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

BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM

ITA Nos. 2178, 1630 & 1631/KOL/2025
(Assessment Years: 2014-15, 2015-16 & 2016-17)

Sushil Mitruka G208, City Centre, Office Block, P.O. Matigara, Siliguri, Darjeeling, Siliguri-734010, West Bengal **(Appellant)**	**Vs.**	**DCIT, Circle 1,** Aaykar Bhawan, Matigara, Siliguri-734004, West Bengal **(Respondent)**

PAN No. ACCPA9340F

ITA No. 1613/KOL/2025
(Assessment Years: 2017-18)

DCIT, Circle 1, Aaykar Bhawan, Matigara, Siliguri-734004, West Bengal **(Appellant)**	**Vs.**	**Sushil Mitruka** G208, City Centre, Office Block, P.O. Matigara, Siliguri, Darjeeling, Siliguri-734010, West Bengal **(Respondent)**

Assessee by	:	Shri SK Tulsian, AR
Revenue by	:	Shri S.B. Chakraborthy, DR

Date of hearing: 03.12.2025
Date of pronouncement: 18.12.2025

O R D E R

Per Rajesh Kumar, AM:

These appeals preferred by the assessee and Revenue against the orders of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)"] dated 28.08.2025, 27.05.2025 for A.Y. 2014-15, 2015-16, 2016-17 & 2017-18.Since the appeals are relating to same assessee and involves commons issues , therefore all these appeals are decided by this consolidated order for the sake of brevity.

First of all we shall take ITA No. 2178/kol/2025 A.Y. 214-15 for adjudication.

A.Y. 2014-15

ITA No. 2178/KOL/2025

2. The issue raised in ground no.1 is against the order of ld. CIT (A) upholding the reopening of assessment, which was based upon borrowed satisfaction without examining the records and without application of mind and accordingly, the reopening of assessment bas bad in law.

2.1. The facts in brief are that the assessee is an individual deriving income by way of director remuneration, share profit from the partnership firm and rental income, etc. The assessee filed the return of income on 31.03.2015, declaring total income of ₹11,10,020/- u/s 139(1) of the Act. Thereafter, the ld. AO on the basis of information received from DDIT, investigation, Wing Siliguri, reopened the assessment u/s 147 of the Act by issuing notice u/s 148 of the Act on 31.03.2021. The assessee complied with the said notices by filing the return of income on 01.05.2021, by declaring the total income at ₹33,84,970/-. The assessee requested the ld. AO to furnish the copies of reasons recorded on 06.05.2021, which were not supplied. The assessee again requested the ld. AO vide letter dated 17.02.2022 to supply the reasons. Thereafter the assessee was supplied the reasons recorded u/s 148(2) of the Act. The assessee furnished before the ld. AO the details and information as called for by the ld. AO. Finally, the ld. AO made an addition of ₹67,37,100/- on account of unexplained cash deposit and ₹37,53,227/- on account of construction expenses thereby assessing the income of ₹1,38,68,297/- vide assessment order dated 26.09.2022, passed u/s 147 read with section 144B of the Act.

2.2. In the appellate proceedings, the ld. CIT (A) dismissed the appeal on legal issue raised by the assessee challenging the invalid reopening of assessment.

2.3. After hearing the rival contentions and perusing the materials available on record, we find that the ld. DDIT (Investigation) Wing, vide letter dated 30.11.2019, informed the ld. AO that assessee has entered into some suspicious transactions by forwarding the report to the ld. AO. The ld. AO on the basis of the said report of DDIT (Investigation) Wing, issued notice u/s 148 of the Act. The reasons recorded for issuing the said notice are available at page nos. 26 to 28. We observe from the perusal of the said reasons that the ld. AO relied on the report from the DDIT (Investigation) as it is without recoding any satisfaction of his own. Thereafter, the ld. AO concluded that in the light of the above discussion, which is just extraction of the reports supplied by the ld. DDIT, noted that the income of the assessee has escaped assessment due failure on the part of the assessee to fully and truly disclosed his total return of income. In our opinion, the said reasons recorded by the ld. AO is just a borrowed satisfaction of the DDIT and not the AO's satisfaction. We note that the ld. AO has not recorded is own satisfaction as to how there was a failure on the part of the assessee to disclose fully and truly all material facts. In our opinion, it is the satisfaction of the ld. AO that income has escaped assessment is a pre condition for re-opening the assessment and not a borrowed satisfaction from outside source as has been held by the Hon'ble Delhi High Court in case of Sarthak Securities Co. (P.) Ltd. vs. Income-tax Officer-Ward 7(3) [2010] 329 ITR 110 (Delhi, wherein it is held as under:-

"3. Further, the alleged information provided by the Addl. DIT has been accepted as gospel truth without any verification by the Assessing Officer. The law postulates the Assessing Officer (and not the Addl. DIT) to have reason to believe. Blind acceptance of

the information furnished by the Addl. DIT cannot form reasons leading to the belief by the Assessing Officer of any escapement of income."

2.4. Similarly, Hon'ble Delhi High Court in case of Principal Commissioner of Income-tax-6 vs. Meenakshi Overseas (P.) Ltd. [2017] 395 ITR 677 (Delhi)[26-05-2017], has held that reopening made on the basis of borrowed satisfaction cannot be sustained where the reasons failed to demonstrate live link between the tangible material and formation of the reason to believe that the income has escaped assessment, as under:-

*"**26.** The first part of Section 147 (1) of the Act requires the AO to have "reasons to believe" that any income chargeable to tax has escaped assessment. It is thus formation of reason to believe that is subject matter of examination. The AO being a quasi judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria. While the report of the Investigation Wing might constitute the material on the basis of which he forms the reasons to believe the process of arriving at such satisfaction cannot be a mere repetition of the report of investigation. The recording of reasons to believe and not reasons to suspect is the pre- condition to the assumption of jurisdiction under Section 147 of the Act. The reasons to believe must demonstrate link between the tangible material and the formation of the belief or the reason to believe that income has escaped assessment.*

……

***36.** In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'. The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment."*

2.5. Similarly, the Hon'ble Bombay High Court in case of Principal Commissioner of Income-tax-5 vs. Shodiman Investments (P.) Ltd. [2020] 422 ITR 337 (Bombay)[16-04-2018], has held as under:-

*"**13.** In this case, the reasons as made available to the Respondent- Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reason to come to the conclusion that the Respondent-Assessee has indulged in any activity which could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped*

Assessment. It is for this reason that the recorded reasons even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment.

14. *Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a re-opening notice on the basis of intimation regarding re-opening notice from the DDIT (Inv.) This is clearly in breach of the settled position in law that re-opening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction"*

2.6. Considering the facts of the assessee's case in the light of the aforesaid decisions, we are inclined to hold that the reopening of assessment has been made invalidly on the basis of borrowed satisfaction as the ld. AO has failed to apply his mind independently to arrive at an objective conclusion that there was failure on the part of the assessee to disclose fully all the material fact and thus, there was nondependent application of mind by the ld. AO. Therefore, the reopening of assessment is not sustainable in the eyes of law. The ground no. 1 is allowed.

3. The second issue raised in ground no.2 is against the order of ld. CIT (A) upholding the reassessment made by the ld. AO by ignoring the fact that the objection filed by the assessee to the reopening of assessment were not disposed off as per the procedural laid down in the case of GKN Driveshafts (India) Ltd. vs. Income-tax Officer [2003] 259 ITR 19 (SC).

3.1. The facts of the case have been discussed while dealing with ground no.1. We note that the ld. AO did not supply the reasons despite the assessee filing the return of income on 01.05.2021, in response to notice issue u/s 148 of the Act on 30.03.2021. The assessee requested the ld. AO on 06.05.2021, for supply of reasons, however, no reasons were provided to the assessee. Thereafter, issued notice u/s 143(2) on 10.11.2021, without providing reasons to the

assessee. The assessee did not file the replies to the said notice. Again on 10.12.2021, the ld. AO again issue notice. Again assessee did not respond to the same as no reasons to believe were provided to the assessee even after being requested by the assessee repeatedly. We note that the ld. AO started the assessment without providing the assessee the reasons for reopening u/s 148 of the Act. Subsequently, on 02.02.2022, the ld. AO issued show cause notice. Again on receipt of the show cause notice, the assessee once again sought the reasons for reopening of assessment vide reply dated 17.02.2022. the ld. AO then provided the copies of reasons recorded on 18.02.2022,along with notices u/s 142(1) of the Act. Thereafter, the assessee filed the objections to reopening of assessment on 08.03.2022. We note that the ld. AO did not dispose off the objections filed by the assessee to the reopening of assessment as per the guidelines provided by Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. (supra), wherein the Hon'ble Court held as under:-

> *"We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years."*

3.2. Similar issue has been laid down by the Hon'ble Madrass High Court in case of Karti P. Chidambaram vs. Assistant Commissioner of Income Tax, Chennai [2018] 402 ITR 488 (Madras)/[2018 wherein it has been held that the assessment order passed without disposing off the assessee's objections to reopening of assessment and without passing a speaking order was unjustified.

3.3. Therefore even, for this reason of non disposal of objections filed by the assessee, the assessment framed by the ld. AO cannot be sustained. The ground no. 2 is allowed.

4. The issue raised in ground no.3 and 4 is against the confirmation of addition of ₹59,73,221/-, by the ld. CIT (A) as made by the ld. AO on account of cash deposits in the bank account by treating the same as unexplained cash credit u/s 68 of the Act.

4.1. The facts in brief qua this ground are that the assessee has a banking account with the Indian bank in Siliguri Branch no. 20904. The ld. AO observed from the bank statements that during the year the assessee has deposited cash of ₹66,33,500/- and also made withdrawals of cash of ₹3,62,000/-. Accordingly, the assessee was called upon to explain the same. The assessee submitted before the ld. AO that the total cash deposits and withdrawals from Indian Bank of Siliguri were ₹67,30,100/- and ₹45,44,150/- respectively. The assessee submitted before the ld. AO the statement of funds available for deposit into the bank account which were out of opening cash in hand available as on 01.04.2013, of ₹41,89,518.90/- and ₹28,00,000/- received from Shelter Enclave Pvt. ltd. for sale of land. However, the ld. AO disbelieved the submissions of the assessee and made an addition of ₹67,30,000/- was made u/s 68 of the Act on account of unexplained cash credit.

4.2. In the appellate proceedings the ld. CIT (A) partly allowed the appeal by sustaining the addition to the extent of ₹59,73,221/- while deleting the addition to the tune of ₹7,56,879/- by observing and holding as under:-

"7.2 I have perused the assessment order, grounds of appeal, and submission filed by the appellant carefully. I find that during the course of assessment proceedings, the AO noted that the appellant had deposited cash of Rs.67,30,100/- in bank account and not

Rs.66,35,500/- as mentioned by the AO in the reasons recorded. The appellant had contended that there was opening cash balance of Rs.41,89,518/- and he had withdrawn the cash of Rs.45,44,150/- from bank accounts and cash of Rs.28,00,000/- was claimed to have received on account of sale of land. However, the explanation regarding opening cash balance was not accepted by the AO on the ground that in the ITR filed for AY 2013-14 there was no mentioned of opening cash balance. Regarding, the sale proceedings of land, the AO noted that the sale consideration was received by cheque, hence the explanation of the appellant was not accepted. Further the AO noted that appellant had claimed to have made investment in house during AY 2014-15 of Rs.79,76,789/- The AO has further observed during the course of personal hearing conducted through VC and the appellant failed to explain the source of cash coming in. Therefore, the AO concluded that the appellant had deposited the cash out of undisclosed sources had hence made the addition of Rs. 67,30,100/- u/s 68 as unexplained cash deposits in bank account from undisclosed source.

I have considered the facts of the case and submission of the appellant carefully. I find that the reason given by the AO for rejecting the claim of opening cash in hand is very vague and hence the action of the AO is not justified. Further I find that appellant had made withdrawals of cash of Rs. 45,44,150/- but the AO has not accepted the contention of the appellant without demonstrating based on the material that the said cash was utilized for some other purpose other than the construction of house of Rs. 79,76,789/. Thus I find that appellant was having cash of Rs. 87,33,668/- (Rs. 41,89,518/- Rs. 45,44,100/-) and even after assuming that the cash of Rs. 79,76,789/- is utilized for construction of house, still, the cash of Rs. 7,56,879/- appears to be available with the appellant to explain the source of cash deposits. From the above facts, I find that the source of cash deposits to the extent of Rs.7,56,879/- gets explained and hence addition of balance amount of Rs. 59,73,221/- is confirmed. Thus, the ground of appeal raised by the appellant is partly allowed."

4.3. After hearing the rival contentions and perusing the materials available on record, we find that the assessee has a bank account with Indian bank, Siliguri in which the assessee deposited the cash of ₹67,37,100/- during the year and also made withdrawals of ₹45,44,150/-. The assessee explained the cash to be out of opening balance of cash in hand of ₹41,89,518.90/- in A.Y. 2014-15 and corroborated the same with a copy of balance sheet as on 31.03.2013, which is also available in the Paper Book page no.96 & 97 . We note that the said amount was taken as opening balance on 01.04.2013. We also find that on 31.3.2013 in A.Y. 2013-14, the said balance was shown as closing balance. We further note that A.Y. 2013-14 was also under scrutiny proceedings u/s 147 of the Act by way of reopening of the assessment and the balance sheet was filed before the ld. AO,

wherein the closing cash-in-hand was ₹4189,518/- duly reflected in the balance sheet. We also note that the assessee has made withdrawals of cash of ₹45,44,150/- during the year from said bank for the purpose of meeting construction expenses and other miscellaneous on the basis of evidences before us. We find that the said cash was not utilized and was deposited back into the bank account. Besides, the assessee has received ₹28,00,000/- from Shelter Enclave Pvt. ltd. on account of sale of land and ₹5,90,000/- on account of refund of advances given for purchase of land. Thus, we find that the assessee has explained the source of cash deposited into the bank account satisfactorily with evidences. These facts were also before the authorities below. Moreover, these deposits and withdrawals as well as the entries as regard to sale of land and refund of advance given for purchase of land were duly shown in the books of account maintained by the assessee and cash book was also available before us. Therefore, we are not in agreement with the conclusion drawn by the ld. CIT (A) on this issue. The case of the assessee find support from the decision of co-ordinate bench in case of Vikram Deokisan Sarsa Vs. ACIT in ITA No.277/M/2012 vide order dated 05.12.2012, wherein it has held as under:-

"19. Per contra, disputed facts are that while assessee explains the source for the cash deposits amounting Rs 3.22 cr is the unutilized cash on hand withdrawn from the same bank accounts; revenue does not believe the said explanation of the assessee. Revenue holds that the assessee needs to establish the nexus and assessee claims that the nexus is already established.

20. On considering the divergent stands of the parties, in our considered opinion, there is need for addressing to various issues before addressing to the core issue. They are: (i) if the assessee has discharged initial onus of explaining the purpose of cash withdrawal; (ii) if the assessee has explained as to why the assessee kept the withdrawn cash in the house without depositing the same in the bank accounts; (iii) if the assessee has successfully explained the sources of the cash deposited in the bank accounts; (iv) if the assessee cash flow of the assessee suffer from any incrimination; (v) if there is availability of cash with the assessee prior to the date of cash deposit in Bank accounts and finally (vi) if the AO is under obligation to accept the claim of the assessee.

(i) Regarding the first issue at (i), we find that the claim of the assessee is that the cash is withdrawn for the triple purposes namely for meeting the cash requirements of the company on reimbursement basis, house hold expenditure and maintaining cash on hand for meeting the contingencies of the land business. In this regard, we find that there is repeated withdrawal of cash from and to the company accounts as well as the bank accounts of the assessee and it suggest the flow of cash from company to the assessee and vice versa. Considering the fact that the cash withdrawn from the company accounts is shown re-depositied in the bank accounts of the assessee, the transactional requirement stands satisfied. Further, we find that the assessee explained that the cash withdrawn is kept with him to meet the contingencies relating to domestic and proposed land purchase transactions. In support of the said explanation relating to land deals, papers at page 275 to 280 relates to Sri Satish Mithulal Tiwari, who gave cash advance to the assessee in connection with the purchase of the land, was finally refunded. The fact assessee receiving the cash in similar transaction when he sold land to Sri Rajkumar Mahale and another transaction of unfructified sale of land to Sri Vinod Saraf who paid cash Rs 15.11 lakhs were also cited by the assessee in the proceedings before the lower authorities. This explanation of the assessee was not controverted by the AO. Entries in the books of accounts, which are not rejected by the AO also supports the explanation/claims of the assessee. The documents relating to transaction with Sri Vinod Saraf are now filed as additional evidences, which are admitted by us considering their importance and remanded to the files of the AO examination. But the moot point here for consideration relates to the credibility of the explanation of the assessee and considering the undisputed entries in the books of accounts and other factors discussed above, we find prima facie merit in the claims of the assessee. In our opinion, the assessee has discharged the initial onus. In normal course of assessment, the AO should have examined Sri Vinod Saraf or Rajkumar Mahale by invoking the provisions of section 131 or 132 or 133(6) of the Act in order to bring facts to demolish the explanation of the assessee. On the contrary, AO prematurely concluded the assessment proceedings relying on the unsustainable ground of surmises. As discussed in para 5 of this order, papers relating to Mr. Saraf's cash advance is set aside.

(ii) if the assessee has explained as to why the assessee kept the withdrawn cash in the house without depositing the same in the bank accounts: Having explained the valid purposes for which the case was withdrawn, we have examined if the assessee violated any provisions in keeping the said cash with him as cash on hand. The case of the assessee is there no preventive law against keeping huge cash at the house. Further, assessee filed number of case laws which upholds the assessee's view point. Details of some of the decisions and the period of holding of cash on hand before cash deposit in the banks are tabulated as under:

S.No	Name of the case & Citation	Holding Period
1	Vinkata Ratnam (SR) 127 ITR 807(Kar)	24 Months
2	Vinod Kimar Goel ITA 310/JP/08	18 Months
3.	Hemant Prabhakar ITA No.684/JP/98, 31 taxworld 198	14 Months
4.	R.K. Dave 94 TTJ (Jod) 19	07 Months
5.	Surendra Singh ITA No.650/JP/2011	5-9 Months
6.	CIT vs. Jauharimal Goel 201 CTR 54 (All)	5-8 Months
7.	Veerappa Shetty ITA No.5276/M/2011	3.5 Months
8.	Anupama Chaudhary ITA No. 4155/Del/2009	3-6 Months
9.	Tanmoy Chatterjee ITA No.1434/Kol/2009	1 Month
10.	ACIT vs. Baldev Raj Charla, 121 TTJ 366 (Delhi)	1-2 Months
11.	ITA No.957/M/2009 M/s. Cellplus Telcomes	09 Months

21. The above judgments from various benches of the Tribunal as well as the Higher courts suggest that the assessee can explain the cash deposit in the banks using the cash held by him for period longer than 2 years and there is no restraining provisions against such maintaining balance for the said periods. Hon'ble Karnataka High Court has found an assessee has kept cash for 2 years and the same is accepted as the source for explaining a cash deposit. Of course, Ld DR attempted to distinguish the above cases as cases of few credits and incomparable to the 298 transactions reported in the instant case. In our opinion, number of transactions is not a relevant factor as the transactions number vary from assessees to assessee depending on their requirements relating to business, domestic and their plans and perspective. Therefore, the instant case being the retaining of cash for few weeks/months only, the arguments of Ld DR has to be dismissed and uphold the views of the AR for the revenue. In the process, we rely on the decision tabulated above.

> *(iii) & (iv) if the assessee has successfully explained the sources of the cash deposited in the bank accounts and existence any incrimination in the cash flow statement & (iv) if the assessee cash flow of the assessee suffer from any incrimination: We have discussed in the preceding paragraphs of this order about various aspects vis avis discharging of 'initial onus' by the assessee in matters of (a) furnishing of the explanation about the sources of funds; (b) rerouting of the cash into the bank accounts adequately to meet the withdrawal of Rs 3.22 cr; (c) AO failure to rebut that the withdrawn cash was not existing in the system and diverted towards other unaccounted purposes etc. We have held that the assessee has discharged his part of the onus which is the duty of the assessee to discharge the initial onus. We have also discussed the settled legal proposition that the assessee is not prevented by any law from parking the cash withdrawn as 'cash in hand'. Thus, when the withdrawn cash exists in the system and not utilised for any other business or personal utilities, the question arises, where did that cash go? Why cannot that cash be used to explain the cash deposits into the bank accounts? If the AO could have found any weakness in the explanation of the assessee or AO is in a possession of any incriminating material against the assessee, inference may be different. But in this case, the AO has not made out any case to say that the said cash was used for other unaccounted or accounted activities of the assessee or others and the same not available for explaining the source of the impugned cash deposits. In our opinion, the explanation of the assessee is a plausible one. Therefore, we have no doubt in our minds to drawn the obvious inference that the withdrawn cash constitutes the sources for*

explaining the impugned cash deposits into the bank accounts. Bombay High judgment in the cae of Narendra G. Goradia (HUF) 234 ITR 571 is relied.

(v) & (vi) If there is availability of cash with the assessee prior to the date of cash deposit in Bank accounts, if the AO is under obligation to accept the claim of the assessee or not &) if the AO is under obligation to accept the claim of the assessee: In matters of considering the withdrawn cash as the sources of cash deposits, existence of adequate cash balance prior to such cash depositing becomes very crucial and decisive factor. In this regard, Ld Counsel relied on a decision of the Tribunal in the case of Shri Bharat Ranawat vide I.T.A. NO.3338/M/2010 for the AY 2008-2009 and read out para 10 of the same which is as under:

22. Therefore, the existence of the funds/cash withdrawn prior to investment in the unaccounted asset as in that case or depositing in the bank accounts as recorded in the book of accounts, is the essential fact that is required to be established by the assessee in this kind of matters. In the instant case, the assessee has filed a cash flow statement showing the details of the amounts of cash withdrawn, details of the accounts from where withdrawn, cash depositing etc. Perusal of the same confirms the existence of the cash on hand. The above reasoning has the strength of support by the ratio decidendi of a binding jurisdictional High court judgment in the case of Jawanmal Gemanji Gandhi (151 ITR 353), which is famous for the proposition that the undisclosed income of an assessee earned in an earlier assessment year can constitute a fund, though concealed, from which the assessee may draw subsequently. The held portion of the said judgment read as follows:

Held, (i) that secret profits or undisclosed income of an assessee earned in an earlier assessment year can constitute a fund, though concealed, from which the assessee may draw subsequently. In the instant case, the assessee acquired the gold during the latter half of the assessment year and it could be that the undisclosed income earned in that very year constituted a fund from which the asset was acquired.

(ii) ……. Even before the Tribunal, the assessee had adopted this stand but the assessee had contended in the alternative that the source of the gold could be assumed to have come out of the intangible additions on account of the increased turnover.””

4.4. Further, if the assessee is able to establish the deposit of cash with the bank out of opening balance, withdrawal of cash and other cash receipts as per cash flow statement then such explanation cannot be rejected by the ld. AO simply without establishing the fact that the cash was utilized by the assessee for some other purposes and not available with the assessee. The case of the assessee also find support from the decision of the co-ordinate Bench in case of ITO Vs. Mrs. Deepali Sehgal in ITA No. 5660/Del/2012 vide order dated 05.09.2014

and Gordhan Vs. ITO in ITA No.811/DEL/2015 vide order dated 19.10.2015.

4.5. Considering the facts of the assessee's case in the light of above decisions, we note that the assessee has fully established the source of cash deposits into the banks and therefore, the order of ld. CIT (A) is not sustainable on this issue. Consequently, we set aside the order of ld. CIT (A) on this issue and direct the ld. AO to delete the addition.

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

A.Ys. 2015-16 & 2016-17

ITA Nos. 1630 & 1631/KOL/2025

6. The issues raised in these appeals are similar to one as decided by us in ITA No. 2178/KOL/2025. Accordingly, our decision would, mutatis mutandis, apply to these appeals of assessee in ITA Nos.1630 & 1631/KOL/2025 as well. Hence, the appeals of assessee are allowed.

A.Y.2017-18

ITA No.1613/KOL/2025

7. The present appeal has been filed by the Revenue against the order of ld. CIT (A) deleting the addition of ₹89,69,000/- as made by the ld. AO on account of cash deposit by the assessee into the bank account and the second issue is against the deletion of ₹6,48,620/- by the ld. CIT (A) as made by the ld. AO in respect of cost of construction incurred by the assessee.

8. The assessee has also raised legal issue under Rule 27 of the ITAT Rules, 1963 challenging the appellate order passed by the ld. CIT (A), wherein the reopening of assessment has been affirmed by the ld. CIT (A).

8.1. Since, the assessee has raised legal issue, we would like to decide the same first of all.

8.2. The assessee under Rule 27 of the ITAT Rules, 1963, has challenged the reopening of assessment as confirmed by the ld. CIT (A). For the sake of ready reference, the Rule 27 is extracted below:-

""Respondent may support order on grounds decided against him.

27. The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him."

8.3. The Rule 27 of ITAT Rules provides an opportunity to the respondent where he has not filed any appeal or cross objection before the Tribunal against the appellate order on the issue decided against him by the CIT(A). The case of the assessee is supported by the decision of Hon'ble Delhi High Court in case of Sanjay Sawhney vs. Principal Commissioner of Income-tax [2020] 116 taxmann.com 701 (Delhi)/[2020] 273 Taxman 332 (Delhi)[18-05-2020), wherein it has held as under:-

26. *The upshot of the above discussion is that Rule 27 embodies a fundamental principal that a Respondent who may not have been aggrieved by the final order of the Lower Authority or the Court, and therefore, has not filed an appeal against the same, is entitled to defend such an order before the Appellate forum on all grounds, including the ground which has been held against him by the Lower Authority, though the final order is in its favour. In the instant case, the Assessee was not an aggrieved party, as he had succeeded before the CIT (A) in the ultimate analysis. Not having filed a cross objection, even when the appeal was preferred by the Revenue, it does not mean that an inference can be drawn that the Respondent- assessee had accepted the findings in part of the final order, that was decided against him. Therefore, when the Revenue filed an appeal before the ITAT, the Appellant herein (Respondent before the Tribunal) was entitled under law to defend the same and support the order in appeal on any of the grounds decided against it. The Respondent-assessee had taken the ground of maintainability before Commissioner (Appeals) and, therefore, in the appeal filed by the Revenue, it could rely upon Rule 27 and advance his arguments, even though it had not filed cross objections against the findings which were against him. The ITAT, therefore, committed a mistake by not permitting the assessee to support the final order of CIT (A), by assailing the findings of the CIT(A) on the issues that had been decided against him. The Appellant - assessee, as a Respondent before the ITAT was entitled to agitate the jurisdictional issue relating to the validity of the reassessment proceedings. We are, therefore, of the considered opinion that the impugned order passed by the ITAT suffers*

from perversity in so far as it refused to allow the Appellant - assessee (Respondent before the Tribunal) to urge the grounds by way of an oral application under Rule 27. The question of law as framed is answered in favour of the Appellant - assessee and resultantly the impugned order is set aside. The matter is remanded back before the ITAT with a direction to hear the matter afresh by allowing the Appellant- assessee to raise the additional grounds, under Rule 27 of the ITAT Rules, pertaining to issues relating to the assumption of jurisdiction and the validity of the reassessment proceedings under section 153C of the Act."

8.4. Therefore, we are inclined to admit the ground raised by the assessee under Rule 27 of the IT Rules for adjudication.

9. Ground no.1 raised by the assessee is against the order of ld. CIT (A) confirming the order of ld. AO, wherein the reopening on borrowed satisfaction was made which was invalid and deserves to be quashed.

9.1. Since, the facts of the present case are quite similar to one as decided by us in ground no.1 of ITA No. 2178/KOL/2025 for A.Y. 2015-16, wherein we have quashed the reopening of assessment on legal issue on the ground that same is without application of mind and based on the borrowed satisfaction. Therefore, our decision would mutatis mutandis, apply to this ground of assessee. Consequently, ground no. 1raised under Rule 27 of the Rules is allowed.

10. The second issue raised in ground no.2 is against the order of ld. CIT (A) upholding the reassessment made by the ld. AO by ignoring the fact that the objection filed by the assessee to the reopening of assessment were not disposed off as per the procedural laid down in the case of GKN Driveshafts (India) Ltd. vs. Income-tax Officer [2003] 259 ITR 19 (SC).

10.1. Since, the facts of the present case are quite similar to one as decided by us in ground no.2 of ITA No. 2178/KOL/2025 for A.Y. 2015-16, wherein we have quashed the reopening of assessment on legal issue on the ground of non disposal of objections filed by the assessee to re-opening of assessment by the AO. Therefore, our

decision on ground no. 2 would, mutatis mutandis, apply to this ground of assessee. Consequently, ground no. 2 raised under Rule 27 of the Rules is allowed.

11. Since, we have allowed the grounds raised under Rule 27 by quashing the reopening of assessment, the appeal of the Revenue become infructuous and hence, dismissed.

12. In the result, the appeal of the Revenue is dismissed and the appeals of the assessee are allowed.

Order pronounced in the open court on 18.12.2025.

Sd/-	Sd/-
(PRADIP KUMAR CHOUBEY)	(RAJESH KUMAR)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Kolkata, Dated: 18.12.2025
Sudip Sarkar, Sr.PS
Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata