

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
And
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.4905/M/2025
Assessment Year: 2012-13**

Shah Petroleum Products, BPCL Petrol Pump, Opp. Shoppers Stop, Ghatkopar Mahul Road, Chembur, Mumbai, Mumbai – 400089. PAN – AABFS2738Q	Vs.	ACIT, Circle 27(3), Room No. 423, 4 th Floor, Tower No. 6, Vashi Railway Station Commercial Complex, Vashi, Navi Mumbai – 400703.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Subodh Ratnaparkhi, Ld. A.R.
Revenue by : Ms. Kavitha Kaushik, SR. D.R.

Date of Hearing : 06.11.2025
Date of Pronouncement : 06.01.2026

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 26.06.2025, impugned herein, passed by the National Faceless Appeal Centre (NFAC)/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2012-13.

2. In this case, the AO had received the information dated 19.03.2019 from the DDIT (Inv.) Unit – 5(4), Mumbai to the effect that in a survey action under Section 132 of the Act carried out in the case of M/s. Evergreen Enterprise, statement of Mr. Nilesh Bharani, being partner of such enterprises recorded under Section 132 (4) of the Act, wherefrom undisclosed activity of money

lending and borrowing "in unaccounted cash" being operated in the premises of M/s. Evergreen Enterprise was unearthed by Mr. Nilesh Bharani. As per information, two sets of ledgers were maintained at the premises of M/s. Evergreen Enterprise, one was for lenders (*Bharnaar*) and other was for Borrowers (*Lenaars*). The lender's ledger contains the code of the lenders, cash amount lent by the lender borrower-wise, rate of interest for amount lent and the date up to which interest thereon has been paid "in cash". The borrower ledger contains the code of the lender, name of the borrower, cash amount borrowed by the borrower/lender-wise, rate of interest for the amount borrowed and the date up to which interest thereon has been charged in "cash". The statements of the employees were also recorded under Section 132 (4) of the Act, wherein they accepted that all cash transactions are handled by them and they are involved in the collection and distribution of cash loan and interest to both lenders and the borrowers. In the information, it was also reported that the Assessee has also lent "cash" loan of Rs. **46,00,000/-** in the FY 2011-12 through M/s. Evergreen Enterprise.

3. Thus, on the aforesaid information, the case of the Assessee was reopened under Section 147 of the act by issuing the notice dated 13.04.2019 under Section 148 of the Act.

4. The AO also depicted the following table in the order:

Cash amount lent (Code Word)	Ledger Number	Name	Date
2000	D/06/J	JitubhaiDedhia – M/s Shah Petroleum Products	02-12-2011
1500	D/06/J	JitubhaiDedhia	02-12-2011
500	D/06/J	JitubhaiDedhia	16-09-2011
100	D/06/J	JitubhaiDedhia	15-09-2011

500	D/06/J	JitubhaiDedhia	14-12-2011
4600			

5. The AO observed that the first column of the above table shows that code word "2000" denotes the amount of Rs.20,00,000/-. The second column shows the ledger number in a code word i.e. "D/06/J" assigned to the Assessee and the lender's ledger. The above code words in lender ledger were duly admitted and revealed during the course of statement of Mr. Nilesh Bharani and employees of M/s. Evergreen Enterprise recorded by the investigation wing at the time of such proceedings.

6. The AO ultimately made the addition of Rs.46,00,000/- more or less, on the basis of statements Mr. Nilesh Bharani (partner) and employees of M/s. Evergreen Enterprise and on the basis of table depicted above:

7. The Assessee being aggrieved challenged the said addition by filing the first appeal before the Ld. Commissioner, however, could not get any relief, as the Ld. Commissioner more or less on the same reasoning as of the Assessing Officer and by observing the Assessee has failed to disprove or rebut with cogent evidence, such facts and findings given by the AO, therefore no interference is required against the assessment order.

8. Thus the Assessee being aggrieved against the aforesaid addition has preferred the instant appeal.

9. The Ld. Counsel for the Assessee contradicted the findings of the authorities below, whereas the Ld. D.R. refuted the claim of the

Assessee by supporting the orders passed by the authorities below and / or making and sustaining the addition under consideration.

10. We observe from the record that in the case of Mayur Kanjibhai Shah vs. Income Tax Officer – 25 (3) (1) (ITA No. 3243/M/2023) decided on 31.01.2024, the identical addition has been made on the basis of identical information and aforesaid code words, by the then AO, which was dealt with by the Hon'ble Coordinate Bench of the Tribunal, who ultimately deleted the identical addition by considering the identical facts and circumstances, by observing and holding as under :

"2. In the instant case, the Assessee being a sole proprietor of a retail business of readymade ladies dress and fabrics, had shown its total income at Rs.5,05,980/- by filing its return of income on dated 28/09/2012 under section 139(1) of the Act, which was processed under section 143(1) of the Act on 15/04/2013.

3. Subsequently, on the information received from the DDIT-Tax Investigation Wing 5(4), Mumbai to the effect that findings arose from search action under section 132 of the Act carried out in the case of M/s Evergreen Enterprises with an undisclosed activity of money lending and borrowing in unaccounted cash loan and interest thereon. As per the information received, the Assessee has lent cash loan of Rs.3,25,00,000/- in the financial year 2011-12. The information available was carefully perused. On the basis of aforesaid information available with the AO coupled with the fact that no scrutiny assessment was completed for the A.Y. 2012-13", the Assessing Officer formed the reason to believe that income chargeable to tax as indicated above to the tune of Rs.3,25,00,000/- had escaped assessment within the meaning of section 147 of the Act, as the Assessee has failed to disclose fully and truly all material facts in the year under consideration by furnishing his return of income for A.Y. 2012-13. The Assessing Officer consequently issued the notice under section 148 of the Act.

4. During the assessment proceedings, the Assessee filed reconciliation of income and TDS statement as on 31/03/2012, audited balance-sheet of the proprietorship concern M/s Ella, bank account statements, etc. Further, the Assessee vide letter dated 13/09/2019 also stated that we did not lend any cash loan of Rs.3,25,00,000/- to M/s Evergreen Enterprises / Shri Nilesh Bharani during the financial year 2011-12 relevant to A.Y. 2012-13. The Assessee also requested to provide the copy of documents / evidence on which he wanted to cross examine M/s Evergreen Enterprises / Shri Nilesh Bharani.

5. The Assessing Officer, though considered the denial/claim of the Assessee, however, not found acceptable and observed Shri Nilesh Bharani of M/s Evergreen Enterprises has given statement under section 132(4) of the Act to the effect that he was in the business of lending / borrowing money in cash (unaccounted and undisclosed business). Further, in the course of search, a

diary has also been seized wherein inter-alia following entries have been recorded in code words, which reads as under:-

- "i) Code 'E/11/N'-
- ii) Name as per Ledger 'NENSIBHI ELLA
- iii) Coded Amount (In '000)32500
- iv) Contact person 'NANCYBHAI -
- v) F.Y. 2011-12"

6. The Assessing Officer ultimately, on the basis of statement of Shri Nilesh Bharani, and without giving any opportunity of cross examination to the Assessee and by considering the aforesaid entries in the diary seized during the course of search, made the addition of Rs.3,25,000,00/- under section 69A of the Act. Further, the AO also added an amount of rs.39,00,000/- on account of alleged interest paid @12% p.a. on the amount of Rs.3,25,00,000/-.

7. The Assessee being aggrieved challenged the aforesaid additions as well as reopening of the case before the Ld. Commissioner, who, by impugned order not only affirmed the reopening of the case under section 147/148 of the Act but also affirmed the additions on merit, by reproducing the assessment order in entirety and concluding as under:-

"On the other hand, the appellant has not much to offer with regard to the merits of the case. He has delved mostly on the technical aspects, questioning the reopening, the issue of cross examination etc."

As stated above, this has already been handled above by the AO. The appellant has not provided the AO with material fit enough not to treat the cash loan as unexplained money. He has not provided me with enough substance either.

In such circumstances, I find no reason to interfere with the order of the AO."

8. The Assessee being aggrieved is in appeal before us and contended against the impugned order, whereas the Ld. DR duly supported the orders passed by the authorities below.

9. Heard the parties and perused the material available on record and given thoughtful consideration to the rival claims of the parties and peculiar facts and circumstances of the case. It is very much clear from the impugned order that the same is an un-reasonable order and passed in cryptic manner, therefore, on this aspect itself, the impugned order is liable to be set aside. However still we want to go to the merits of the case.

We observe that the Assessing Officer made the additions mainly on the ground that Shri Nilesh Bharani in his statement recorded under section 132(4) of the Act has admitted that he was in the business of lending / borrowing money in cash (unaccounted and undisclosed business). Further, in the course of search, a diary has been seized wherein inter-alia following entries have been recorded and the Assessee's name is also appearing in the same diary in coded word. For clarity ready reference, we are again reproducing the entries relied upon by the Assessing Officer:-

- "i) Code 'E/11/N'-
- ii) Name as per Ledger 'NENSIBHI ELLA'
- iii) Coded Amount (in '000)-32500
- iv) Contact person 'NANCYBHAI -
- v) F.Y. 2011-12

10. It is an admitted fact that the Assessing Officer has not entertained the Assessee's request for cross examination of Shri Nilesh Bharani / M/s Evergreen Enterprises and also it is a fact that Shri Nilesh Bharani subsequently retracted his statement. Therefore, his statement made earlier become doubtful as claimed by the Assessee and cannot be relied as substantive evidence. Even otherwise, we have failed to understand that how the name as mentioned in the said diary, as 'NENSIBHI ELLA' can be attributed to the Assessee's name. Further, how the coded amount of Rs. 32,500 can be construed as Rs.3,25,000,00/-. Further, how the Assessee is connected with the said narration of entries written in diary. Further, as per Assessee's claim, the mobile number noted in said diary is even otherwise do not belong to the Assessee and the Assessing Officer also failed to verify the owner of the said number to connect with the Assessee.

11. We by giving thoughtful consideration to specific facts and circumstances of the case, are of the considered view, that retracted statement of Shri Nilesh Bharani/ M/s Evergreen Enterprises who otherwise neither named nor specified the role and also not connected the Assessee specifically and the aforesaid facts/entries made in the diary as noted above by us, in fact, is not at all substantive material to make and sustain the addition as done by the authorities below in this case and, therefore, we are inclined to delete the addition. Consequently, the addition under consideration stands deleted.

12. In the result, appeal filed by the Assessee stands allowed.

11. We further observe that same search and survey action in the case of M/s. Evergreen Enterprise and the information and the identical additions on the basis of code words/figures, have also been considered and dealt with by the Hon'ble Co-ordinate Benches of the Tribunal in the case of *Parag Motilal Savla vs. ITO (Ward) - 27 (2) (5) (ITA No. 5220/M2023)* decided on 29.04.2024 and *Parag Motilal Savla vs. NFAC (Delhi) (ITA No. 4221/M/2023)* decided on 06.01.2025 wherein by considering the judgment of the Hon'ble Co-ordinate Bench of the Tribunal in the case of *Mayur Kanjibhai Shh (Supra)*, ultimately deleted the identical additions.

12. As the facts are not deviated from the facts dealt with by the Hon'ble Co-ordinate Benches of the Tribunal in the cases referred to

above and therefore, the issue is squarely in favour of the Assessee and thus, we are inclined to delete the addition under consideration which is otherwise un-sustainable in the eyes of law. **Thus, in view of the above, the addition is deleted.**

14. In the result, Assessee's appeal is allowed.

Order pronounced in the open court on 06.01.2026.

**Sd/-
(PRABHASH SHANKAR)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

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, Mumbai.