

**आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता**

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH KOLKATA**

**Before Shri Rajesh Kumar, Accountant Member and  
Shri Pradip Kumar Choubey, Judicial Member**

**ITA Nos.1255 & 1256/Kol/2025  
Assessment Year: 2013-14 & 2014-15**

**DCIT, Circle-3(2), Kolkata .....Appellant**

**vs.**

**Sincere Commodities And Derivatives Markets Pvt. Ltd.....Respondent**

**12, BBD Bagh (East),**

**Kol-1..**

**[PAN: AAICS3108G]**

**Appearances by:**

Shri Bonnie Debbarma, Addl. CIT-Sr. DR, appeared on behalf of the appellant.

Shri Devesh Poddar, Advocate, appeared on behalf of the Respondent.

Date of concluding the hearing : October 30, 2025

Date of pronouncing the order : November 18, 2025

**ORDER**

**Per Pradip Kumar Choubey, Judicial Member:**

Both the captioned appeals filed by the revenue are directed against the separate orders both dated 17.03.2025 of the Commissioner of Income Tax (Appeals)-21, Kolkata ['CIT(A)'] passed under Section 250 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") respectively. Since the issues involved in both the appeals are common and relate to the same assessee, therefore, these appeals have been heard together and are being disposed of by this consolidated order. ITA No.1255/Kol/2025 is taken as lead case.

2. At the outset, the Registry informed that the present appeals have been filed by the revenue with delay of 9 days. The revenue has filed

affidavits for condonation of the delay. After considering the reasons cited in the affidavits for condonation of delay, we find that the reasons are valid and consequently, the delays in filing the appeals are hereby condoned and we proceed to dispose of the appeals on merits.

3. ITA No.1255/Kol/2025 – Brief facts of the case of the assessee are that the assessee filed its original return of income for assessment year 2013-14 on 01.10.2013 declaring total income of Rs. 2,62,140/- and the return was processed u/s 143(1) on 08.08.2014. Thereafter, on the basis of a search and seizure operation conducted in the case of Banka Group on 21.05.2018, proceeding u/s 148 of the Act was initiated in the case of Assessee. The Assessing Officer completed the assessment u/s 147 by making addition of Rs.1,29,05,662/- as unexplained cash credit u/s 68 of the Act.

4. Aggrieved by the said order, the assessee preferred appeal before the Id. CIT(A) wherein the appeal of the assessee has been allowed.

5. Being aggrieved and dissatisfied, the revenue has come in appeal before us raising the following grounds of appeal:

1.	Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the fact that the companies were controlled by the entry operator Mukesh Banka and that they did not have the creditworthiness to undertake such huge transactions?
2.	Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.1,29,05,662/- made by the AO under section 68 of the Act despite the fact that the assessee had failed to establish the identity and creditworthiness of the creditors and the genuineness of the transactions?
3.	Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.1,29,05,662/- made by the AO under section 68 of the Act and thus, has acted in contravention of the established and binding judicial precedent set by the Hon'ble Apex Court in the judgment dated 05/03/2019 in the case of PCIT vs NRA Iron and Steel Private Limited?
4.	Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred deleting the addition of Rs.1,29,05,662/- made by the AO under section 68 of the Act and thus, has acted in contravention of the established and binding judicial precedent set by the Hon'ble Apex Court in the judgment dated 26/08/1971 in the case of CIT vs Durga Prasad More?
5.	On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO, since the transacting companies were controlled by the entry operator Mukesh Banka and that they did not have the creditworthiness to undertake such huge transactions. Hence, the assessee was a beneficiary of accommodation entry which is in the nature of organized tax evasion, and comes under exception as per clause (h) of section 3.1 of CBDT Circular No. 05/2024 dated 15/03/2024, falling under the category of cases involving organized tax evasion including cases of bogus capital gain/loss through penny stocks and cases of accommodation entries.
6.	The appellant craves the right to add, alter, amend or withdraw any ground of appeal before or at the time of hearing.

6. The ld. AR supports the impugned order thereby submitting that during the course of assessment proceeding, nature of transactions with Desire Impex Pvt. Ltd. and Gurumukh Mercantile Private Limited were duly explained and the assessee earned brokerage on the said transactions and the same was duly reflected in its Return of Income and the said transactions with both the said companies are neither resulted in any increase in share capital and share premium nor in liabilities of the assessee company hence the assessee company was not benefited for the said transaction. The ld. AR further submits that the allegation made by the Assessing Officer regarding non-responsive to the notice issued u/s 133(6) of the Act by the said two companies i.e. Desire Impex Pvt. Ltd. or Gurumukh Mercantile Private Limited is not correct as both the said companies were responded to the notice u/s 133(6) and

assessee duly submitted the copies of response to the Assessing Officer. It has further been submitted that during the assessment proceedings, the assessee has also submitted requisite evidences such as copy of bank statement, relevant ledger accounts etc. to substantiate that it made purchases on behalf of the said companies and raised bills and the amounts received were against such transactions made on National Spot Exchange. The ld. AR also submits that Assessing Officer has not considered the documentary evidences furnished by the assessee and also failed to bring any defect or discrepancy about the documentary evidences submitted by the assessee. The ld. AR further submitted that the ld. CIT(A) has discussed the issue at length and after considering the documentary evidences as well as judicial pronouncements has allowed the appeal of the assessee and there is no infirmity in the impugned order.

7. Upon hearing the counsels of the respective parties and on perusal of the records, we find that the assessee is a brokerage firm and was a member of various exchanges such as National Spot Exchange Ltd and was in the business of conducting commodities transactions on behalf of its clients in such exchanges and the assessee earned brokerage income from such activities. We also find that the assessee company had received amounts of Rs.29,42,149/- from M/s Desire Impex Pvt Ltd and Rs.1,02,62,918/- from M/s Gurumukh Mercantile Pvt Ltd during the relevant F.Y. 2012-13 and the same was received through banking channel. It is pertinent to mention here that the assessee has submitted requisite evidences such as copy of bank statement, relevant ledger accounts etc. and copies of responses from the said two companies. We note that the said two companies have stated that such amounts were paid towards commodity transactions made on National Spot Exchange

Limited and copies of ITR filed by the said companies along with their Audited Financial Statements were also filed by the assessee. We also find that the assessee only earned brokerage from such transactions which have been duly recorded in books of accounts and also offered to tax in the return of income filed under section 139(1) of the Act. We note that the assessee submitted relevant documents to discharge its initial burden to prove the identity and creditworthiness and genuineness of the transaction, now the burden shifted upon the Assessing Officer to examine the documents furnished and even if he can make independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee confronting the same with the assessee, which was laid down by the Hon'ble Supreme Court in the case of PCIT vs. NRA Iron and Steel Pvt. Ltd. [(2019) 103 taxmann.com 48 (SC)] and in this case, the Assessing Officer failed to do. We find that the ld. CIT(A) has passed a reasoned and detailed order after considering the various judicial precedents and the relevant portion of the order of the ld. CIT(A) is as under:

### ***“Discussions and Findings***

*I have carefully examined the material on record including the assessment order under section 147 against which the instant appeal has been preferred, the submissions of the appellant, and the various documentary evidences furnished by the appellant. The appeal thereafter is being adjudicated in a ground-wise manner:*

### ***Grounds 1 & 2***

*Both these grounds agitate against the action of the AO in making an addition of Rs.1,29,05,662/- under section 68 as unexplained cash credit. The allegation against the appellant is that it had received amounts of Rs.29,42,149/- from M/s Desire Impex Pvt Ltd and Rs.1,02,62,918/- from M/s Gurumukh Mercantile Pvt Ltd during the relevant FY: 2012-13. These payments were received through banking channels. As per the notings of the Ld. AO, both M/s Desire Impex Pvt Ltd and M/s Gurumukh*

*Mercantile Pvt Ltd were shell companies controlled by an entry operator, Mukesh Banka and that there was huge cash withdrawal from the bank accounts of shell companies of Banka Group. Having spelt out the allegation in respect of Mukesh Banka and the alleged shell companies controlled by Mukesh Banka, I find that the AO has not brought on record anything to establish that cash withdrawals were made from the bank accounts of M/s Desire Impex Pvt Ltd and M/s Gurumukh Mercantile Pvt Ltd. and as to whether the appellant had benefitted from the same. The allegation levelled against the appellant company is that it had received funds from M/s Desire Impex Pvt Ltd and M/s Gurumukh Mercantile Pvt Ltd during the relevant FY: 2012-13. The appellant has submitted that it was a brokerage firm and was a member of various exchanges such as National Spot Exchange Ltd and was in the business of conducting commodities transactions on behalf of its clients in such exchanges. The appellant earned brokerage income from such activities. As per the submissions of the appellant, the amounts of Rs.29,42,149/- from M/s Desire Impex Pvt Ltd and Rs.1,02,62,918/- from M/s Gurumukh Mercantile Pvt Ltd were received during the relevant FY: 2012-13 for making transactions in the National Spot Exchange Limited. Both the companies M/s Desire Impex Pvt Ltd and M/s Gurumukh Mercantile Pvt Ltd were its clients who wanted to execute transactions in National Spot Exchange. The appellant has submitted requisite evidences such as copy of bank statement, relevant ledger accounts etc. to substantiate that it made purchases on behalf of the said companies and raised bills and the amounts received were against such transactions made on National Spot Exchange. As per the appellant these evidences were also filed before the AO during the course of assessment proceedings, but the Ld. AO chose to ignore them. The appellant also submitted copies of responses made by M/s Desire Impex Pvt Ltd and M/s Gurumukh Mercantile Pvt Ltd before the AO during the course of assessment proceedings wherein both the companies, M/s Desire Impex Pvt Ltd and M/s Gurumukh Mercantile Pvt Ltd have stated that such amounts were paid towards commodity transactions made on National Spot Exchange Limited. Copies of ITR filed by the said companies along with their Audited Financial Statements were also filed by the appellant before the AO. The appellant has submitted requisite documentary evidences to demonstrate that the money received from these companies M/s Desire Impex Pvt Ltd and M/s Gurumukh Mercantile Pvt Ltd were not held by him and were paid to the National Spot Exchange for such commodity transactions. The appellant only earned brokerage from such transactions which have been duly accounted for in its books and offered to tax in the return of income filed under section139(1). I find that the Ld. AO has failed to bring anything on record which would substantiate that the appellant was the final beneficiary of the funds received to the tune of Rs.29,42,149/- from M/s Desire Impex Pvt Ltd and Rs.1,02,62,918/- from M/s Gurumukh Mercantile Pvt Ltd*

during the relevant FY: 2012-13. The appellant has, therefore, discharged its onus to explain the identity, creditworthiness of the creditor and the genuineness of the transactions by filing requisite documents before the AO. The contentions of the appellant, therefore, are not under dispute as the AO has brought nothing on record to prove otherwise.

Therefore, since the appellant only conducted commodity transactions on behalf of M/s Desire Impex Pvt Ltd and M/s Gurumukh Mercantile Pvt Ltd on National Spot Exchange Ltd, against which it earned brokerage which was duly offered to tax, the AO's action in making addition of Rs.1,29,05,662/- under section 68, therefore, cannot be sustained and stands **deleted**. These grounds are **allowed**."

7.1 Going over the above discussion and considering the judicial pronouncements, we do not find infirmity in the order of the Id. CIT(A) and the same is upheld and the impugned addition u/s 68 is hereby deleted. ITA No.1255/Kol/2025 is accordingly dismissed.

8. ITA No.1256/Kol/2025 - Since the facts and issues involved in both the appeals are identical, therefore, our findings/directions given above in ITA No.1255/Kol/2025 will mutatis mutandis apply ITA No.1256/Kol/2025 also. Hence, ITA No.1256/Kol/2025 is also dismissed.

9. In the result, both the captioned appeals of the revenue are dismissed.

***Kolkata, the 18<sup>th</sup> November, 2025.***

Sd/-  
**[Rajesh Kumar]**  
Accountant Member

Sd/-  
**[Pradip Kumar Choubey]**  
Judicial Member

Dated: 18.11.2025.

RS

*Copy of the order forwarded to:*

1. Appellant -
2. Respondent -
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches