

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH MUMBAI**

**BEFORE HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
HON'BLE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**ITA No.2431/Mum/2025
(Assessment Year: 2022-23)**

Joint Commissioner of income Tax (OSD), Central Circle 2(1), Mumbai 802, 8 th floor, Pratistha bhavan, C.G.O. Building, Maharashi Karve Road, Mumbai- 400020	Vs.	Jugalkishore Banarasilal Saraf 12-A, Saraf house, Hatkesh Co-op. Hsg. Society, N.M.Road, J.V.P.D Scheme, Vile Parle, Mumbai- 400056
PAN/GIR No. ANRPS9847D		
(Applicant)		(Respondent)

**ITA No.5058/Mum/2025
(Assessment Year: 2019-20)**

&

**ITA No.5059/Mum/2025
(Assessment Year: 2020-21)**

Jugalkishore Banarasilal Saraf 12-A, Saraf house, Hatkesh Co-op. Hsg. Society, N.M.Road, J.V.P.D Scheme, Vile Parle, Mumbai- 400056	Vs.	Joint Commissioner of income Tax (OSD), Central Circle 2(1), Mumbai Room No. 802, 8 th floor, Pratistha bhavan, Old CGO Annexe, Maharashi Karve Road, Mumbai- 400020
PAN/GIR No. ANRPS9847D		
(Applicant)		(Respondent)

Assessee by	Shri. Himanshu Gandhi
Revenue by	Ms. Kavitha Kaushik,Sr.-DR.

Date of Hearing	11.11.2025
Date of Pronouncement	22.12.2025

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

These present appeals have been filed by the assessee as well as revenue challenging the impugned order 25.02.2025 passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the National Faceless Appeal Centre, Delhi (NFAC) for the assessment year 2019-20, 2020-21 and 2022-23 respectively.

2. Since all the issues involved in these three appeals are common and identical and belongs to one assessee therefore, they have been clubbed, heard together and consolidated order is being passed. Firstly we shall take **ITA No. 2631/Mum/2025, A.Y 2022-23** as lead case and facts narrated therein.

ITA No. 2631/Mum/2025, A.Y 2022-23

The revenue has raised the following grounds of appeal:

- 1) Whether on the facts and circumstances of case, the Ld. CIT(A) erred in deleting the addition of cash loan of Rs.1,00,00,000/-made by the AO u/s 69A r.w.s. 115BBE of the Act?*

2) Whether on the facts and circumstances of case, the Ld. CIT(A) erred in deleting the addition of interest received of Rs.25,16,782/-made by the AO u/s 694 r.w.s. 115BBE of the Act?

3) Whether on the facts and circumstances of case, the Ld. CIT(A) erred in allowing the appeal of the assessee by stating that the disallowance was made by the AO based on the loose excel sheet and statement of Shri Shailesh Desai by ignoring the fact that incriminating material and seized materials related to the assessee during the Search action?

4) Whether on the facts and circumstances of case, the Ld. CIT(A) erred in restricting the addition to 25% of indexed cost of improvement, instead of 50% disallowed by the AO of Rs 6,12,198/, in the absence of any details/submission filed by the assessee during the assessment proceedings and appellate proceedings?

5) The appellant craves leave to add, to amend, alter/delete and/ or modify the above grounds of appeal on or before the final hearing.

3. The brief facts are that the assessee is an individual, engaged in the business of wholesale of Industrial Chemicals in the name and style of 'Saraf Chemicals', and has filed his return of income on 27.09.2022 declaring total income of Rs. 4,28,31,300/-. The case of the assessee was selected for scrutiny proceeding and assessment order passed on 07.03.2024 wherein addition of Rs. 1,00,00,000/- on account of cash loan given u/s 69A, Rs. 25,16,782/- on account of Interest income u/s 69A and ad-hoc disallowance of Rs. 50% of indexation of Cost of Improvement of Rs. 6,12,198/- was made. Aggrieved by the order of AO, assessee preferred appeal

and Ld. CIT(A) after considered the facts and preposition of law partly allowed the appeal and deleted the addition u/s 69A of the Act. Aggrieved by the said order, revenue has preferred the present appeal on the grounds mentioned here in above Ground No. 1 to 3 are interrelated and interconnected and relates to challenging the order of Ld. CIT(A) in deleting the addition made by the AO u/s 69A r.w.s 115BBE of the Act. Therefore, we have decided to adjudicate these grounds through the present consolidated order.

4. We have heard counsels for both the parties, perused the material placed on record, judgment cited before us and also the order passed by the revenue authorities. From the records, we notice that a search and seizure action u/s 132 of the Act was carried out in the case Polisol-Apurva / Hemani / LNG Group on 18.11.2021 by Investigation Wing, Vapi. During the search proceedings some excel sheets were found from the employee Shailesh Desai which depict name of 'Artek Saraf' which describe cash loan and interest working relating to the assessee at page No. 11 to 14 of E-3 (Excel sheet), Further statement of Shailesh Desai was recorded wherein vide Q.13 he confirmed the excel sheet relating to cash loan and interest to the assessee. Therefore the addition of Rs. 1,00,00,000/- was made on account of cash loan given to Shailesh Desai and Rs. 25,16,782/- on account of cash interest received was

made u/s 69A of the Act which was deleted the same by Ld. CIT(A).

5. Now after hearing the parties at length, we found that the sole basis for making the additions in the hands of assessee is the 'excel sheet' found during the course of search. In this regard, the AO relied on Q.13 of statement of Shailesh Desai which pertain to Excel Sheet No. E-4 whereas the excel sheet referred in respondent case is Page No. 11 to 14 of E-3 (Excelsheet) 'Artek Saraf'. Hence, no statement of Shailesh Desai was recorded on excel sheet No. E-4. Further in Q.13 of the statement he has nowhere accepted the cash loan from the assessee. Therefore, reliance of AO on the statement of Shailesh Desai is ill founded. Even nowhere in statement of the Shailesh Desai recorded u/s 132(4) of the Act he accepted that assessee had given cash loan to him and paid interest on that. Apart Shailesh Desai had filed an affidavit in support that no cash loan was ever received from the assessee and the same was submitted during the cause of assessment proceeding for A.Y 2019-20, A.Y 2020-21 and A.Y 2021-22. Even for A.Y 2022-23, the AO himself recorded statement of Shailesh Desai u/s 131 on 12.02.2024 at back of the assessee wherein also the said Shailesh Desai denied having received any cash loan from the assessee.

6. Further nowhere in excel sheet copies the name of assessee was mentioned, which could give inference that sheet pertain to the assessee. The excel sheet named as 'Artek Saraf' which AO decoded the word 'Artek' as 'Artke Surfin Chemicals Ltd' and on perusal of MCA portal it was found that Artek Surfin Chemicals Ltd has only one director namely 'Harivats Saraf'. Thus the real identity of whom this excel sheet pertain was not duly established. Thus in our view loose excel sheet found from third party cannot be relied upon for making addition in the hands of assessee without any corroborative evidence.

7. From the totality of the facts the said excel sheet does not indicate assessee's name. Even excel sheet table is not showing that the entries are of cash loans as nowhere word cash is mentioned. Thus this document can be considered as 'dump document' without cogent evidence and no addition can be made on the basis of the dumb document.

8. It is important to note that AO has not carried out any independent enquiries, more particularly when the assessee had categorically denied the transactions and had provided affidavit of Shailesh Desai.

9. Even otherwise during the course of assessment the assessee had asked for cross examination of parties whose deposition was relied upon by AO vide letter dated 29.01.2024. But, no such permission was granted thus

denial of cross examination of parties violates the principal of natural justice. As per settled law no addition could be made unless the assessee is put to notice about such adverse materials and allowing cross examination of the parties whose statement is root cause of said addition. Reliance relied in this regard is placed upon the decision in case of ***Andman Timber Industries 281 CTR 241 (SC)***

10. It is also important to mention here that unsigned excel sheet was neither found at the premises of the Assessee nor he was author of these sheets. Therefore, no presumption u/s 132(4A) r.w.s. 292C be drawn and even there is no direct link between the entries in the said excel sheet and the assessee, even Shailesh Desai had not taken the name of the Assessee. Thus in the absence of such a crucial linkage, addition cannot be made in the case of the Assessee. Reliance in this regard is placed upon the decision in the case of Kailashben Manharlal Choksi Vs. CIT, [2008] 174 taxman 466, held that “*statement recorded u/s 132(4) during the search operation is not voluntary statement, and may not be given weightage at the time of assessment after search*”

11. Another important fact was brought to our notice, during the course of hearing that even the penalty levied u/s 271D on allegation of receiving cash loan from assessee was deleted in the hands of Shailesh Desai by Ld.

CIT(A) vide its order dated 27.12.2024. Thus, when the excel sheet was not treated as corroborative evidence in hands of party from where such sheet was recovered, then the same cannot be relied upon in making addition in the hands of assessee.

12. After considering the totality of the facts and circumstances and while relying upon then decisions in the following cases:

1. *DCIT V/s Periampillai Nadar Thangavelu Soundarapandian ITA No. 2752/ Chny/2024*
2. *DCIT V/s Mahalaxmi Infracontract Ltd. [2025] 173 taxmann.com 399 (Ahd. Trib.)*
3. *ACIT V/s Yerra Rajesh ITA No. 417/Viz/2024*
4. *Sanjay Taneja V/s ACIT [2025] 176 taxmann.com 392 (Del. Trib.)*
5. *Tarun Kumar Goyal V/s ACIT ITA No. 456/Hyd/2020*
6. *V. Sathyamoorthy & Co. V/s DCIT ITA No. 1024/Chny/2024*

13. which lay down the principal that addition cannot be made on the basis excel sheet found in third party premises without any corroborative evidence as the presumption u/s 292C r.w.s 132(4) cannot be apply in third party case. We are also of the view that under the above circumstances, additions made by AO are not sustainable. Therefore the grounds No. 1 to 3 raised by the revenue stands dismissed.

14. Ground No. 4, raised by the revenue relates to challenging the order of Ld. CIT(A) in restricting the additions made by the AO with regard to indexed cost of improvement.

15. We have heard the counsels for both the parties, perused the material placed on record, judgments cited before us and also the orders passed by the revenue authorities. From the records, we found that Ld. CIT(A) dealt in this ground in detail in para 10 to 10.2 which is reproduced herein below:

10. Decision on Ground No. 9: In this ground the appellant has challenged the disallowance of 50% of Cost of Improvement on sale of land. The appellant was owning a Land at Lonavala which was acquired on 19.04.2014. Appellant claimed that he incurred Rs. 5,00,000/- each in FY 2015-16 and FY 2016-17 on account of fencing, levelling of the land as it was situated at hill of Lonavala and other supervisory charges paid to locals in that area to keep vigil on land. But for want of supporting documents claim could not be fully verified by the AO. Therefore, the AO allowed only 50% of Cost of Improvement and disallowed the balance 50% of Cost of Improvement on estir ation basis.

10.1 During appellate proceedings, the appellant take same plea. After considering the peculiar facts of case and it is not denied by the AO that cost of improvement was not incurred. As the Land was situated at Hill of Lonavala which required more cost in terms of transportation and labour for doing land improvement and same time appellant has also failed to submit the complete details. Therefore, disallowance @25% of Cost of Improvement will serve the justice as the Rate of 50% is high.

10.2 In connection to the above, the AO is hereby direct to restrict the disallowance to 25% of Indexed cost of Improvement i.e. 3,06,099/- (25% of Rs. 12,24,396/-). Hence, Ground No. 9 of appeal is Partly Allowed.

16. After having gone through the facts of the present case, we found that AO has also admitted that the assessee had incurred cost of improvement since the land was situated at hills of Lonavala which requires more cost in terms of transportation and labour for doing land improvement. Although assessee has failed to submit the complete details, nevertheless under the peculiar facts and circumstances Ld. CIT(A) has rightly restricted the disallowance @ 25% as the rate of 50%. Consequently, this ground raised by the revenue stands dismissed.

17. No new facts or circumstances have been placed on record before us in order to controvert or rebut the findings so recorded by Ld. CIT(A). Therefore, we see no reasons to interfere into or to deviate from the lawful findings so recorded by Ld. CIT(A). Hence, the grounds raised and by the revenue stands dismissed.

ITA Nos. 5058 & 5059/Mum/2025, 2019-20 & 2020-21

18. Since the additions made in these appeals also pertains to the same excel sheet and also the same assessee therefore our decision in ITA No. 2431/Mum/2025, will apply *mutatis mutandis*. Consequently, the appeals filed by the assessee is allowed.

19. In the result, the appeal filed by the revenue stands dismissed and the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 22.12.2025

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Sd/-

**(SANDEEP GOSAIN)
JUDICIAL MEMBER**

Mumbai, Dated 22/12/2025

KRK, Sr. PS.

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai