was selected for complete scrutiny. During a search proceeding in the case of one M/s Fengyuan India Pvt. Ltd. (‘FIPL’) conducted on 16.11.2021 in the



course of which statement of one of the Directors Ms Mexia Hunag was also recorded. In response to Q. no. 17 of the statement recorded u/s. 132(4) of the Act, Ms. Meixia stated that the company had paid Rs. 49 lakh in cash over and above the agreement value to the assessee for purchase of a piece of land in Dahej, Gujarat. Further, about the source of cash, she stated that it was out of the cash generated through fake invoices. The relevant question and answer are as below:

Q:17 Please state for what purposes you used this cash?

Ans: Sir, I had made a deal to buy a piece of land in Dahej Gujarat from Sh.Roshan Babglal Jian. His PAN is ASEPS9930M. The deal was of about 4.99 crore. This amount was paid from banking channels to him. **He further demanded Rs.49 lakhs in cash. That's why I had to pay him cash."**

3.1 In view of the above factual position, a summon was issued by the AO to the assessee and statement was recorded u/s131 of the Act on 08.12.2023. In the statement, he denied receipt of cash of Rs. 49 lakh from FIPL. A letter u/s133(6) was issued to FIPL and in reply FIPL vide its letter dated 22.12.2023, the assessee company confirmed the above payment in April 2021, to 'Crest International' for purchase of land as admitted earlier by Ms. Meixia Huang, Director that she had paid a sum of Rs.49 lakh to Mr. Roshan Jain, Proprietor of Crest International, in addition to the aggregate cheque payment of Rs.4,99,00,011/- as seen in ledger A/c for F.Y. 2020-21. In this regard, FIPL submitted ledger



account of M/s. Crest international in their books of A/c for the F.Y. 2021-22, wherein the payment of cash amount of Rs.49 lakh was mentioned on 15.04.2021.

3.2 The AO again confronted the assessee with the above facts and also for invoking the provisions of section 69A of the Act r.w.s. 115BBE of the Act as Unexplained Money who once again denied having received any cash payment, holding the claim of payment to be false not supported by any fact. The said contention of Ms. Meixia Huang was also not backed by any supporting evidence. As regards extracts of Crest International the entry of cash payment on 15/04/2021, it was stated to be not supported by any evidence. Since it was their claim, burden of proof lay on FIPL to prove with clinching evidence the fact of such payment to Mr. Roshan Jain. Even the Department failed to discharge the burden that lay on it to prove the factum of receipt of above stated money. The AO rejected the reply and the contentions of the assessee and concluded that from the evidences found during the search proceedings and submissions on record, it was clear that the assessee had received Rs.49 lakh in cash from the said party during the year under consideration. The onus was on the assessee which it failed to discharge. Thus, the amount was treated as unexplained money u/s. 69A



r.w.s 115BBE of the Act in the hands of the assessee under consideration and the same was added to the total income declared.

4. Aggrieved by the assessment order, the assessee preferred appeal before the Id.CIT(A)inter alia claimed that no addition u/s 69A of the Act could be made sinceit was demonstrated that the assessee had not received any cash of Rs. 49 lakh as alleged on the basis of statement u/s 132(4) of the Act.The AO failed to substantiate issue of such receipt of money which was not received by Mr. Roshan Jain. Hence, question of invoking section 69A did not arise. The AO failed to discharge onus that lay on him to prove receipt of the said sum. In fact, the assessee had substantiated that no such cash was received since deal was cancelled. The AO without any corroborative evidence added the amount. Burden of proof is upon the person who asserts a proposition, not upon the person who denies it. No addition of can be made merely on the basis of 132(4) of the Act on the statement of other party unless corroborated by any material evidence. Besides, the copy of statement of Ms. Meixia Huang recorded u/s 132(4) was not given to him in full and only that part on which was beneficial to Department was picked by AO which is a violation of principle of natural justice. Instead of bringing on record any positive material that assessee had received the cash, he shifted the



responsibility to him to prove that he had not received the cash. Reference was made to the judgement of Hon'ble Supreme Court in case of Engineering Analysis Centre of Excellence Private Limited vs. CIT, wherein it was observed by the court that "the law cannot compel one to do the impossible". Mere reliance on somebody's statement u/s 132(4) without any corroborative evidence is not enough to make the addition. It is settled principle that no addition can be made merely on the basis of someone else's statement unless backed by corroborative evidence. Reliance was also placed on certain case laws in support of the plea that in the absence of any corroborative evidence, addition cannot be made.

4.1 The Id.CIT(A) after taking into account the facts of the case and also the submissions made by the assessee concluded that the company had paid amount of Rs. 4,95,25,761/- on various dates during FY 2020-21 in connection with the said land purchase. However, after some time the company expressed its wish not to conclude the deal and requested for refund of entire amount. The assessee returned the entire amount to the company during the month of September 2021 onwards. He mentioned that all the payments were received and returned back through banking channel and same were reflected in the books of accounts. The assessee denied the amount of Rs. 49 lakh received in



cash from the FIPL. During the appellate proceedings, the assessee had submitted the same reply as filed before the AO during assessment proceedings. However, none of supporting documents had been submitted by him from which it could prove that cash of Rs. 49 lakh was accounted in the books of accounts. The assessee had not filed any shred of evidence/documents to support its claim or to explain the cash received. He further noted that all the case laws cited by the assessee were the cases where assessees had discharged onus by submitting the details asked which was not the case here. In absence of basic details submitted either before AO or during the appellate proceeding, the submission of assessee remained hollow and could not be relied upon. Further, it was found from the records that FIPL confirmed in the statement recorded during the course of search as well as against the notice issued u/s. 133(6) of the Act during the assessment proceedings that they had paid cash amount of Rs. 49 lakh. In this connection, he quoted the findings of Hon'ble Apex Court in case of

Chuharmal Vs. CIT(1988) 172 ITR 250:

“Section 69A of the Act was inserted in the Finance Act, 1964, and it came into force with effect from 1-1-1964. **The High Court has rightly held that the expression 'income' as used in section 69A, has wide meaning which meant anything which came in or resulted in gain.** Hence, in the facts of this case, a legitimate inference could be drawn that the assessee had income which he had invested in purchasing the wrist-watches and, as such, that income was subject to tax. In the view, the High Court was justified



in justifying the Tribunal's holding that the assessee was the owner of the wrist-watches and, thus, including the value in the assessment of the income of the assessee as his wealth and so deemed to be the income of the assessee by virtue of section 69A coupled with surrounding circumstances. Therefore, inclusion of the money in purchasing the wrist-watches, that is to say, Rs. 87,455/- was correct and proper for the assessment year under reference.”

4.2 Accordingly, finding no infirmity in the assessment order, he upheld the addition made by the AO u/s. 69A r.w.s. 115BBE of the Act treating the same as unexplained money dismissing appeal of the assessee.

5. Before us, the ld.AR has reiterated the same contentions as made before the lower authorities denying the receipt of the impugned amount by the assessee and AOs failure to discharge onus u/s 69A of the Act. It is contended that mere reliance on somebody's statement u/s 132(4) without any corroborative evidence is not enough to make the addition. The AO did not have any other evidence other than 132(4) statement the Director of FIPL which had evidentiary value only in her case and not in assessee's case unless backed by corroborative evidence. It is settled principle in Income Tax, no addition can be made merely on the basis of someone else's statement unless backed by corroborative evidence. It is well settled principle of taxation that u/s 69A burden of proof lies on the person who makes the allegation. The AO failed to discharge the burden that laid on him. The recourse to provisions of



section 69A was not in accordance with provisions of the Act. The ld.DR on the other hand has placed reliance on the orders of the lower authorities.

6. We have carefully considered the rival submissions and also perused the records. The main contentions of the assessee is that the AO made the addition merely on the basis of the statement of the Director without bringing on record any corroborative evidence. The onus u/s 69A of the Act was accordingly not discharged by him. After going through the contents of the assessment order, appellate order and the contentions of the assessee alongwith paper book, we find that the said Director of FIPL had categorically stated in the statement u/s 132(4) of the Act during search conducted on 16.11. that Rs 49 lakh was paid to the assessee on 16.11.2021. Subsequently, again on 22.12.2023, the company affirmed her statement in response to notice u/s 133(6) of the Act i.e after more than two years. Neither the person concerned nor the company retracted the original statement at any point of time.

6.1 It is also noticed from the statement of the assessee dated 08.12.2021 as per reply to question no.10 admitted that said land deal was agreed upon as per MOU copy of which he promised to submit later. However, subsequently or even during any of the proceedings, the



said MOU has not been produced by the assessee. As such, the actual terms and conditions of the agreement of the said deal could not be verified due to non compliance by the assessee in this regard .Besides, the assessee has not cited any reason for non production of the same which also casts serious doubts over the actual amount of consideration agreed upon by both the parties. Thus, the contentions of the Director regarding cash element involved cannot be brushed aside in the absence and non production of a vital documents i.e. MOU and that too without any reason. It is also important to note from the copy of ledger account of the assessee as appearing in the books of account of FIPL which is placed on record, clearly shows that the impugned amount of Rs 49 lakh is stated therein though with the narration stating itto be cash received against bogus purchases. It also incorporates other transactions relating to the same land deal done through banking channels. It is worth mentioning here that neither the assessee nor the purchaser have anywhere stated to have any other transaction entered into apart from the impugned land deal. Therefore,irrespective of the nomenclature of the said sum recorded in the ledger account, the contentions of the Director are corroborated by the ledger account of the assessee which cannot be brushed aside as all other transactions made through banking channels are also reflected therein,thus leaving no doubt about the



authenticity of the said ledger account. The assessee has not denied the ledger account and the contents recorded therein at any point of time, thus accepting it to be true. Therefore, we find that the statement of the director is duly corroborated from this ledger account.

6.2 In so far as the reliance placed by the assessee on various case laws is concerned, we find that none of them are applicable to the facts of the case. As stated above, the addition is not based merely on the statement recorded u/s 132(4) of the Act but is also duly corroborated from the audited accounts of the purchaser and such a fact has not been denied by the assessee at all. Since the cash transaction was made against the said land deal which could not be finalized ultimately invocation of the provisions of section 69A of the Act is fully justified as Unexplained money. From the ledger account of the assessee as appearing in the books of account of the purchaser, it is quite evident that the assessee being the owner of the impugned sum did not record the said amount in its books of account and also could not adduce any satisfactory reply in respect of it. Therefore, all the ingredients of section 69A of the Act are clearly applicable to the facts of the instant case. We also do not subscribe to the contentions of the assessee that the AO did not discharge the onus. Rather, the onus was heavily on him in view of the categorical statement of the Director which was affirmed even after



a time gap of more than two years and remained non-retracted and also in the light of corroborative evidence having been recorded in the ledger account of the assessee as appearing in the audited books of account of the FIPL. The assessee has failed to discharge the onus to rebut the above pieces of evidences. Accordingly, we do not find any infirmity in the appellate order which is, therefore, upheld dismissing the ground of appeal of the assessee.

7. *Ground no.3. The Learned Commissioner of Income Tax (Appeals) has earned both on facts as well as in law is not considering the following **additional Grounds of Appeal** raised by Assessee before the Learned Commissioner of Income Tax (Appeals).*

- a. *The order u/s 143(3) passed on 16/02/2024 bearing DIN No. ITBA/AST/F/17/2023-24/1061043902(1) is bad-in-law, illegal and void-ab-initio on various ground including -*
 - i. *Multiple DINs - The said order passed us. 143(3) bears multiple DIN No. ITBA/AST/F/17/2023-24/1061043902(1) ITBA/AST M/143(3)/2023-24/1061055589(1), ITBA/AST/M/143(3)/2023-24/1061055600(1), ITBA/AST/M/143(3)/2023-24/1061055610(1) which is not in accordance with mandatory circular issued by CBDT.*
 - ii. *The order is passed without providing full copy of statement of Ms. Meixia Huang director of Fengyuan India Private Limited recorded u/s 132(4). This is gross violation of Principals of natural justice.*

8. In so far as the **ground no. 3(a)(i)** regarding multiple DIN is concerned, in the course of hearing before, the Id.AR either in oral or written submission made did not even mention the same. Nothing has been stated as to how the rights of the assessee have been prejudiced. Therefore, the ground no. 3(a)(i) being devoid of any merit is dismissed.



8.1 In **ground no. 3(a)(ii)**, it is claimed that the complete statement of the director was not provided to it, thus violating the principles of natural justice. We do not find any merit in the ground and find that the AO has repeatedly confronted the assessee with regard to the statement during assessment proceedings in consonance with the principles of natural justice. Moreover, he has categorically provided the relevant part of the statement which pertained to the assessee. Evidently other questions and answers by the Director were not relevant to the assessee. Therefore, in the absence of full statement which must be irrelevant to the assessee, no prejudice has been caused to him. Besides, nothing has been brought on record to demonstrate that the assessee made any request to the AO in this regard. The ground is therefore dismissed.

9. In the result, appeal of the assessee is **dismissed**.

Order pronounced in the open court on 04/11/2025.

Sd/-

SANDEEP GOSAIN

(न्यायिक सदस्य / JUDICIAL MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 04.11.2025

Lubhna Shaikh / Steno

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य/ACCOUNTANT MEMBER)



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.

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आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

