

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI MAKARAND VASANT MAHADEOKAR,
ACCOUNTANT MEMBER**

**ITA No.4760/Mum/2025
(Assessment Year :2008-09)**

A B Exports Private Limited D-1088, New Friends Colony New Delhi- 110 065	Vs.	Income Tax Officer Ward - 9(1)(1), Mumbai
PAN/GIR No.AACCA4280F		
(Appellant)	..	(Respondent)

Assessee by	Ms. Timsi Sharma (virtually appeared)
Revenue by	Shri Surendra Mohan, Sr. DR
Date of Hearing	20/01/2026
Date of Pronouncement	21/01/2026

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The present appeal has been preferred by the assessee, A.B. Exports Private Limited, assailing the order dated 16.05.2023 passed by the learned Commissioner of Income Tax (Appeals)-29, New Delhi, arising out of the assessment framed under section 143(3) read with section 147 of the Income Tax Act, 1961 for the Assessment Year 2008-09. The assessee has, inter alia, challenged the validity and sustainability of the

additions made on account of alleged unexplained cash credits under section 68 and alleged unexplained expenditure by way of commission payments, both emanating from transactions relating to subscription of Optionally Fully Convertible Debentures (OFCDs), which, according to the Assessing Officer, were nothing but accommodation entries procured through concerns allegedly controlled by Shri Praveen Kumar Jain.

2. At the threshold, it is noted that the appeal before us is accompanied by a petition for condonation of delay. The assessee has placed on record a detailed explanation stating that the impugned order of the learned CIT(A)-29, New Delhi was received by it on 23.05.2023 and, within the prescribed period of limitation, it had filed an appeal before the Hon'ble ITAT, Delhi Bench, being ITA No.2089/Del/2023 on 21.07.2023. It has been explained that, at the time of filing of the said appeal, the jurisdiction of the assessee was lying with DCIT, Central Circle-27, New Delhi and, therefore, the filing before the Delhi Bench was bona fide and in accordance with the jurisdictional understanding prevailing at that point of time. Subsequently, however, since the assessment order had been passed by the Income Tax Officer, Ward 9(1), Mumbai, the ITAT, Delhi Bench dismissed the appeal as not maintainable for want of territorial jurisdiction and granted liberty to the assessee to file an appeal before the appropriate forum, namely, ITAT, Mumbai, observing that the issue of condonation of delay, if any, would be considered by the Mumbai Bench. The assessee has further

averred that the delay was neither deliberate nor intentional, but occurred due to the peculiar jurisdictional circumstances, and that it has a strong case on merits, inasmuch as grave prejudice would be caused if the delay is not condoned.

2.1. Upon careful consideration of the said averments and keeping in view the settled principle that a litigant should not be shut out at the threshold on technicalities, particularly when the delay is sufficiently explained and the conduct is bona fide, we find that there are no laches or contumacious conduct attributable to the assessee. Accordingly, the delay in filing the present appeal is condoned.

3. The assessee is aggrieved by the following additions sustained by the learned CIT(A), namely, an addition of ₹5,00,00,000/- on account of unexplained cash credit under section 68 of the Act and a further addition of ₹10,50,000/- on account of alleged unexplained expenditure by way of commission.

4. The factual matrix, in brief but in necessary detail, is that the Assessing Officer initiated reassessment proceedings under section 147 of the Act on the basis of information received from the Investigation Directorate, Mumbai, to the effect that a search and seizure action under section 132 had been carried out on 01.10.2013 at the residential and business premises of Shri Praveen Kumar Jain. During the said search, it was allegedly found that Shri Praveen Kumar Jain was engaged in the business of providing accommodation entries in the nature of bogus sales, unsecured loans and share application money

through a web of benami concerns and that he had admitted the same in his statement recorded under section 132(4) of the Act. On the basis of such information, it was noticed by the Assessing Officer that M/s A.B. Exports Private Limited was one of the alleged beneficiaries of such accommodation entries, having received funds from entities purportedly controlled by the Praveen Jain group. The Assessing Officer referred to transactions aggregating to ₹5,00,00,000/- stated to have been routed through the following entities, namely, Alka Diamond Industries Limited, Nakshatra Business Private Limited (earlier known as Hema Trading Co. Pvt. Ltd.), Olive Overseas Private Limited (earlier known as Realgold Trading Co. Pvt. Ltd.), Triangular Infocom Limited (earlier known as Lexus Infotech Ltd.) and Yash-V Jewels Private Limited, details of which were set out in the assessment order and are reproduced hereunder.

Sr. No.	Name & Address of the hawala Party	PAN	Bill Amount (In Rs.)
1	Alka Diamond Industries Limited	AAACA5236D	95,00,000
2	Nakshatra Business Private Limited (Earlier known as Hema Trading Co. P. Ltd.)	AABCH4279G	105,00,000

3	Olive Overseas Private Limited (Earlier known as Realgold Trading Co. P. Ltd.)	AACCR4512K	100,00,000
4	Triangular Infocom Limited (Earlier known as Lexus Infotech Ltd)	AAACL4646G	1,00,00,000
5	Yash-V Jewels Private Limited	AAACY1119P	1,00,00,000

5. During the course of the reassessment proceedings, the Assessing Officer issued various statutory notices and show cause communications calling upon the assessee to explain as to why the aforesaid transactions should not be treated as accommodation entries. In response thereto, the assessee, vide its detailed reply dated 09.03.2016, placed on record a comprehensive explanation, inter alia, contending that it had received a sum of ₹5,00,00,000/- during the year under consideration towards subscription of Optionally Fully Convertible Debentures (OFCDs); that the OFCDs were subscribed and allotted strictly in accordance with the applicable provisions of the Companies Act and the relevant rules and regulations; that the subscribing companies had submitted duly filled and signed application forms along with board resolutions

authorising the investments; that the consideration for the subscription of OFCDs had been received through normal banking channels by way of RTGS; that upon receipt of the applications, the assessee company had vetted the same, allotted the OFCDs and issued the necessary certificates as per law; that confirmations in the form of affidavits had been directly filed by the subscribing companies before the Assessing Officer; and that each of the said subscribing companies had furnished documentary evidences to establish their identity, creditworthiness and the genuineness of the transactions, including certificates of incorporation, PAN, income-tax returns, audited annual reports and bank statements reflecting the payments made to the assessee, copies of which form part of the paper book.

6. The assessee further pointed out that the subscribing entities were regularly showing the OFCDs as investments in their respective books of account; that no material whatsoever had been found during the search and seizure operation to indicate that any cash had been received back by the subscribing entities against the issue of OFCDs; and that the proposed addition was based solely on the statement of Shri Praveen Kumar Jain recorded under section 132(4) of the Act, which had already been retracted by him on 25.04.2014, i.e., much prior to the initiation of reassessment proceedings in the assessee's case. The assessee thus contended that there was no legally sustainable basis to

invoke section 68 of the Act in respect of a duly documented and routed capital transaction.

7. The Assessing Officer, however, brushed aside the assessee's explanation and proceeded to make an addition of ₹5,00,00,000/- under section 68 of the Act and a further addition of ₹10,50,000/- on account of alleged unexplained expenditure by way of commission, primarily on the following grounds: firstly, that the affidavits submitted by the subscribing companies were baseless and self-serving; secondly, that the retractions made by Shri Praveen Kumar Jain and his associates were afterthoughts and a desperate attempt to protect the interests of the beneficiaries; thirdly, that the subscribing companies did not present themselves for personal examination despite opportunities; and fourthly, that the assessee had failed to satisfactorily explain the nature and source of the sum of ₹5,00,00,000/- with cogent evidence. The Assessing Officer thus treated the entire OFCD subscription amount as unexplained cash credit and further estimated commission expenditure thereon, the relevant observations of the Assessing Officer being reproduced hereunder.

“1. The affidavits submitted by the above-mentioned companies at this stage are baseless

2. The retractions made by Praveen Kumar Jain on 25.04.2014 and his associates are baseless, afterthought and a desperate attempt to protect the interests of the various client / beneficiaries though the assessment in appellant's case initiated much later vide Notice u/s 148 dated 31.03.2015.

3. The above-mentioned companies did not present itself for examination though the replies from the said companies were received by the Ld. AO along with affidavits towards confirmation for subscription of OFCD and other relevant documents.

4. The appellant failed to explain the nature and source of sum of Rs 5,00,00,000/-with proper evidence and failed to offer any satisfactory explanation.”

8. In appeal, the learned CIT(A)-29, New Delhi, passed an ex parte order, upholding the additions aggregating to ₹5,10,50,000/-. Before us, the learned counsel for the assessee has filed an extensive paper book comprising confirmations, affidavits, bank statements, corporate documents, board resolutions, audited financial statements and other relevant materials to demonstrate the genuineness of the OFCD transactions and to controvert the adverse inferences drawn by the Assessing Officer. It has been vehemently contended that the learned CIT(A) erred in passing an ex parte order without affording adequate opportunity of hearing and without adjudicating upon the merits of the evidences produced, thereby vitiating the appellate proceedings.

9. Upon careful consideration of the rival submissions, the material placed on record and the peculiar factual matrix of the case, we find that the learned CIT(A) has disposed of the appeal *exparte* in a perfunctory and mechanical manner, without addressing the substantive contentions of the assessee. In the facts and circumstances of the present case, and in the interest

of substantial justice, we deem it fit and proper to restore the matter to the file of the learned CIT(A) for de novo adjudication on merits. The learned CIT(A) shall afford due and effective opportunity of hearing to the assessee, consider all the documents, evidences and explanations filed, and thereafter pass a reasoned order in accordance with law. It is clarified that we have not expressed any opinion on the merits of the additions, and all issues are left open to be adjudicated afresh.

10. Accordingly, the impugned order of the learned CIT(A) is set aside and the matter is remanded to his file for fresh adjudication in accordance with law, after considering the submissions and evidences filed by the assessee.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 21st January, 2026.

Sd/-
(MAKARAND VASANT
MAHADEOKAR)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 21/01/2026
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai