

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “D”, MUMBAI
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 5332/MUM/2025 (A.Y: 2010-11)**

ITO 42(1)(4),

Room no. 736, 7th floor, Kautilya
Bhavan, Bandra (East), G Block,
BKC, Mumbai-400 051.

Vs. Raj Kumar

18, 35, Mint Road,
Mumbai-400 001

PAN: AKKPS1106R

(Appellant)

(Respondent)

Department Represented by	:	Shri Annavaram Kosuri, Ld. DR
Assessee Represented by	:	Ms. Soumya Poojari, Ld. DR
Date of conclusion of Hearing	:	03.11.2025
Date of Pronouncement	:	07.11.2025

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 20.06.2025 of National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “*the Act*”] for the A.Y. 2010-11.



2. The department is in appeal before us and has raised following grounds of appeal:

1. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) is erred in not deciding the appeal on merit and ruling the assessment as failed on technicalities."*

2. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) is erred in deleting the addition made by the AO of Rs. 77,88,765 u/s 68 of the IT Act on account of profit through client code modification"*

3. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) is erred in ignoring the fact that as per the information received from DIT(Intell & CR Inv), the assessee is involved in client code modification and used the fictitious profit for the purpose of setting off brought forward losses.*

4. *"On the facts and in the circumstances of the case, the Hon'ble ITAT is requested to entertain this appeal, though, the tax effect is below the monetary limit prescribed in the CBDT Circular No.9/2024 Dt.17.09.2024 but the case falls within the exceptions laid down in clause (h) of Para 3.1 of the Board's Circular No.5/2024 Dt.15.03.2024.*

5. *"The appellant craves leave to amend or alter or add a new ground which may be necessary."*

3. During the arguments, the Ld. AR at the very outset submitted that the department appeal has become infructuous by virtue of circular no. 9/2024 dated 17.09.2024, wherein the monetary limit for tax effect for filing appeal before Income Tax Appellate Tribunal has been raised up to Rs. 60 lacs. It is submitted that the tax effect in this appeal is below 60



lacs and as such the appeal has become infructuous and same may be disposed off accordingly.

4. We have also heard the Ld. DR on behalf of the revenue, who has submitted that the tax effect in this case is less than 60 lakhs, but the case falls under the explanation clause 3.1(h) of Circular No. 5/2024 issued by CBDT on 15th March 2024. We have asked Ld. DR as to how the present case is covered under explanation clause 3.1(h) as it is neither involving organized tax evasion including cases of bogus capital gain/loss through penny stocks nor cases of accommodation entries, etc. In that regard, Ld. DR did not submit anything and as such we have no hesitation to conclude that the present case is not covered under explanation clause 3.1(h) of CBDT Circular No. 5/2024. Therefore, the present case falls under CBDT Circular No. 09/2024 dated 17.09.2024 wherein the monetary limit for tax effect for filing appeal before Income Tax Appellate Tribunal has been raised up to Rs. 60 lacs. As per Form 36, the total tax effect at Rs. 23,66,650/- and for this reason, the appeal filed by the revenue is not maintainable as the same has been filed in violation of CBDT Circular No. 09/2024.



5. In the result, appeal filed by the department is accordingly dismissed having become infructuous.

Order pronounced in the open court on 07.11.2025.

**Sd/-
(OM PRAKASH KANT)
(ACCOUNTANT MEMBER)**

Mumbai / Dated 07.11.2025
Dhananjay, Sr. PS

**Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)**

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai