

आयकर अपीलीय अधिकरण न्याय पीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

BEFORE SHRI PAWAN SINGH, JM &
SHRI ARUN KHODPIA, AM

I.T.A. No.5551/Mum/2025
(Assessment Year: 2012-13)

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| Mr. Dhiren Pradip Sadiwala, 120/121, Mangaldas Market, 2 nd Lane, Mumbai - 400002 PAN: AADPS5506J | Vs. | ITO, Ward-23(1)(6), Piramal Chamber, Lalbaug, Mumbai-400012. |
| Assessee -अपीलार्थी / Appellant | : | Revenue - प्रत्यर्थी / Respondent |

Assessee by : Shri Rajiv Khandelwal, CA
(Virtually appear)

Revenue by : Shri Rajesh Sakhardande, Sr. DR

Date of Hearing : 19.01.2026

Date of Pronouncement : 21.01.2026

ORDER

Per Arun Khodpia, AM:

This appeal is preferred by assessee challenging the order of Addl./ JCIT(A), Agra dated 29.08.2025 for the Assessment Year (AY) 2012-13), which in turn arises from the assessment order passed u/s 143(3) r.w.s. 147 of Income Tax Act, 1961 (for short “The Act”), dated 19/12/2019, by ITO, Ward-23(1)(6), Mumbai (for short “the Ld. AO”). The grounds of appeal raised by the assessee are as under:

“The following grounds of appeal are independent of, and without prejudice to, one another

1. The Additional Commissioner of Income-tax (Appeals), Agra(hereinafter referred to as the Addl CIT(A)) erred in upholding the action of the Income-tax Officer 23(1)(6) Mumbai (hereinafter referred to as the Assessing Officer) in issuing a notice under section 148 of the Act.

The appellant contends that on the facts and in the circumstances of the case and in law, the Addl CIT(A) ought not to have upheld the action of the Assessing Officer in issuing notice under section 148 of the Act.

2 The Addl CIT(A) erred in upholding the action of the Assessing Officer in making an addition under the head "income from other sources" of a sum of Rs 17,00,000, being unexplained cash loan given to Mr Nilesh Bharani

The appellant contends that on the facts and in the circumstances of the case and in law, the Addl CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned addition inasmuch as there is no basis or iota of evidence available with the Assessing Officer to make the impugned addition.

The appellant further, contends that on the facts and in the circumstances of the case and in law. the impugned addition ought not to have been upheld inasmuch as the only basis is the statement of Mr Nilesh Bharani (Partner at M/s Evergreen Enterprises) which has since been retracted by him, no details of lending has been furnished that is, date or particulars of lending, and no opportunity of cross-examination has been provided and as such, the impugned addition requires to be deleted.

The appellant further, contends that on the facts and in the circumstances of the case and in law, there is non-application of mind by the Assessing Officer inasmuch as the Assessing Officer does not specify the section in which he has brought the impugned addition to tax, and hence, the impugned addition requires to be deleted.”

2. Briefly stated the assessee had filed his return of income for the relevant year on 25.09.2012 declaring total income of Rs. 7,55,020/-. Further as per information received from the office of DDIT (Inv.), Unit-5(4), Mumbai, a search and seizure action under section 132 of the Act was carried out in the

case of M/s Evergreen Enterprises, in which Mr. Nilesh Bharani is one of the partners. It is reported that the Evergreen Enterprises was involved in undisclosed activity of money lending and borrowing. On the basis of documents found and seized during the aforesaid search and statements recorded on oath under section 132(4) of the key persons, it is found that the assessee Mr. Dhiren Pradip Sadiwala is one of the beneficiaries, who had lent cash loan of Rs. 17,00,000/- to /through the aforesaid concerns. Accordingly, the case of assessee was reopened u/s 147/148. During the assessment proceedings the assessee was show-caused, to explain the transactions surfaced from the material seized during the said search, however the assessee has not furnished any explanation/documentary proof, but have merely filed his objection against the reopening of assessment. Such objection of assessee was disposed of vide letter dated 18.12.2019 by the ld. AO. Further, it is observed by the ld. AO that the assessee failed to discharge the onus on him to prove the genuineness of the impugned transaction. Finally, the subject amount of Rs. 17,00,000/- was added to the income of assessee under the head "Income from other sources".

3. Being aggrieved with the aforesaid findings by ld. AO, the assessee preferred an appeal before the ld. CIT(A), however the appeal of assessee has been dismissed by the ld. CIT(A) by rejecting the assessee's contentions regarding validity of reopening of assessment. He further rejected the argument

of the assessee that no evidence or material seized during the search has any direct link with the assessee to establish that the alleged transactions are carried by the assessee. It is also emphasized by the assessee that in absence of cross-examination and because of retraction of statements by the key persons of the Evergreen Enterprises, the same are at nullity and has no evidentiary value. The Id. CIT(A) had not found any merits in the submissions of the assessee, thus finally had confirmed the addition stating that the assessee is failed to furnish conclusive documentary evidence to dislodge the findings of Id. AO.

4. To challenge the aforesaid decision of Id. CIT(A) assessee preferred the present appeal before us.

5. At the outset, the Id. Counsel of the assessee submitted that the assessee had challenged the reopening proceedings being illegal and void ab-initio, since the very inception of the proceedings before the Id. AO as well as before the Id. CIT(A). The assessee also denied being involved in the transactions allegedly claimed by the revenue to be the transaction undertaken by the assessee, therefore has contended that the additions made are not in accordance with the law. The Id. AR further submitted that the revenue authorities are expecting the assessee to prove something which is against the assessee and could not be proved by them, whereas once the negative inference is drawn by the revenue, it was incumbent upon them to prove the same by corroborative evidence. The Id. AR placed his reliance on the decision of ITAT, Mumbai in

the case of ***Laxmichand Jethalal Dedhia in ITA No. 2433/Mum/2025 dated 12.08.2025*** and submitted that under similar facts and circumstances, wherein the allegation of bogus cash loans by the assessee Shri Laxmichand Jethalal Dedhia was culminated in an addition in his hands, was subsequently, vacated by the Tribunal with the observation that the alleged additions were made on the basis of search and survey action, wherein the information was surfaced that the assessee had transacted in the cash loans during the year, however the same could not be conclusively proved, as the statements given by key persons are itself later retracted, thus the requirement of section 69A and 69C of the Act could not be not fulfilled by the ld. AO. The ld. CIT(A) also failed to pass a reasoned order under section 250(6) of the Act.

6. Per contra Ld. Sr. DR strongly supported the orders of ld. AO and ld. CIT(A), have reiterated the facts from the orders of ld. AO as well as ld. CIT(A) and has submitted that the assessee was failed to furnish any evidence to disprove the specific findings of ld. AO. It was therefore the submission that the order by the ld. AO as well as ld. CIT(A) are just and reasonable, thus deserves to be upheld.

7. We have considered the rival submissions, perused the material available on record and the decision of ITAT, Mumbai in the case of ***Shri Laxmichand Jethalal Dedhia (supra)***, wherein the Tribunal has relied upon the similar decision in the case of some more assessee's having similar facts and

circumstances, their assessments are reopened in consequence to the impugned search on M/s Evergreen Enterprises. The relevant findings of ITAT in the case of ***Shri Laxmichand Jethalal Dedhia (supra)*** are as under:

“10. On careful examination of the findings of Ld. CIT(A), we have noticed that the Ld. CIT(A) has not raised any point of determination and did not give any acceptable reason for confirming the addition made by the AO. The order of Ld. CIT(A) is found cryptic and unreasoned and is liable to be quashed on this sale ground only. However, we have considered the respective submissions of both the parties. Ld. AR has referred and relied on 4 cases of Jurisdictional Coordinate Benches where additions were made on the basis of search and survey action in the case of M/s Evergreen Enterprises. The said cases are as under:-

1. Parag Motilal Savla vs. ITO, ITA No. 4220/MUM/2023 order dated 29-04-2024.
2. Mayur Kanjibhai Shah vs. ITO, ITA No. 3243/MUM/2023, Order dated 31-01-2024.
3. Parag Motilal Savla vs. NFAC, Delhi, ITA No. 4221/MUM/2023, Order dated 06-01-2025.
4. RajeshkumarRameshchandra Shah vs. DCIT, ITA No. 5568 to 5573/MUM/2024, Order dated 31-01-2025.

11. The case of Mayur Kanjibhai Shah, ITA No. 3243/Mum/2023 (supra) is identical to the facts of the case in hand where the alleged documents recovered during the survey and addition made on the basis of said documents, was duly considered by the Ld. Coordinate Bench. The relevant portion of the said order in para no. 9 to 12 are extracted 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 interalia 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-

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.”

12. Admittedly the said documents in this case before us were not in the name of the assessee and the table containing the name of the assessee was found in a loose paper sheet and in that regard, the Ld. AR has further relied following 2 cases of the Hon’ble Supreme Court as under:-

i) PCIT vs. Krutika Land (P) Ltd. 103 taxmn.com 9 (SC)

ii) Common Cause (A Registered Society) vs. Union of India (2017) 77 taxmann.com 245 (SC)

iii) CBI vs. Shukla (1998) AIR SC 410 (SC)

13. Regarding the application of section 292C of the Act as the AO was of the view that the documents recovered during the survey were admissible u/s 292C of the Act, the Ld. AR argued that section 292C of the Act can be invoked only against the person in whose premises / possession, the said incriminating material was found during the course of search action u/s 132 of the Act. It was further submitted that the word „such person“ used in section 292C of the Act is only referable to the person in whose premises the things or materials were found in possession or control at the time of search action. In support of these arguments, Ld. AR relied on the case of Global Star Realtors Pvt. Ltd. vs. DCIT, ITA No. 40 to 44/Bang/2024, order dated 24.03.2025 wherein it was held as under:-

“11.23 The word "such person" used in section 292C of the Act is only referable to the person in whose premises the things or materials were found in possession or control at the time of search. Admittedly, the assessee before us was not person in whose premises, the things were found in possession or control at the time of search action. Therefore, provisions of section 292C of the Act cannot be invoked to assist the department, which is without any basis and contrary to law. In our opinion, if any document is found in the premises/possession/control of such person which belongs to the other person then the said documents can be used for making the addition, however, it is necessary to prove that the said document is incriminating in nature and belongs to other person. The presumption u/s 292C of the Act can only be invoked against such/searched person and not against another person like person before us. The above said proposition is based and relatable to the Evidence Act which casts data of a person in whose possession, a thing or article was found to discharge the burden that it does not belong to him.”

14. It is thus evident that the alleged additions were made on the basis of search and survey action during which so called ledger account allegedly maintained on a loose paper was found wherein the name of the assessee was found mentioned alongwith alleged address and telephone number and the amount mentioned as 500 only. It was categorically submitted by the Ld. AR that mobile number and address does not pertain to the assessee and the loose paper which just mentioned the name of the assessee is not admissible evidence unless corroborated by other sufficient admissible evidence. We are convinced by the argument of Ld. AR because nothing has been brought to our notice on the basis of which revenue authorities has coded the information contained in the loose paper and there is no material which may connect the assessee to Dhruvin Fashion who has allegedly lent loan to M/s Evergreen Enterprises.

15. From the above discussion and the case relied by the Ld. AR and the judgment of Hon“ble Coordinate Benches where addition made on the basis of same survey

action report, were deleted, we are convinced that the requirement of section 69A and 69C of the Act were not fulfilled in this case. In the assessment order, the Ld. AO did not consider the points raised by the assessee in an objective manner and has passed the assessment order on his subjective satisfaction. Ld. CIT(A) also has failed to pass a reasoned order u/s 250(6) of the Act.

16. For these reasons, the impugned order suffers from legal infirmity and is not legally sustainable in the eyes of law. Hence, the impugned order is set aside and the grounds raised by the assessee are allowed. Accordingly, we direct the AO to delete the addition so made.”

8. Admittedly the present case is also identical to the case of ***Shri Laxmichand Jethalal Dedhia (supra)*** & other cases referred to therein, we, thus, in absence of any distinguishing facts, circumstances or contradicting decision brought on record by the revenue, find that the present matter, since has been at parity with the aforesaid decisions of ITAT, Mumbai, therefore, should be decide with same inference.

9. Accordingly, the appeal of assessee is allowed, following the decision of ITAT, Mumbai in the cases of referred (supra).

10. In result the appeal of assessee is **allowed**, in terms of our aforesaid observations.

Order pronounced in the open court on 21-01-2026.

Sd/-
(PAWAN SINGH)
Judicial Member
Mumbai, Dated : 21-01-2026.
*SK, Sr. PS

Sd/-
(ARUN KHODPIA)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai