

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

**BEFORE SHRI SAKTIJIT DEY, VP &
MS PADMAVATHY S, AM**

**I.T.A. No. 5697/Mum/2025
(Assessment Year: 2012-13)**

Amit Virendra Patel, 103, Panchratna, M.P. Marg, Opera House, Mumbai-400004. PAN: AABPP4100D	Vs.	ITO-19(1)(1), Piramal Chambers, 5 th Floor, Lalbaug, Mumbai-400012.
Assessee)	:	Revenue)

Assessee by : Shri Gunjan Kakkad, AR

Revenue by : Shri Surendra Mohan, Sr. DR

Date of Hearing : 18.11.2025

Date of Pronouncement : 03.12.2025

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [In short 'CIT(A)'] passed under section 250 of the Income Tax Act, 1961 (the Act) dated 29.08.2025 for Assessment Years (AY) 2012-13. The assessee raised the following grounds of appeal:

“1) The learned CIT(A) erred in dismissing the appeal without considering the fact that the JAO has issued the notice u/s.148 of the Act without application of mind. It is prayed that the notice u/s. 148 of the Act be held to be illegal, unlawful, void ab initio and bad in law and the assessment order passed in pursuance thereto be directed to be set aside.

2) The learned CIT(A) erred dismissing the appeal without considering the fact that the JAO has issued the notice u/s.148 of the Act without making independent enquiries by merely relying on external information. It is prayed that the notice u/s.148 of the Act be held to be bad in law and the assessment order directed to be set aside

3) The learned CIT(A) erred in holding that the JAO was justified in rejecting the objections to the re-opening of the assessment for failure to furnish the information and documents in his possession forming the basis for re-opening the assessment. It is prayed that the order u/s.143(3) r.w.s. 147 of the Act having been passed in violation of the principle of natural justice be held to be illegal, unlawful, void ab initio and be directed to be set aside.

4) The learned CIT(A) erred in holding that the JAO was justified in making an addition of Rs.72,35,057/- u/s 69C of the Act by disallowing the purchases from M/s. Mayank. It is prayed that the said disallowance be held to be bad in law and be directed to be deleted.”

2. The assessee also raised the following addition grounds:

“Additional Ground of Appeal No. 1

On the facts and circumstances of the case and in law, the notice issued under section 148 of the Income-tax Act, 1961 ("the Act") is invalid and consequently, the assessment order dated 24 December 2019 is illegal and bad in law.

Additional Ground of Appeal No. 2

On the facts and circumstances of the case and in law, the Assessing Officer failed to appreciate that he could assume jurisdiction to initiate assessment/ reassessment proceedings only by issuing a notice under section 153C of the Act in accordance with the extant provisions when admittedly it is stated that the information was received pursuant to search and seizure operation under section 132 of the Act.”

3. The additional grounds raised are pure legal issue, which does not require investigation of new facts. Hence, placing reliance on the judgment of the Hon'ble Apex Court in the case of *National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC)*, we admit the additional grounds.

4. The assessee is an individual and filed the return of income for AY 2012-13 on 30.09.2012 declaring total income of Rs. 11,85,751/-. The return was processed u/s. 143(1) of the Act. The AO received an information from DDIT (Inv.) based on the search and seizure action conducted on Rajendra Jain group that the assessee has been one of the beneficiary of the accommodation entries towards purchasers from the entry provider M/s Maya for an amount of Rs. 72,35,035/-. In view of the same the AO reopened the assessment by issuing notice u/s. 148 of the Act in response to which the assessee filed the return of income on 20.03.2019. The assessee requested for the reason recorded which was provided to the assessee vide letter dated 12.09.2019. The assessee filed its objections vide letter dated 09.10.2019 and the AO disposed of the objections vide order dated 29.10.2019. Subsequently, the AO called on the assessee to furnish details pertaining to the impugned transaction. The assessee furnished details of purchase and sells invoices, ledger copy, etc. to substantiate the claim that the purchasers made are genuine. However, the AO did not accept the submissions of the assessee and

based on the findings of the Investigation Wing concluded that the impugned transactions are non genuine and accordingly proceeded to treat the entire purchase as addition u/s. 69C of the Act. Aggrieved the assessee filed further appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee to confirm the addition made by the AO. The assessee is in appeal before the Tribunal against the order of the CIT(A).

5. The ld. AR during the course of hearing made detailed submissions with regard to the legal contentions raised through addition ground as well as the main grounds. The ld. AR also made submissions contending the additions on merits. For the purpose of adjudication we will first consider the submissions made on merits. The ld. AR submitted that the assessee has furnished all the details pertaining to the impugned transactions such as the ledger copy, invoice raised by M/s. Maya Impex, the corresponding export sales invoice raised on M/s World Impex and the stock statement, etc. (page 35 to 40 of PB). The ld. AR also drew our attention to the letter submitted by the assessee before the AO requesting to summon the party for cross-examination. The ld. AR argued that the AO while making the impugned transaction as bogus has completely relied on the findings in a third party search and the statements recorded therein. The ld. AR further argued that the AO did not conduct any independent inquiry with regard to the transactions and has not examined the various documentary evidences submitted by the assessee. The ld. AR accordingly argued that the addition made by the AO is merely based on conjecture and surmises without recording any adverse finding pertaining to the assessee. Accordingly, the ld. AR submitted that the addition made by the AO cannot sustain on merits.

6. The ld. DR on the other hand submitted that the AO has received information based on the findings of the Investigation Wing that the party with whom the assessee has entered into purchase transaction is a bogus entity and accordingly the AO has rightly treated the entire transaction as non-genuine. The ld. DR further submitted that the documents furnished by the assessee cannot be independently accepted and has to be considered along with the findings of the Investigation Wing. The ld. DR also submitted that the AO has applied his mind and has come to the conclusion that the transactions entered into by the assessee which is established to be a bogus entity is non-genuine. The ld. DR relied on the decision of the Hon'ble Bombay High Court in the case of PCIT vs. Kanak Impex (India) Ltd. [2025] 172 taxmann.com 283 (Bom.).

7. The ld. AR in rebuttal submitted that the entire premise under which the Hon'ble Bombay High Court concluded that the transaction was bogus was that the assessee in the said case has not furnished any details and has not discharged the onus of proving the genuineness of the transaction by filing the relevant documents. The ld. AR submitted that the assessee's case is clearly distinguishable since the assessee has furnished the relevant details before the AO and no adverse finding has been recorded by the AO on the merits. Accordingly, the ld. AR submitted that the reliance placed by the ld. DR on the decision of the Jurisdictional High Court is misplaced.

8. We heard the parties and perused the material on record. The assessee's case was reopened based on the information received from DGIT (Inv.) as a result of search and seizure operation conducted in the case of a third party Shri Rajendra Jain and family. From the perusal of the order of the AO we notice that the AO has elaborated the various findings of the Investigation Wing as a result of the search

and seizure operations and the statements recorded from Shri Rajendra Jain. We further notice that the AO while doing so has not examined the documentary evidences submitted by the assessee in terms of purchases, corresponding sales, the stock statement, etc. We also notice that the AO recorded a finding with regard to the documentary evidences that the entries in the books of accounts are unilateral act and cannot be relied on in the light of the findings of the Investigation Wing. In our considered view such a conclusion arrived at by the AO is not tenable for the reason that the impugned transaction cannot be treated as non-genuine merely based on third party search/statements without recording any adverse finding with regard to the documentary evidences submitted by the assessee or without recording anything which contrary to the submissions made by the assessee. We notice that the assessee has purchased cut and polished diamonds weighing 224.83 cts. from Mayank Impex on 21.11.2011 for a consideration of Rs. 72,35,051/- and has made payment through banking channel to the tune of Rs. 8,00,000/- against the said purchase (page 35 & 36 of PB). We further notice that the assessee has exported the said diamonds to M/s World Impex, Hongkong through export invoice for USD 149,262.78 (page 37 of PB). We also notice that the stock statement of the assessee for the year ended 31.03.2012 reflect the impugned transaction of purchases and sales (page 38 to 40 of PB). From the perusal of these facts we are of the view that the assessee has discharged the onus of proving the genuineness of the transaction. Accordingly, we are of the view that the lower authorities are not correct in treating the impugned transaction as bogus merely based on third party search/statements without examining the documentary evidences and without recording any corroborative evidence in support of the information from the Investigation Wing in assessee's case. Therefore we hold that the addition made by the AO is liable to be deleted and the AO is directed accordingly.

9. Since we have deleted the addition considering issue based on the merits, the legal contentions of the assessee raised through additional as well as the main grounds have become academic and left open accordingly.

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

Order pronounced in the open court on 03-12-2025.

Sd/-
(SAKTIJIT DEY)
Vice-President

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai