

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No.	A.Y.	Appellant	Respondent
7089/Mum/2025	2013-14	Income Tax Officer, Ward-19(3)(1), 4 th Floor, Room No. 405, Piramal Chambers, Lower Parel, Mumbai.	Raashi Sawhney, 3901, 39 th Floor, The Imperial South Tower, BB Nakashe Marg, Tardeo, Mumbai. [PAN: AITPM7566L]
7090/Mum/2025	2014-15		
7091/Mum/2025	2015-16		

C.O.No.	A.Y.	Cross Objector	Respondent
388/Mum/2025 (In ITA No. 7089/Mum/2025)	2013-14	Raashi Sawhney, 3901, 39 th Floor, The Imperial South Tower, BB Nakashe Marg, Tardeo, Mumbai. [PAN: AITPM7566L]	Income Tax Officer, Ward-19(3)(1), 4 th Floor, Room No. 405, Piramal Chambers, Lower Parel, Mumbai.
389/Mum/2025 (In ITA No. 7090/Mum/2025)	2014-15		
390/Mum/2025 (In ITA No. 7091/Mum/2025)	2015-16		

For Assessee :	Shri Nimesh Agarwal
For Revenue :	Shri Umashankar Prasad, CIT-DR

Date of Hearing :	12-01-2026
Date of Pronouncement :	13-01-2026

ORDER

PER BENCH:

These are three appeals filed by the Revenue against the respective order(s) of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’] and the Cross Objections filed by the assessee against the respective order(s) of the Ld.CIT(A),

pertaining to Assessment Years (AYs.) 2013-14, 2014-15 and 2015-16 respectively.

2. At the outset, the Ld. CIT-DR submitted that all these matters involve common issue and, therefore, can be taken up together. All these appeals and Cross Objections were thus heard together and are being disposed-off by this common order, for the sake of convenience.

3. With the consent of both the parties, Revenue's appeal in ITA No. 7089/Mum/2025 and the Cross Objection of the assessee in C.O.No. 388/Mum/2025 for the AY. 2013-14 were taken as lead case, wherein the Revenue and the Assessee have raised the following grounds of appeal:

Grounds raised by the Revenue in ITA No. 7089/Mum/2025 (AY.2013-14):

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) justified the admission of documentary evidence other than the evidence produced during the course of proceedings before the assessing officer, has been filed in terms of Rule 46A should have been remanded to the AO under the provisions of the Act*

2. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) justified to allow the appeal of the assessee on the addition made of Rs. 8,81,25,000/-in the assessment order u/s. 147 rus 144 of the I.T. Act, despite the fact that the assessee has failed to prove the genuineness of the transactions"*

3. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) justified to allow the appeal of the assessee on the addition made in the assessment order, despite the fact the assessee has failed to prove the creditworthiness of her husband and failed to provide the documentary evidences during the assessment proceedings."*

4. *"Whether on the facts and the circumstances of the case and in law, Ld CIT(A) erred in ignoring the decisions in Sumati Dayal v. CIT 214 ITR-80 and CIT v. Durga Prasad More 82 ITR 540 (S.C.) and coming to a conclusion only on the basis of the arguments advanced by the assessee."*

5. *The appellant craves leave to add, alter, amend or withdraw any ground of appeal before or during the course of the hearing."*

Grounds raised by the assessee in C.O.No. 388/Mum/2025 (AY.2013-14):

“Ground No. 1

On the facts and circumstances of the case and in law, the Assessing Officer (the Ld. AO) erred in passing the reassessment order dated 21 March 2022 under section 147 read with section 144 of the Income Tax Act, 1961 (‘the Act’) without appreciating that the reassessment proceedings are void-ab-initio, invalid and bad in law and consequently ought to be quashed.

The Respondent prays that the re-assessment proceedings be quashed and the additions made be deleted.

Ground No. 2

On the facts and circumstances of the case and in law, the Ld. AO erred in making an addition of Rs. 8,81,25,000/- under section 69 of the Act, without appreciating that the income generated from said investments was already disclosed in the return of income filed of the Husband of the Respondent.

Ground No. 3

On the facts and circumstances of the case and in law, the Ld. AO erred in levying interest under section 234A of the Act.

The Cross-objector prays that the AO be directed to delete the levy of interest under section 234A of the Act.

Ground No. 4

On the facts and circumstances of the case and in law, the Ld. AO erred in levying interest under section 234B of the Act.

The Cross-objector prays that the AO be directed to delete the levy of interest under section 234B of the Act.”

4. Briefly stated facts of the case are that the assessment in this case was completed u/s. 147 r.w.s. 144 r.w.s. 144B of the Income Tax Act, 1961 (‘the Act’), wherein the AO has brought to tax a sum of Rs. 8,81,25,000/- u/s. 69 r.w.s. 115BBE of the Act as ‘unexplained investments’ for the reason that the assessee has failed to explain the sources of such investments during the course of assessment proceedings. During the appellate proceedings, the Ld.CIT(A)-NFAC, Delhi has deleted the whole of the addition and allowed relief to the assessee. Against the

said deletion, the Revenue is in appeal before us and the assessee has also taken certain grounds in her cross-objection.

5. During the course of hearing, the Ld. CIT-DR drawn our reference to the findings of the Ld.CIT(A) contained at paras No. 3.4 to 3.9 of the impugned order, which read as under:

“3.4. In assessee’s case, the assessment for Assessment Year 2013-14 was reopened in terms of AIR notification available with the department which had shown huge amount of investments in bonds, mutual fund units and shares. There had been no corresponding return to justify the source of such investments and therefore the case was reopened by issued of notice u/s 148. It seems that such notice was communicated online through mail. The assessee did not comply with such notice and no return of income was filed. Thereafter certain notices u/s 142(1) were issued to the assessee again through mail seeking specific details of the investment reported by the various 3rd parties where the investments had been made. There had been no compliance on part of the assessee and therefore, a Best Judgement Order u/s 144 r.w.s. 147 was passed treating the entire amount of reported investment as undisclosed income of the assessee for the year.

3.5. The assessee said that she was a house wife and married to Shree Viraj Rajvir Sawhney. Shree Viraj Rajvir Sawhney is assessed to income tax with PAN AQGPS9461H. Shree Sawhney is a regular filer of income tax and can be categorized as high net-worth individual (HNI) with business interests in India and also in the USA. The assessee claimed that the investments which had been assessed as her investment are actually the investment of her husband. In support of such claim she had submitted the Form 26AS against her PAN which clearly showed number of parties against the investments in various mutual fund units, shares, bonds etc. as 2. The column for Single/ Joint Party transaction also showed such investments as Joint party transactions. She had also submitted the Form 26AS of her husband Shree Viraj Sawhney, where all such investments are also reflected in identical fashion.

3.6. During the appeal, the assessee claimed that in the return of income of Shree Sawhney for the assessment year, the investments are duly disclosed along with the income/loss generated out of sale of some of the units in Mutual Funds which were reflected in such 26AS statement. The appellant assessee also submitted copies of statements issued by the Mutual Fund companies, where from it is seen that the first holder of such investment are stated to be Shree Viraj Sawhney and the name of the assessee is shown as second holder. The bank statement of the assessee as well as her husband were also submitted and on perusal of such bank

statements, it was seen that the transactions were made in the investments mentioned in the assessment order as made from the bank account of Shree Sawhney and not from the bank account of the assessee. It is a fact that the assessee's name is also reflected as second holder in such bank account. However, since the investments have been completely owned up by Shree Sawhney and the source of such investment are reflected in the return of income of the husband, the assessee's argument that she is not liable to be assessed for the investments made is acceptable.

3.7. The assessee also claimed that for the identical reasoning, she had received a physical notice of reopening for the immediately preceding Assessment Year 2012-13. However, for Assessment Year 2012-13 a physical notice was received by her and she had complied with such notice and explained that the investments were actually made from the income of her husband. The assessee claimed with documentary evidence that on being satisfied with her reply, the reopening proceedings for Assessment Year 2012-13 were dropped by the department and no demand of tax was raised against her for Assessment Year 2012-13.

3.8. Considering the above submissions of the assessee, I am satisfied that the investment for which the assessee is taxed through order u/s 144 r.w.s. 147 is not correct. The return of ShreeVirajSawhney had been assessed u/s 143(3) for Assessment Year 2012-13, 2013-14, 2014-15 and again in 2018-19 and no adverse inference was drawn in such assessment and the declared income had been accepted by the department where such investments had been duly disclosed.

3.9. In light of the above discussion, I agree with the assessee that she was not liable to pay any tax on any income for the investments for which assessment u/s 144 was made in her case after reopening. Therefore, the Assessing Officer is directed to delete the demand raised in her case in full through the order u/s 144 w.r.s. 147."

6. Drawing our reference to the aforesaid findings, the Ld.CIT-DR submitted that the Ld.CIT(A)-NFAC, Delhi has allowed relief to the assessee, basis certain additional evidences/documentation furnished by the assessee for the first time during the appellate proceedings. In this regard, it was submitted that it is not clear from the impugned order as to whether the assessee has moved any application under Rule 46A of the Income Tax Rules, 1962 ('the Rules') before the Ld.CIT(A), NFAC, Delhi and acceptance thereof, in absence of any findings by the Ld CIT(A), NFAC, Delhi and without prejudice to the same, the additional evidences so

submitted by the assessee before the Ld.CIT(A)-NFAC, Delhi have not been confronted to the AO nor any remand report has been called for by the Ld.CIT(A)-NFAC, Delhi. It was submitted that it was a case where the matter was reopened u/s 147 after recording reasons regarding huge investments made by the assessee and the assessee has not even responded to the notices and show-cause issued during the assessment proceedings nor any documentation has been submitted before the AO to substantiate the source of huge investments totaling to Rs 8,81,25,000/-. It was accordingly submitted that the Ld.CIT(A)-NFAC, Delhi was not justified in admitting the additional evidences and basis the same, deleting the huge additions without even confronting the AO regarding the additional evidences so sought to be submitted by the assessee for the first time during the appellate proceedings. It was accordingly submitted that the matter be set aside to the file of the Ld.CIT(A) so that necessary opportunity is provided to the AO to verify the additional evidences submitted by the assessee for the first time before the Ld.CIT(A) and furnish his comments in that regard and basis the same, the matter may be decided by the ld CIT(A) on merits of the case.

7. The Ld.AR has been heard, who has relied on the findings of the Ld. CIT(A). It was submitted that the Ld.CIT(A) has deleted the addition after noting that the source of such investments are reflected in the return of income of assessee's husband and such return of income was subject to scrutiny assessment proceedings and no adverse inference has been drawn by the Assessing officer in case of assessee's husband and basis other documents submitted by the assessee. It was further submitted that the assessee has also taken legal ground of appeal in its Cross Objections (Ground No. 1 of the assessee's Cross Objection) wherein the assessee has

challenged the re-assessment proceedings u/s. 147 of the Act as invalid and bad in law and sought time to present the arguments in this regard.

8. In his rejoinder, the Ld.CIT-DR submitted that the assessee has taken a similar legal ground before the Ld. CIT(A) and even the same has not been adjudicated upon by the Ld.CIT(A) and, therefore, even on this ground, the matter deserves to be set aside to the file of the Ld.CIT(A). It was further submitted that the assessee in its Cross Objection vide Ground No. 2 has challenged the action of the AO in making the addition of Rs. 8,81,25,000/- u/s. 69A of the Act, wherein the said addition already stood deleted by the Ld.CIT(A) and, therefore, there is no basis for raising the said Cross Objection before this Tribunal and Grounds No. 3 & 4 of the assessee's Cross Objection are in relation to levy of interest u/s. 234A and 234B of the Act, which are consequential in nature.

9. We have heard the rival contentions and perused the material available on record. We find that it is a case where the matter was reopened u/s.147 basis information that the assessee has made investments to the tune of Rs 8,81,25,000/- and thereafter, in absence of compliance to various notices and show-cause issued by the AO, the assessment proceedings have been completed and order u/s. 147 r.w.s. 144 r.w.s. 144B of the Act has been passed wherein the AO has brought to tax a sum of Rs. 8,81,25,000/- u/s. 69 r.w.s. 115BBE of the Act as 'unexplained investment' for the reason that the assessee has failed to explain the sources of such investment during the course of assessment proceedings. During the appellate proceedings, the Ld.CIT(A)-NFAC, Delhi has deleted the whole of the addition and allowed relief to the assessee. The said finding of the Ld.CIT(A) is basis acceptance of explanation submitted by the assessee that such investments have been made by her

husband and the source of such investments are reflected in his return of income and to corroborate the same, the assessee has submitted various documentation in form of return of income of her husband for various assessment years, the bank statements, the mutual fund statements, Form 26AS and the assessment orders passed u/s 143(3) in case of her husband. These documentation so submitted by the assessee were evidently not submitted before the Assessing officer and have thus been submitted for the first time before the Ld.CIT(A) and which the assessee wishes to rely upon thus qualifying them as additional evidences u/s Rule 46A.

10. The law no doubt empowers the Ld.CIT(A) to admit the additional evidences during the appellate proceedings and the Ld.CIT(A) has the powers to admit the additional evidences, however the same is subject to fulfillment of conditions as so specified which prevented the assessee from furnishing such evidences before the Assessing officer and the Ld.CIT(A) has to record specific findings while admitting the additional evidence. Further, given that these additional evidences are sought to be submitted by the assessee for the first time during the appellate proceedings, the Assessing officer is also required to be provided an opportunity and his report should be called for as specifically provided in Rule 46A(3). Basis the assessee's application and after taking into consideration the remand report submitted by the Assessing officer, the Ld.CIT(A) can pass appropriate order u/s Rule 46A(2) either accepting or rejecting the additional evidences and thereafter, the matter can be proceeded with in examining the merits of the case.

11. In the instant case, on perusal of the impugned order, it is not clear whether the assessee has moved any application under Rule 46A for

admittance of additional evidences, whether any remand report was called for and submitted by the AO and how the conditions enabling the admittance of additional evidence were found to be satisfied by the Ld. CIT(A). We also couldn't find any specific findings of the Ld. CIT(A) for admission of additional evidences. During the course of hearing, the Ld. AR couldn't controvert the aforesaid factual position as emanating from the impugned appellate order or brought to our notice any documentation which proves otherwise. We thus, find that the whole procedure so laid down under Rule 46A for admission of additional evidence has been completely side-stepped and not adhered to by the Ld. CIT(A) for reasons best known to him. In our considered opinion, the same is not just a technical breach but goes to very foundation and core of subject matter of dispute which require not just dispensation of justice but at the same time, fair opportunity to both the sides which has been statutorily mandated under the aforesaid Rules and which evidently has not been adhered to in the instant case. We therefore find merit in the contentions advanced by the Ld. CIT-DR that the Ld. CIT(A) was not justified in admitting the additional evidences without even confronting the AO regarding the additional evidences so sought to be submitted by the assessee for the first time during the appellate proceedings. At the same time we note that the Ld. CIT(A) has returned a finding that for the Assessment Year 2012-2013, reassessment proceedings initiated in the case of the Assessee in identical facts and circumstances were dropped after considering the identical explanation and documentary evidence furnished by the Assessee. The relevant findings of the Ld. CIT(A) recorded in paragraph 3.7 of the order read as under:

“3.7. The assessee also claimed that for the identical reasoning, she had received a physical notice of reopening for the immediately preceding Assessment Year 2012-13. However,

for Assessment Year 2012-13 a physical notice was received by her and she had complied with such notice and explained that the investments were actually made from the income of her husband. The assessee claimed with documentary evidence that on being satisfied with her reply, the reopening proceedings for Assessment Year 2012-13 were dropped by the department and no demand of tax was raised against her for Assessment Year 2012-13.”

On cumulative consideration of the facts and circumstances of the present case, the matter is set aside to the file of the AO so that appropriate opportunity is provided to the AO to verify the additional evidences submitted by the assessee. The AO is directed to pass a speaking order as per law after considering the additional evidences and the submissions of the assessee, if any, in this regard. It is clarified that reasonable opportunity of being heard shall be granted to the assessee.

12. In view of the same, the ground taken by the assessee challenging the legality of reopening of the assessment proceedings u/s 147 admittedly not decided by the Ld.CIT(A), and other grounds on merits of the case are also left open.

13. The appeal of the Revenue and the cross-objection of the assessee are thus allowed for statistical purposes.

Revenue's appeals and Assessee's Cross Objections
for AYs. 2014-15 and 2015-16:

14. Both the parties fairly submitted that the facts and circumstances of these cases are identical to facts and circumstances of AY. 2013-14 and similar grounds of appeal have been taken by Revenue and assessee in her cross-objection except for the amount of additions involved which is

Rs 18,26,74,776/- for A.Y 2014-15 and Rs. 19,87,02,000/- for AY. 2015-16 and similar contentions as aforesaid may be considered. Considering the submissions so made, our aforesaid findings in context of AY. 2013-14 would apply *mutatis mutandis* to these appeals so filed by the Revenue and Cross Objections filed by the assessee. Hence, following the same, these appeals of the Revenue and Cross Objections of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 13-01-2026

Sd/-
[RAHUL CHAUDHARY]
JUDICIAL MEMBER

Sd/-
[VIKRAM SINGH YADAV]
ACCOUNTANT MEMBER

Mumbai,
Dated: 13-01-2026

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai