

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

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

**ITA No.7409/Mum/2025
(Assessment Year :2015-16)**

Airoplast Private Limited Dubhash House, 15 J.N. Aradia Marg Ballard Estate Mumbai – 400 038	Vs.	Income Tax Officer, Ward 2(1)(1), Mumbai
PAN/GIR No.AABCA2280L		
(Appellant)	..	(Respondent)

Assessee by	Ms. Ritika Agarwal, virtually appeared
Revenue by	Shri Surendra Mohan, Sr. DR
Date of Hearing	19/01/2026
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 against the order dated 11 November 2024 passed by the National Faceless Appeal Centre Delhi for the quantum of reassessment framed under section 147 for Assessment Year 2015 16, whereby an addition of ₹2,45,00,000 has been sustained under section 69 of the Act. The assessee has also challenged the validity of the

reopening proceedings and has further assailed the ex parte appellate order.

2. At the outset, it is noticed that the appeal is barred by a delay of 17 days. The assessee has filed a petition for condonation of delay supported by an affidavit, wherein it has been stated that the email address and contact number mentioned in Form No 35 filed before the NFAC belong to the deponent, that the impugned order dated 11 November 2024 was not received on the said registered email address nor through SMS on the registered mobile number, and that subsequently a demand letter dated 21 August 2025 for Assessment Years 2015 16 and 2016 17 was received by postal delivery on 25 August 2025 at the registered address of the assessee company. It is further stated that upon checking the income tax portal, it came to the knowledge of the assessee that the impugned order dated 11 November 2024 had been passed, whereafter the relevant material was collected on legal advice for the purpose of preparation of the present appeal. Having regard to the marginal nature of the delay, the explanation tendered, and the settled principle that procedural technicalities ought not to defeat substantive justice, the delay is condoned.

3. On merits, the brief facts, as emanating from the record, are that the assessee filed its return of income for Assessment Year 2015 16 on 30 September 2015 declaring nil income after claiming loss of ₹5,54,253. The original assessment was completed under section 143 3 on 16 October 2017 accepting the loss returned. Subsequently, on perusal of the profit and loss account and the balance sheet schedules, the Assessing Officer noted that the

assessee had shown non current investments aggregating to ₹4,60,00,000 on account of purchase and subscription of shares, comprising ₹2,15,00,000 in the shares of M s Wavell Industries Pvt Ltd and ₹2,45,00,000 in the shares of M s JKM Holdings Pvt Ltd, reflected under Note 7 as non current investments. The Assessing Officer further recorded that the assessee had paid share premium of ₹3,036.40 per share to M s Wavell Industries Pvt Ltd and share premium of ₹3,518.90 per share to M s JKM Holdings Pvt Ltd. He then observed that in the case of M s JKM Holdings Pvt Ltd, during the year under consideration, the company had issued 11,412 shares and received share premium of ₹9,99,58,800 at ₹8,759.10 per share, whereas the assessee company had shown share premium paid of only ₹3,518.90 per share. On this basis, he formed a prima facie view that the source and nature of the investment remained unexplained within the meaning of section 69.

4. The Assessing Officer further referred to the shareholding pattern of M s JKM Holdings Pvt Ltd and observed that one Mr Udyant Malhotra held 94,395 shares out of total 1,08,620 shares, that is 87 percent of the shareholding, and that, as per the submission of the assessee company, 6,670 shares had been issued to it during Assessment Year 2015 16, which constituted more than 6 percent of the total share capital. According to the Assessing Officer, such allotment should have reflected in the books or shareholding pattern of M s JKM Holdings Pvt Ltd, which, according to him, was neither reflected nor justified by the assessee. He also noted that the assessee did not submit any

details of the investment pertaining to M s Wavell Industries Pvt Ltd for the year under consideration. On these premises, notice under section 148 was issued on 30 March 2021.

5. In the reassessment order, the Assessing Officer held that the creditworthiness and genuineness of the share premium had been examined from the records available and that during the year under consideration M s JKM Holdings Pvt Ltd had issued 11,412 shares and received share premium of ₹9,99,58,800 at ₹8,759.10 per share, whereas the assessee company had shown only ₹3,518.90 per share. He reiterated that the alleged allotment of 6,670 shares to the assessee was not reflected in the books or shareholding pattern of the investee company. Observing that it was a limitation matter and no further opportunities could be granted, he treated the investment of ₹2,45,00,000 as unexplained investment under section 69 and added the same to the total income of the assessee.

6. The learned CIT Appeals passed the order ex parte on the ground that no details or replies had been furnished by the assessee in response to the notices issued, as tabulated in the appellate order. Before us, the learned counsel for the assessee submitted that the entire premise of the addition rests on an incorrect assumption of facts and an erroneous application of section 69. It was contended that during assessment proceedings the assessee had furnished the board resolution approving the investment, valuation reports supporting the face value and premium paid per share, board resolutions of M s JKM Holdings

Pvt Ltd and M s Wavell Industries Pvt Ltd approving allotment of shares, and copies of private placement offers and allotment forms. It was submitted that the transaction was genuine, duly recorded in the assessee's books, and that the Assessing Officer neither disputed the recording of the investment nor the source from which the investment was made. It was further urged that even if the investee company had not reflected the allotment in its records, no addition under section 69 could be made in the hands of the assessee on that basis.

7. The learned Departmental Representative, on the other hand, submitted that since the documents relied upon by the assessee were not examined by the lower authorities, the matter ought to be remanded to the file of the CIT Appeals for fresh verification.

8. We have considered the rival submissions, perused the impugned orders and the material referred to in the assessment record. The controversy lies in a narrow compass, namely, whether the sum of ₹2,45,00,000 invested by the assessee in shares of M s JKM Holdings Pvt Ltd can, on the facts recorded by the Assessing Officer, be treated as unexplained investment within the meaning of section 69, merely because the premium per share noted by the Assessing Officer in the case of the investee company from other issuances is higher and because, according to the Assessing Officer, the assessee's shareholding or allotment is not reflected in the shareholding pattern or books of the investee company. In order to answer this, one must return to the statutory architecture of section 69, for deeming provisions do not operate on impressions; they operate on jurisdictional facts.

9. Section 69 embodies a specific legal fiction, where in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of account, if any, maintained by him, and the assessee offers no explanation about the nature and source of such investments, or the explanation offered is not satisfactory in the opinion of the Assessing Officer, then the value of the investments may be deemed to be the income of the assessee. Thus, the provision is triggered by two foundational conditions, first, a finding that the investment is not recorded in the assessee's own books, and second, absence of a satisfactory explanation regarding the nature and source of such investment. Unless these jurisdictional facts are established, the deeming fiction cannot be invoked as a matter of convenience or conjecture.

10. Tested on these touchstones, we find that in the present case, the Assessing Officer's own narration negates the first jurisdictional condition. The investment is not a hidden or off book transaction unearthed from external sources; rather, it is noticed by the Assessing Officer from the assessee's own balance sheet, where the non current investment of ₹4,60,00,000 is reflected in Note 7, including the component of ₹2,45,00,000 in M s JKM Holding Pvt Ltd. In other words, the very source from where the Assessing Officer draws his suspicion is the assessee's own recorded disclosure. Once the investment stands recorded in the assessee's books, the statutory gateway of section 69, investments not recorded in the books, is, on the Assessing Officer's own recorded

facts, not crossed. There is no finding, even remotely, that the assessee had made any investment outside the books or that there existed any parallel or extra consideration over and above what is recorded. This is not a mere technicality; it is the very jurisdictional fact on which section 69 rests.

11. The second jurisdictional limb, absence of satisfactory explanation as to the nature and source, also remains unestablished on the reasoning recorded by the Assessing Officer. The assessment order proceeds not on the discovery of an unexplained source of funds, but on an inference drawn from a comparative figure of premium in the hands of the investee company from other issuances and an alleged mismatch or non reflection in the investee company's shareholding pattern. Even on their face, these reasons do not address source in the sense contemplated by section 69. The Assessing Officer has not recorded that the assessee lacked funds, that bank trail was absent, that payment was in cash, that there was circular layering, or that the consideration emanated from undisclosed sources. Indeed, the addition has not been made on any finding that the assessee was financially incapable of making the investment or that it failed to explain the immediate source. What is questioned is not the assessee's source, but the investee company's issuance pattern and the premium benchmarks. That line of reasoning may give rise to enquiries at the level of the investee company or prompt verification of documentation, but it does not, by itself, satisfy the statutory ingredients of section 69 in the hands of an investor whose investment is recorded.

12. We also find the central premise adopted by the Assessing Officer, namely, if the investee company has received premium at ₹8,759.10 per share, the assessee's premium at ₹3,518.90 per share is suspect, to be, in itself, an insufficient foundation for section 69. The statute does not create a presumption that premium must be uniform across all allottees, nor does it permit treating a recorded investment as unexplained merely because the pricing differs from some other issuance, unless there is material to show that the assessee has, in fact, paid more than what is recorded or that some part of the investment represents unaccounted funds. A difference in premium, without evidence of on money or unrecorded consideration, cannot substitute the statutory requirement that the investment is not recorded and source is unexplained. The Assessing Officer's approach, therefore, converts section 69 from a provision dealing with unrecorded investments into a provision policing commercial pricing, which is not its function.

13. Equally, the other limb of the Assessing Officer's reasoning, that the assessee's shareholding should have reflected in the investee company's shareholding pattern or books but was allegedly not reflected, cannot, by itself, justify an addition under section 69 in the assessee's hands. Even assuming, for the sake of argument, that the investee company's records are deficient or that its shareholding pattern does not reflect the allotment in the manner expected by the Assessing Officer, that circumstance does not establish that the assessee's investment is unrecorded in its

own books, nor does it establish that the assessee's source is unexplained. Section 69 is a deeming provision aimed at taxing an assessee's unexplained investment; it is not a vicarious penalty for perceived gaps in a third party's corporate records. If the Assessing Officer harboured doubt on the genuineness of allotment, the proper course was to verify the assessee's documentary trail and, if required, seek confirmation from the investee company, rather than to straightaway fasten the investment as unexplained in the assessee's hands.

14. What further weighs with us is that the assessment order itself indicates that the assessee had made submissions with respect to allotment of 6,670 shares, and the assessee before us has consistently maintained that it had also furnished board resolutions, valuation reports and private placement or allotment forms. Yet, the Assessing Officer has not examined these documents nor has he recorded any finding that such documentation is false, fabricated or non genuine. The assessment order, instead, states that as it was a limitation matter and time was at the fag end, no further opportunities could be granted. Limitation constraints cannot legitimise an addition under a deeming provision without satisfaction of jurisdictional facts. A deeming addition is not an administrative default option; it is a serious statutory consequence that must be supported by enquiry, verification and legally sustainable reasoning.

15. In view of the foregoing discussion, we hold that, on the facts recorded in the assessment order, the addition of ₹2,45,00,000

under section 69 is unsustainable. The investment is admittedly recorded in the assessee's books; there is no finding of unrecorded consideration; and the reasons recorded by the Assessing Officer, premium comparison and alleged non reflection in investee company records, do not satisfy the statutory conditions of section 69. Consequently, the addition is directed to be deleted.

16. In the result, the appeal of the assessee is allowed.

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