

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH MUMBAI**

**BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER &
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No. 1959/Mum/2018
(Assessment Year: 2010-11)**

M/s. U. S. Reality Pvt. Ltd. 115-116, J.K. Chambers, Sector No. 17, Vashi, Navi Mumbai-400 705	Vs.	DCIT-10(3), 452, Aaykar Bhavan, M. K. Road, Mumbai- 400 020
PAN/GIR No. AAACU8241J		
(Applicant)		(Respondent)

Assessee by	Shri Madhur Agarwal, Ld. AR
Revenue by	Shri Vivek Perampurna, Ld. DR

Date of Hearing	23.12.2025
Date of Pronouncement	29.12.2025

आदेश / ORDER

PER MAKARAND VASANT MAHADEOKAR, AM:

This appeal is filed by the assessee against the order passed by the Commissioner of Income Tax (Appeals)-24, Mumbai [hereinafter referred to as “CIT(A)”], dated 21.12.2017, for Assessment Year 2010-11, arising out of the assessment order passed by the Assessing Officer under section 143(3) of the



Income Tax Act, 1961[hereinafter referred to as “the Act”], dated 28.03.2013.

2. The brief facts of the case are that the assessee is a company engaged in the business of land acquisition, investment and contracting. For the assessment year under consideration, the assessee filed its original return of income on 25.06.2010, declaring a total income of Rs. 1,03,79,180/-and the same was initially processed under section 143(1) of the Act.

3. Thereafter, notice under section 143(2) was issued on 26.08.2011 and duly served. Upon change of incumbent, a fresh notice under section 143(2) was issued on 06.08.2012. Further notices under section 142(1) along with questionnaires calling for various details were issued on 06.08.2012, 19.12.2012 and 15.02.2013.While framing the assessment for A.Y. 2010–11, the Assessing Officer also relied upon impounded material and the Special Audit Report pertaining to A.Y. 2009–10.

4. After examination of the submissions of the assessee, the impounded material, the Special Audit Report and the books of account, the Assessing Officer recorded a categorical finding that the books of account were incomplete and incorrect, and that the explanations furnished by the assessee were not acceptable on several counts. Accordingly, invoking the provisions of section 145(3) of the Act, the Assessing Officer rejected the books of account and proceeded to complete the assessment in the



manner provided under section 144, after holding that adequate opportunity of being heard had been afforded to the assessee.

5. During the assessment proceedings, the Assessing Officer noticed that the assessee had credited Rs. 91,00,00,000/- to the Reserve and Surplus Account without routing the amount through the Profit and Loss Account. When called upon to explain, the assessee stated that the entry was passed on ill advice, represented liquidated damages, involved no actual receipt or payment, and was an incorrect book entry sought to be rectified through revised financial statements filed beyond the time limit. The Assessing Officer rejected the explanation, holding that the original audited financial statements filed with the return and the Registrar of Companies could not be disregarded, that revised statements filed beyond time without a valid revised return were not acceptable in view of *Goetze (India) Ltd. v. CIT* (284 ITR 323), and that the assessee failed to establish the nature and source of the credit. The credit was treated as an artificial inflation of equity and added as unexplained cash credit under section 68.

6. The Assessing Officer further found that the assessee had claimed liquidated damages of Rs. 100,43,14,489/- in the Profit and Loss Account. The assessee explained that no such damages were payable or paid and that the entry was merely a book entry passed on ill advice. The Assessing Officer held that the assessee failed to discharge the onus under section 37(1) to prove that the



expenditure was actually incurred for business purposes, noted absence of supporting evidence and the assessee's own admission that the claim was not genuine, and consequently disallowed the entire amount.

7. It was also observed that the assessee had debited administrative expenses, business promotion expenses and professional fees aggregating to Rs. 4,64,79,295/-. The assessee admitted that these expenses were window-dressing entries and withdrew the claim through revised accounts. Since the revised Profit and Loss Account was not accepted and the assessee itself admitted that the expenses were not genuine, the Assessing Officer disallowed the entire amount.

8. Further, the Assessing Officer noted that the assessee had shown Rs. 16,21,59,316/- as long-term capital receipts, whereas investments in plots had increased only by Rs. 9,52,52,484/-. Considering that the assessee was engaged in trading of plots and that advances received were non-refundable, the Assessing Officer held the receipts to be revenue in nature and treated the difference of Rs. 6,69,06,832/- as business income.

9. After making these additions, the total income was assessed at Rs. 203,80,79,800/-. It was held that tax under the normal provisions was higher than tax under section 115JB, and penalty proceedings under section 271(1)(c) were initiated separately.



10. Aggrieved by the assessment order passed, the assessee filed an appeal before the CIT(A). During the appellate proceedings, the assessee challenged the rejection of books of account, non-consideration of the revised return of income, the validity of the special audit directed under section 142(2A), and the various additions and disallowances made by the Assessing Officer.

11. The assessee also raised an additional legal ground questioning the validity of the special audit, which was admitted by the CIT(A) as it went to the root of the assessment. The CIT(A) called for remand reports from the Assessing Officer and considered the assessee's submissions thereon. Further, the assessee sought admission of additional evidence under Rule 46A, which was objected to by the Assessing Officer. The CIT(A) declined to admit the additional evidence, holding that the conditions of Rule 46A were not satisfied.

12. On adjudication, the CIT(A) upheld the validity of the special audit and confirmed most of the additions and disallowances made by the Assessing Officer, while granting limited relief on certain issues such as verification of TDS credit. The grounds relating to levy of interest and initiation of penalty were treated as consequential. In the result, the appeal before the CIT(A) was partly allowed.



13. Further aggrieved by the order of CIT(A), the assessee is in appeal before us raising following grounds of appeal:

1. Special Audit u/s 142(2A):

1.1 *The Learned CIT(A) erred in holding that the Assessing Officer (AO) has correctly invoked power u/s 142(2A) to order special audit.*

1.2 *The Learned CIT(A) failed to appreciate that pre-conditions for ordering special audit were not satisfied to invoke the power u/s 142(2A) of the Act and further erred in considering extraneous material for upholding the ordering of special audit.*

2. Admission of Additional Evidence u/r 46A:

2.1 *The Learned CIT(A) erred in not admitting application for admission of additional evidence.*

2.2 *The Learned CIT(A) failed to appreciate that the Appellant was prevented by sufficient cause for not submitting the additional evidences and hence CIT(A) ought to have exercised the discretion judicially in favour of admission of the additional evidence in the interest of justice and equity.*

3. Assessment u/s 145(3) r.w.s. 144:

3.1 *The Learned CIT(A) erred in upholding the assessment u/s 145(3) rws 144 of the Act.*

3.2 *The Learned CIT(A) ought to have appreciated that provisions of section 143(3) of the Act are not attracted and furthermore since adequate opportunity was not given during the course of assessment the AO was not justified in making assessment u/s 144 of the Act.*

3.3 *The Learned CIT(A) failed to appreciate that the AO on one hand invoked the provisions of sections 145 r/w 144 of the Act and at the same time made addition based on the financials and the books of accounts maintained by the Appellant.*

4. Non-consideration of Revised Financials:

4.1 *The Learned CIT(A) erred in treating filing of revised financials as revised return and thereby failing to consider the revised corrected financials.*



4.2 *The Learned CIT(A) ought to have considered revised financials for adjudicating the issues on merits since there were errors in original financials filed with the return of income.*

4.3 *Without prejudice to above, assuming the same is to be treated as revised return, the CIT(A) ought not to have rejected the same on the ground that same was revised after the date prescribed by the Act but ought to have considered the revised financials as fresh claim made during the appellate proceedings for adjudicating the issues on merits.*

5. Inadequate opportunity of hearing:

5.1 *The Learned CIT(A) erred in holding that sufficient opportunity of hearing was given by the AO before making assessment.*

5.2 *The Learned CIT(A) failed to appreciate that 30 days' time is insufficient for giving details of additions running into Rs. 202.77 cr.*

6. Addition on account of liquidated damages – Rs. 91 cr.:

6.1 *The Learned CIT(A) erred in confirming the addition of Rs. 91 cr. on the ground that capital reserve consisting of the said amount ought to have been routed through profit and loss account and therefore the addition is upheld under section 68 of the Act.*

6.2 *The Learned CIT(A) failed to appreciate that there was no transaction entered into with respect to Rs. 91 cr. but same was only a book entry which did not yield any income which is chargeable to tax under the Act.*

6.3 *The Learned CIT(A) failed to consider the material filed in the course of the proceedings in support of the claim of the Appellant.*

7. Disallowance of expense – Rs. 100.43 cr.:

7.1 *The Learned CIT(A) erred in upholding the disallowance of Rs. 100.43 cr. by erroneously rejecting the explanation and material which indicated that the said claim was erroneously made in the original financials and no such amount was payable or paid to anyone.*

7.2 *The Learned CIT(A) failed to appreciate that the error in the financials and books of accounts in booking the said expense cannot be considered as income under the Act which is chargeable to tax.*

7.3 *The Learned CIT(A) ought to have appreciated and considered the revised financials or ought to have considered the original financials by*



accepting the explanation of the Appellant leading to the booking of the said expense.

8. Disallowance of administrative and selling expenses – Rs. 4,64,79,295/-:

8.1 *The Learned CIT(A) erred in upholding the addition of Rs. 4.64 cr. by rejecting the explanation of the assessee and relying upon the financials and books of accounts rejected by the AO.*

8.2 *The Learned CIT(A) ought to have considered the circumstances under which the entries relating to Rs. 4.64 cr. was made and further ought to have considered the revised financials filed during the course of the assessment proceedings for adjudicating the said claim.*

8.3 *The Learned CIT(A) failed to appreciate that no income arises merely on making book entries and therefore ought to have not confirmed the addition made by the AO.*

General:

The Appellant craves leave to add, alter or amend any of the aforesaid grounds of appeal.

14. During the course of hearing before us, the learned Authorised Representative for the assessee submitted that the order passed by the learned CIT(A) proceeds on a different and erroneous factual premise as compared to the facts emerging from the assessment record. It was contended that several factual aspects and chronological events have been incorrectly noted or assumed by the CIT(A), which have materially influenced the conclusions drawn in the impugned order. The learned AR specifically invited our attention to the various dates and stages of proceedings as recorded by the Assessing Officer vis-à-vis those referred to by the CIT(A), and pointed out material inconsistencies therein. On this basis, the learned AR submitted



that the matter requires fresh examination on correct facts and, therefore, prayed that the entire matter be restored to the file of the CIT(A) for de novo adjudication after properly appreciating the factual record and after affording adequate opportunity of being heard to the assessee.

15. Per contra, the learned Departmental Representative relied upon the order passed by the learned CIT(A).

16. We have carefully perused the assessment order, the impugned order of the learned CIT(A), and the contemporaneous records placed before us, including the extracts forming part of the appellate order itself. On a close examination, we find that the learned CIT(A), while adjudicating the issues relating to opportunity of hearing and validity of special audit under section 142(2A), has proceeded on a chronology of notices and events which is materially inconsistent with the chronology emerging from the assessment record.

17. Since the issue of reasonable opportunity and validity of proceedings is fundamentally dependent on the sequence and timing of statutory notices, we consider it appropriate to record the differences in dates as noticed from the two orders.

Sl. No.	Section / Event	As per AO's Assessment Order	As recorded by CIT(A)
1	Notice u/s 148	Not referred / not mentioned in the assessment order	Notice u/s 148 dated 24.11.2010 stated to have been issued



2	Return of income filed in response to notice u/s 148	AO proceeds with assessment without linking it to any return filed pursuant to section 148	Return stated to have been filed on 16.10.2010
3	Notice u/s 143(2)	AO's order does not clearly specify the date of first notice u/s 143(2)	Notice u/s 143(2) dated 08.12.2010 stated to be issued and served
4	Notice u/s 142(1)	AO refers generally to calling for details but without a consolidated date-wise narration	Notices u/s 142(1) stated to have been issued on 05.12.2011 and 16.12.2011
5	Transfer of case / fresh opportunity	Not specifically narrated in AO's order	Fresh opportunity u/s 143(2) stated to have been granted vide letter dated 10.10.2011
6	Show-cause for special audit u/s 142(2A)	AO refers to compliance failure and complexity but does not narrate a specific show-cause date	Show-cause stated to be part of notice u/s 142(1) dated 16.12.2011 , served on 19.12.2011
7	Order directing special audit u/s 142(2A)	AO's order records that special audit was directed with approval	CIT(A) records approval and direction vide order dated 30.12.2011

18. It is evident from the comparative analysis above that the chronology of statutory notices and procedural events, as relied upon by the CIT(A), does not flow from the assessment order itself. In particular, the issuance of notice u/s 148 dated 24.11.2010, the return allegedly filed on 16.10.2010, and the detailed sequencing of notices u/s 143(2) and 142(1) are facts recorded and relied upon by the CIT(A) independently, without corresponding narration or foundation in the assessment order.



19. The assessment order, on the other hand, proceeds primarily on the basis of the survey findings, alleged non-cooperation, and complexity of accounts, without recording a clear, section-wise, date-wise procedural history. The absence of any reference to issuance of notice u/s 148 in the assessment order, while the appellate authority proceeds on the premise that the assessment is pursuant to such notice, creates a serious factual disconnect.

20. Further, the chronological anomaly noted by us, namely that the return of income is stated to have been filed on 16.10.2010, whereas the notice u/s 148 is recorded as having been issued on 24.11.2010, has neither been reconciled nor explained. Such inconsistency goes to the root of the validity of the proceedings and cannot be brushed aside as a clerical lapse.

21. The findings of the CIT(A) on the issue of reasonable opportunity before directing special audit u/s 142(2A) are based on a reconstructed timeline of notices and service thereof, which is not demonstrably borne out from the assessment order or the assessment records as discussed therein.

22. In view of the above factual inconsistencies, particularly in respect of statutory notices, dates of compliance, and the foundational premise of reopening, we are of the considered view that the order of the CIT(A) has been passed on a factual matrix



which is materially different from, and not fully supported by, the assessment order.

23. Accordingly, in the interest of justice and fair play, we set aside the impugned order of the CIT(A) on these issues and restore the matter to the file of the CIT(A) with a direction to re-examine the issues afresh after reconciling and conclusively determining the correct chronology of notices and proceedings strictly with reference to the assessment records and thereafter adjudicate the grounds on merits in accordance with law after granting due opportunity of being heard to the assessee.

24. In the result the appeal is allowed for statistical purposes.

Order pronounced in the open court on 29.12.2025.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, Dated 29/12/2025

Dhananjay, 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

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