

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCHES "SMC", NEW DELHI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No.4893/DEL/2025**

Assessment Year: 2018-19

(Physical hearing)

Harish Banga, 264, Bank Colony, Hisar, Haryana – 125001. PAN – ABQPB 8845 F	Vs.	Assessment Unit, Faceless Assessment Unit Income Tax Department, New Delhi-110001.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri H.K. Batra, CA &
Shri Naman Chawla, CA
Revenue by : Shri Virender Kumar Singh, SR. D.R.
Date of Hearing : 04.12.2025
Date of Pronouncement : 19.12 .2025

O R D E R

Per : Pawan Singh, Judicial Member:

This appeal by the Assessee is directed against the order of CIT (A) dated 08.07.2025 vide Assessment Year 2018-19. The Assessee has raised following grounds of appeal:-

1.1 The Ld. CIT(A) erred in law and on facts in confirming the reopening of the assessment under section 147 read with section 148A of the Act, which was invalid and without jurisdiction.

1.2 The Ld. CIT(A) failed to appreciate that the Assessing Officer (AO) did not have tangible material or credible information to form a reasonable belief that income chargeable to tax had escaped assessment. The reliance on "flagged information" from the Insight Portal under the head "High Risk CRIU/VRU Information" was vague, non-specific, and lacked prima facie evidence linking the Appellant's commission income to any escapement of income.

1.3 The Ld. CIT(A) erred in dismissing the Appellant's contention that the reopening violated CBDT Notification No. 20/2022 dated 29/03/2022, as the notice u/s 148 was issued on 29/03/2022, post the issuance of the notification, which mandated faceless procedures under section 151A. The reopening process, including the issuance of notice u/s 148, was not compliant with the prescribed faceless mechanism, rendering it invalid.

1.4 The Ld. CIT(A) failed to consider that the order u/s 148A(d) dated 26/03/2022 was passed mechanically, without independent application of mind, and did not address the Appellant's submissions that the alleged undisclosed commission income of Rs. 13,50,380/- was duly disclosed in the original return of income filed on 30/03/2019.

1.5 The Ld. CIT(A) erred in holding that the Appellant's participation in assessment proceedings estopped him from challenging the validity of the notice u/s 148. The jurisdictional defect in reopening cannot be cured by participation, as held in various judicial precedents, including **CIT v. Chetan Gupta (2022) 441 ITR 1 (SC)**.

1.6 Without prejudice, the addition made by the AO and confirmed by the Ld. CIT(A) exceeds the scope of reopening, as the notice u/s 148A(b) was issued solely for disallowance of expenses, and no new income was alleged to have escaped assessment.

2.1 The Ld. CIT(A) erred in law and on facts in confirming the disallowance of commission expenses of Rs. 9,00,000/- paid to Smt. Suman Devi, treating the same as non-genuine and not allowable under section 57 of the Act.

2.2 The Ld. CIT(A) failed to appreciate that the Appellant had furnished substantial evidence during appellate proceedings, including:

- a) Copy of invoice raised by Smt. Suman Devi;
- b) PAN number of Smt. Suman Devi;
- c) Bank statements reflecting payments made through account payee cheques;
- d) Copy of Aadhaar Card of Smt. Suman Devi, establishing her identity.

2.3 The Ld. CIT(A) erred in holding that the genuineness of the transaction was not proved, despite the Appellant's submission that payments were made through banking channels (via account payee cheques dated 15/01/2018 and 18/01/2018 totaling Rs. 9,00,000/-) and corroborated by bank statements. The requirement of proving genuineness beyond banking transactions is contrary to settled law, as held in **CIT v. Daulat Ram Rawatmull (1973) 87 ITR 349 (SC)**.

2.4 The Ld. CIT(A) failed to consider that the commission paid to Smt. Suman Devi (2/3rd of the total commission of Rs. 13,50,380/-) was in accordance with the verbal agreement for introducing new customers to M/s Future Maker Life Care Pvt. Ltd., which was a common practice in multi-level marketing (MLM) businesses.

2.5 The Ld. CIT(A) erred in dismissing the Appellant's reliance on judicial precedents, which are squarely applicable, including **CIT v. Anwar Ali (1970) 76 ITR 696 (SC)**, where expenses supported by

documentary evidence were held allowable unless disproved by the Revenue.

2.6 Without prejudice, the Ld. CIT(A) failed to appreciate that even if the commission income is treated as "Income from Other Sources" u/s 56, the expenses incurred wholly and exclusively for earning such income (i.e., commission paid to sub-agent) are allowable u/s 57(iii) of the Act.

2.7 The Ld. CIT(A) erred in not allowing at least a reasonable portion of the expenses, as claimed by the Appellant, despite evidence of services rendered by Smt. Suman Devi, which is contrary to the principles of natural justice and equity.

3.1 The Ld. CIT(A) erred in law and on facts in upholding the AO's treatment of commission income of Rs. 13,50,380/- as "Income from Other Sources" u/s 56 instead of "Profits and Gains of Business or Profession" u/s 28 of the Act.

3.2 The Ld. CIT(A) failed to appreciate that the Appellant was engaged in the systematic and organized activity of earning referral commissions through MLM schemes, which constitutes a business activity as per section 2(13) of the Act, as held in **CIT v. P.V. Subba Rao (1988) 173 ITR 295 (AP)**.

3.3 The Ld. CIT(A) erred in relying on the illegal nature of the MLM scheme operated by M/s Future Maker Life Care Pvt. Ltd. to deny the business character of the Appellant's income, as the Appellant was not involved in the management or operation of the scheme but merely acted as an agent earning referral commissions.

3.4 Without prejudice, even if the income is treated as "Income from Other Sources," the Ld. CIT(A) erred in disallowing the expenses u/s 57(iii), as the commission paid to Smt. Suman Devi was directly linked to earning the referral commission.

4.1 The Ld. CIT(A) erred in dismissing the appeal without adequately considering the additional evidence submitted by the Appellant during appellate proceedings, including the PAN, Aadhaar Card, and bank statements of Smt. Suman Devi, which were not available during assessment proceedings due to practical difficulties.

4.2 The Ld. CIT(A) failed to exercise powers under Rule 46A of the Income-tax Rules, 1962, to admit additional evidence, which was crucial for proving the identity and genuineness of the commission payments.

4.3 The Ld. CIT(A) erred in not remanding the matter to the AO for verification of the additional evidence, thereby denying the Appellant a fair opportunity to substantiate his claim, which is violative of the principles of natural justice.

4.4 The Ld. CIT(A) did not provide a reasoned finding on the Appellant's submissions and mechanically upheld the AO's order, rendering the appellate order perverse and unsustainable.

5.1 The Ld. CIT(A) erred in not adjudicating on the initiation of penalty proceedings u/s 270A for alleged under-reporting of income, which was raised as a ground of appeal before the CIT(A).

5.2 The Ld. CIT(A) failed to appreciate that the disallowance of expenses does not constitute under-reporting of income, as the commission income of Rs. 13,50,380/- was fully disclosed in the return of income, and the dispute pertains only to the allowability of expenses.

5.3 The initiation of penalty proceedings is premature and unjustified, as no willful concealment or misreporting of income has been established, as held in **CIT v. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC)**.

6.1 The Appellant craves leave to add, alter, amend, or delete any of the above grounds of appeal at or before the time of hearing.”

2. Rival submission of both the parties heard and perused the material available on record. The Ld. Authorized Representative (in short the 'Ld. AR') on behalf of the Assessee has submitted that the case of the Assessee was reopened on the basis of information available with the Assessing Officer that the Assessee has received commission of Rs.13,50,380/- from Future Makers Life Care Pvt. Ltd. the details of such information was provided to the assessee in the form of Annexure which notice under Section 148 (A) (b), copy of which is filed on record. The Assessee in response to such notice submitted his reply and contended that the Assessee while filing the return of income has declared income from the business by running a hotel in the name of Mid City Hotel, income from commission, out of which net commission of Rs.4,58,380/- is shown in the computation of

income. The Assessee disclosed that he has received commission of Rs.13,50,380/- and out of which Rs. 9,00,000/- was paid to earn such commission income. The Assessee furnished all such explanation in his reply dated 15.06.2022. On receipt of reply furnished by the Assessee, the Assessing Officer passed order under Section 148 (A) (d) dated 26.03.2022. In the order, the Assessing Officer substituted/change the basis of reopening. The Assessing Officer after serving notice under Section 148 dated 29.03.2022 proceeded for reassessment. Reassessment was completed on 10.03.2023. The Assessing Officer instead of making addition on the basis which was based for reopening, made addition on other issues, the Assessing Officer disallowed the commission payment of Rs.9,00,000/- debited by Assessee. Though, the Assessee furnished required details to substantiate genuineness of commission paid to Smt. Suman Devi. The Assessing Officer disregarded the submission of the Assessee and made addition/ disallowance of such commission payment under section 57. The Ld. CIT (Appeal) confirmed the action of Assessing Officer. The Ld. AR of the Assessee submitted that the Hon'ble Jurisdictional High Court in *Jindal Saw Limited Vs. DCIT reported in 2025 170 taxmann.com 634 (Delhi)* held that wherein allegation made in the order under Section 148 (A) (d) were in variance which was set out in the notice under section 148A(b), order under Section 148 (A) (d), was to be set aside. The Ld. AR reiterated his submission that the allegation in the notice under

Section 148 (A) (d) was that the Assessee received commission income from Future Makers Life Care Pvt. Ltd. However, in the assessment order the AO made addition on account of disallowance of commission paid by Assessee to Suman Devi. Thus, the ratio of decision of Hon'ble Jurisdictional High Court in *Jindal Saw Ltd. Vs DCIT (Supra)* is squarely applicable on the facts of the case.

3. On merit, the Ld. AR of the Assessee submits that the Assessee furnished the details of commission payment and proved the genuineness of the commission payment. During the assessment the commission recipient was not in the contact with the Assessee therefore, the confirmation could not be filed. Now, the Assessee has filed affidavit of Suman Devi confirming the fact that she has received commission for her service as a sub-agent for introducing new customers to Future Makers Life Care through assessee, as per verbal understanding with the Assessee. Since, such evidence could not be filed during assessment, now; the Assessee has filed application for admission of additional evidence. The additional evidences are relevant and essential to adjudicate the real controversy about the payment of commission for earning commission income. To support his submission on legal issue, the Ld. AR of the Assessee already relied upon following case laws :-

- ***Jindal Saw Ltd. Vs Deputy/Assistant Commissioner of Income-tax*** ([2025] 170 taxmann.com 634 (Delhi)[23-

12-2024]) wherein the Hon'ble High court held that order u/s 148A(d) of the act is unsustainable as it is at variance with the allegations that were made in the impugned notice issued under Section 148A(b) of the Act.

- **Pr. CIT v. Sunlight Tour and Travels (P.) Ltd. [2024] 169 taxmann.com 673 (Delhi)** In this case the Hon'ble High Court held that section 147 cannot be interpreted to mean that Assessing Officer could assess other incomes of assessee even in cases where no addition is made on account of reasons for which reassessment was initiated.
- **Pr. CIT v. Jaguar Buildcon (P.) Ltd. [2024] 165 taxmann.com 757 (Delhi).** In this case the Hon'ble High Court held that where assessee's case was reopened on basis of information relating to accommodation entry received from an entity but no addition was made in assessment order on this account since amount was already added in order under section 153A, other addition made by Assessing Officer which did not form part of reasons recorded by him was not valid.
- **Anand Cine Services (P.) Ltd. v. Asstt. CIT [2024] 169 taxmann.com 236 (Madras):** In this case the Hon'ble High Court held that Where Assessing Officer issued reopening notice on ground that assessee sold land and deleted certain amount under head 'land' in fixed assets of balance sheet without offering capital gain for assessment, since no additions were made in reassessment order as regards deletion of relevant immovable property which formed basis for reopening assessment, other addition made reassessment order could not be sustained.
- **Hon'ble Delhi High Court** in the case of **Ranbaxy Laboratories Limited Vs. CIT 2011 336 ITR 136** where it has been held that "**it is essential that the items in respect of which the reasons had been recorded are**

assessed. If the AO accepts that the items for which reasons are recorded have not escaped assessment, it means he had no "reasons to believe that income has escaped assessment" and the issue of the notice becomes invalid".

- ***CIT V. Jet Airways (1) Ltd. [2010] 195 Taxman 117 (Bombay)***, the Bombay High Court held that if after issuing notice under section 148, Ld. Assessing Officer accepts contention of assessee and holds that income, for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income; if he intends to do so, a fresh notice under section 148 would be necessary, legality of which would be tested in event of a challenge by assessee.
 - ***Aishwarya Rai Bachchan v. Pr. CIT [2022] 135 taxmann.com 335 (Mumbai – Trib.)***, ***ITAT*** held that where AO recorded reasons on basis of which reassessment was initiated, but did not make any addition in reassessment proceedings, in such case primary reason to believe that income had escaped assessment would fail and reassessment could not be treated as a valid order.
4. On the other hand, the Ld. Sr. DR for the Revenue supported the order of lower authorities. The Ld. Sr. DR submits that in fact addition is made on the basis of same information which was the basis of issuance of notice under Section 148 (A) (b). On merit the Ld. Sr. DR. submits that the Assessee failed to substantiate the genuineness of commission payment to Suman Devi. Copy of agreement/other document to establish genuineness of Assessee's claim were not furnished. The

Assessee merely furnished copy of bank certificate. Since the Assessee failed to prove the identity of the person, thereby AO rightly disallowed such commission payment.

5. I have considered the rival submission of both the parties and have gone through the orders of the lower authorities carefully. I find that Assessee has raised multiple grounds of appeal however, in my considered view; there are two substantial ground of appeal, first, validity of notice under Section 148 and assessment order passed thereof and secondly on merit, if the Assessee duly substantiate genuineness of commission payment. So far as legal ground is concerned, on perusal of notice under Section 148 (A) (b), I find that AO along with such notice provided the details of allegation/information which was basis of issuing such notice. Such information was provided in the form of Annexure to notice under Section 148 (A) (b). In the annexure, the AO recorded/mentioned that : *“It is brought to your notice that this office has received flagged information in your case for the financial year 2017-18 relevant to the assessment year 2018-19 which reveals that you received commission amounting to Rs. 13,50,380/- from M/s Future Maker Life Care Pvt. Ltd. This office has also information that the M/s Future Maker Life Care Pvt. Ltd. was running Ponzi Scheme in the garb of earning high returns for persons who deposited money with them for trading health care products whereas no actual business done by the aforementioned company.*

2. In view of the above, you are required to show cause as to why a notice u/s 148 of the Income Tax Act, 1961 should not be issued on the basis of information discussed in the preceding para which delineates that income chargeable to tax has escaped assessment in your case for the relevant assessment year i.e. 2018-19.”

6. I find that in response to notice dated 12.03.2022, the Assessee filed his detailed reply dated 18.03.2022. In the reply the Assessee submitted that he has received referral commission from Future Makers Life Care Private Ltd. for introduction of customer for the scheme allotted of said company. He received total commission of Rs. 13,50,380/- out of which he further paid commission of Rs.9,00,000/- to Smt. Suman Devi for earning such commission income. The Assessee also furnished computation of his total income which was the basis while filing return of income. The assessee explained that it was agreed with sub-agent/Suman Devi that she will receive 2/3rd of referral commission pertaining to her customers. Thus, out of total commission of Rs.13,50,380/-, 2/3rd of which that is Rs.9,00,000/- was paid through account payee cheque. I find that the AO accepted such explanation of Assessee. However, the AO while passing the order under Section 148 (A) (d) has not proposed for making such addition, rather change the basis of reopening and doubted the commission paid by Assessee and proposed to disallow under Section 57. Ultimately, while

passing the assessment order the AO disallowed the commission of Rs.9,00,000/- for the want of agreement and other supporting documents. The action of the AO was confirmed by CIT (A) on the issue / grounds related with the objection of the Assessee that order under Section 148 (A) (d) is at variance. The Ld. CIT(A) while confirming the action of AO held that the AO followed the prescribed procedure. On merit, the addition was confirmed for the want of identity and genuineness of commission payment. It was also held that the Assessee has not explained the nature of services and actual rendering of service with supporting evidences.

7. Before me the Ld. AR of the Assessee on legal issue vehemently argued that basis of addition in the assessment order as well as in the order under Section 148 (A) (d) is at variance with the information supplied with notice under Section 148 (A)(d). On careful perusal of information, in the annexure with notice under Section 148 (A) (b), I find that the AO in the said information noted that commission payment made by Future Makers Life Care was without actual business. However, the commission income shown by Assessee was accepted by AO. The AO doubted the commission paid by Assessee to Smt. Suman Devi. Thus, the basis of addition is quite different than the allegation of issuance of notice under Section 148 (A) (b).
8. I find that the Hon'ble Jurisdictional High Court in Jindal Saw Vs. DCIT (*Supra*) held that wherein the allegation made in the

notice under Section 148 (A) (b) is at variance with the grounds raised in the order passed under Section 148 (A) (d), impugned notice as well as impugned order was to be set aside. Hence, I find merit in the submission of Ld. AR of the Assessee that addition is at variance with the allegation of information about escapement of income. I also find merit in the submission of Assessee that the commission received by the Assessee from Future Makers Life Care Pvt. Ltd. is accepted by the AO. Thus, the substantial ground of appeal raised by the Assessee is allowed. Even otherwise on merit, I find that the right from the beginning the Assessee has explained that out of total commission earned from Future Makers Life Care, the Assessee parted with 2/3rd of commission income to Smt. Suman Devi. Suman Devi referred certain clients while acting as a sub-agent. Before AO the Assessee furnished bank statement of Assessee. However, the other evidence could not be furnished by Assessee. Before Tribunal the Assessee filed application for admission of additional evidence. The Assessee furnished PAN, Aadhar Card, Bank Statement and Affidavit of Suman Devi. On perusal of such details I find that such details and evidence are material to effectively adjudicating the controversy before me. Thus, considering the relevancy of evidence such additional evidence taken on record. Considering the fact that commission payment was made through account payee cheque, Assessee furnished bank statement before the AO. Now the assessee also furnished

evidence of identity of Suman Devi in the form of Aadhar Card and also filed her affidavit to substantiate the purpose of commission received by her, therefore, I find that Assessee has successfully proved the identity and genuineness of commission payment. Hence, the Assessee also succeeded on merit. In the result, both the substantial ground of appeal is allowed.

9. In the result, appeal of the Assessee is allowed.

Order pronounced in the open court on 19.12.2025, with the direction to place result on notice board at Delhi.

**Sd-
(PAWAN SINGH)
JUDICIAL MEMBER**

Mumbai

* Tarun Kushwaha
Sr. Private Secretary.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Delhi.