

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M JOSHI, JUDICIAL MEMBER

ITA No.812 & 814/Ind/2024
(AYs: 2014-15 & 2013-14)

Khojema Bohra, 15 Tilak Marg, Barwah (Appellant)	<u>बनाम/</u> Vs.	ITO, NFAC, Delhi (Respondent)
Assessee by	Shri Pankaj Shah & Soumya Bumb, ARs	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	13.01.2026	
Date of Pronouncement	22.01.2026	

आदेश / O R D E R

Per Paresh M Joshi, J.M.:

This is an Appeal filed by the Assessee under section 253 of the income tax Act 1961,[herein after referred to as the Act for the sake of brevity] before this tribunal as & by way of a second Appeal. The Assessee is aggrieved by the order bearingNumber:-ITBA/NFAC/S/250/2024-25/1068128472(1) dated 29.08.2024 passed by the Ld. CIT(A) u/s 250 of the Act, which is herein after referred to as the "**Impugned order**". The Relevant Assessment year is 2014-15 and the

corresponding previous year period is from 01.04.2013 to 31.03.2014.

2.

Factual Matrix

2.1 That as and by way of an Assessment order bearing number:- ITBA/AST/S/147/2021-22/1035836537(1) dated 23.09.2021 passed by the NFAC Delhi u/s 147 r.w.s 144B of the Act the total income of the assessee was computed & assessed at Rs.29,56,940/-. The total income as per the return of income was at Rs.6,56,940/-. The addition u/s 68 of Rs.23,00,000/- was made. The aforesaid assessment order is hereinafter referred to as the "**Impugned Assessment Order**". The relevant portion of para 4.15 of the impugned assessment order is reproduced as under:-

4.15 On verification it is seen that Shri Sharad Kumar Darak was involved in providing accommodation entries in the form of Share Capital and Loans and Advances through the following companies controlled by him. The present assessee i.e. Khojema Bohra (PAN: AGGPB9954Q) is one of the such beneficiary who had taken accommodation entry and inflated the same in the form of Unsecured Loan. Shri Sharad Kumar Darak has admitted in his statement that these correspondences were between him and some brokers. He explained that these brokers provide him with cash received by them from beneficiaries and this cash was utilized to provide the accommodative entries to the beneficiaries in form of share capital and unsecured loans from his companies via banking modes (cheque/RTGS) and in turn he profits some percentage of the cash as commission for arranging such

accommodation entries. Statement of Shri Sharad Kumar Darak clearly established that companies controlled by him are nothing but shell companies which had been indulged in the malpractice of providing accommodation entries. Hence, all the loans and share premium advanced by these companies of Shri Sharad Kumar Darak are bogus and nothing but unaccounted money of these beneficiaries which has been routed back into the books of accounts of these beneficiaries and is liable to be taxed in the hands of such beneficiaries being unexplained credits.

In the instant case, the assessee has made the following transactions of accommodative entries from the bogus companies controlled by Shri Sharad Kumar Darak

BENEFICIARY NAME	COMPANY NAME	Transaction Amount
Shri Khojema Bohra,	Jay Jyoti India Pvt Ltd	Rs. 23,00,000/-

On verification of the return of income filed for the assessment year under consideration, it is found that the assessee has shown to have accepted unsecured loan of Rs.23,00,000/- from Jay Jyoti India Pvt Ltd by adopting the modus operandi discussed above, and brought his unaccounted income into the books of account under the guise of such transaction. Hence it is clear that bogus loans and advances of Rs.23,00,000/- claimed to have been received from the above bogus company controlled by Shri Sharad Kumar Darak is liable to charge tax being unexplained credits, hence, the unsecured loan shown amounting to Rs.23,00,000/- is treated as unexplained taxable income earned during the year and accordingly, added under section 68 of the Income Tax Act, 1961 to the total income of the assessee during the relevant year under consideration and taxed by invoking the section 115BBE of the Income Tax Act, 1961 at the rate of 30%. Penalty proceedings u/s. 271(1)(c) are initiated separately for furnishing inaccurate particulars of (Addition Rs.23,00,000/-income.)

2.2 That the Assessee being Aggrieved by the aforesaid **“Impugned Assessment Order”** prefers the **first appeal u/s**

246A of the Act before the Ld. CIT(A) who by the **“Impugned Order”** has dismissed the 1st appeal of the Assessee on the grounds & reasons stated therein. The core ground & reasons for the dismissal of the 1st appeal was as under:-

“(i) I have gone through the elaborate assessment order and the reasons for the AO to have made the additions. The AO had passed a speaking order marshalling the facts taking into account all the attendant circumstances as well as taking guidance of the legal precedents applicable to the facts of the case

(ii) The appellant's claim that the amount received from the entities are genuine transactions and the creditor has filed its return of income, its having a valid PAN and hence identity of the creditor is proved and the transactions are genuine as all the payments were made through banking channel alone would not make the claim a genuine transaction since the transactions are made and presented in such a manner to make it look genuine and such transactions have to conform to the book requirements of a valid claim. But what is apparent is always not always true.

(iii) The statements recorded from Sarad Darak who is the director of the following shell companies which were stated to not existing in the addresses given in the return of income were analysed by the Assessing Officer and the statement recorded at the survey premises of the following companies revealed that:

Statement of Shri Dinesh Kumar Agrawal s/o Shri Hari Agrawal, owner of the building was also recorded during survey proceedings u/s 131 of the Income Tax Act. He is a practicing-chartered accountant and told that he had represented East West Finvest India Ltd and Trimurthi Finvest Ltd before Income Tax authorities from AY 2005-06 to AY 2015-16. He stated that the company had shifted its office and he did not know its present address. Thus, these two companies were also found non-existent at this address. Jay Jyoti (India) Pvt. Ltd. renamed as Jayganga Exim India Pvt. Ltd. has shown its registered office at Panjapara, Mashila Shankrail, Howrah, West Bengal. Authorization u/s 133A of the Income Tax Act was issued by the JDIT (Investigation) for survey

proceedings. It was found by the authorized officers of the survey team that the given address is located in a small village lane where no company office or building, factory shed or factory building was w found. Enquiries were made by the authorized officers from local people about Jay Jyoti (India) Pvt. Ltd. renamed as Jayganga Exim India Pvt. Ltd but they expressed complete ignorance about the company and told that they have never heard of or seen any company at the given address. They further told that in their village, no company was carrying out any business activity and they did not see sign board of any company. The survey authorization could not be executed as the company did not exist at the given address. It is evident from the above-mentioned facts that the following companies did not exist or work from the registered offices:

1. Ziya Merchandise Pvt Ltd renamed as Zyka Merchandise Pvt Ltd

2. Rajwadi Retail Trade Systems Pvt Ltd renamed as Rajyeshwar Retail Trade Systems Pvt Ltd.

3. East West Finvest India Ltd

4. Trimurthi Finvest Ltd

5. Jay Jyoti (India) Pvt. Ltd. renamed as Jayganga Exim India Pvt. Ltd.

6. Jayant Security Private Limited

The fact that the above-mentioned companies did not exist at their given registered addresses was confronted to Shri Sharad Darak and Shri Rohit Darak in their statements on oath u/s 132(4) of the Income Tax Act 1961.

(iv) Appellant submitted that

That while going through the statements of Mr. Sharad Kumar Darak provided by your good sell, we have not come across any statements/answer wherein Mr. Sharad has stated that the assessee have taken any accommodation entries from him or requested him to take our cash and provide unsecured loans from his companies via banking modes.

VII. In absence of any such statements or records against the assessee we request that no adverse inference can be drawn, in

respect of bonafide and genuineness of aforesaid loans transactions of the assessee, which was repaid by the assessee along with interest

(v) In this regard, it is pointed out that if the transactions are genuine and bonafide. the lender could have confirmed that the transaction with the appellant is genuine. Sharad Kumar in his statement confirmed that he was only an accommodation entry provider and the companies floated by him were being used to lend share application money or loans to the beneficiaries. Even if the companies are existing as per the records of registrar of companies, the credit worthiness of the company to give such amount was not satisfactorily proved. The Investigation Wing after conducting necessary enquiries concluded that the appellant has been mentioned as one of the beneficiaries.

(vi) The legal precedents relied upon are equally countered by other legal precedents on this subject and the decisive decision of the Hon'ble Apex Court in the case of Pr CIT vs. NRA Iron & Steel P Ltd., reported in 103 Taxmann.com 48 vide its order dated 05.03.02019, even though this decision is rendered in the context of share application money treated as unexplained credit, the loan appearing in the books of the appellant in the instant case also stands on similar set of facts as the credit worthiness of the lender has not been satisfactorily proved. The Court after analyzing various facts and legal precedents held that

"The lower appellate authorities appear to have ignored the detailed findings of the AO from the field enquiry and investigations carried out by his office. The authorities below have erroneously held that merely because the Respondent Company - Assessee had filed all the primary evidence, the onus on the Assessee stood discharged. The lower appellate authorities failed to appreciate that the investor companies which had filed income tax returns with a meagre or nil income had to explain how they had invested such huge sums of money in the Assessee Company Respondent. Clearly the onus to establish the credit worthiness of the investor companies was not discharged. The entire transaction seemed bogus, and lacked credibility The Court/Authorities below did not even advert to the field enquiry conducted by the AO which revealed that in several cases the investor companies were found to be non-existent, and the onus to establish the identity of the investor companies, was not discharged by the assessee.

14. *The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the Assessee since the information is within the personal knowledge of the Assessee. The Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the Assessee."*

(vii) Further, reliance is also placed on the decision of the Hon'ble Delhi High Court in the case of Nipun Builders and Developers Pvt. Ltd. (supra), where it was held that B

12. *A perusal of the order of the Tribunal shows that it has gone on the basis of the documents submitted by the assessee before the AO and has held that in the light of those documents, it can be said that the assessee has established the identity of the parties. It has further been observed that the report of the investigation wing cannot conclusively prove that the assessee's own monies were brought back in the form of share application money. As noted in the earlier paragraph, it is not the burden of the AO to prove that connection. There has been no examination by the Tribunal of the assessment proceedings in any detail in order to demonstrate that the assessee has discharged its onus to prove not only the identity of the share applicants, but also their creditworthiness and the genuineness of the transactions. No attempt was made by the Tribunal to scratch the surface and probe the documentary evidence in some depth, in the light of the conduct of the assessee and other surrounding circumstances in order to see whether the assessee has discharged its onus under Section 68. With respect, it appears to us that there has only been a mechanical reference to the case-law on the subject without any serious appraisal of the facts and circumstances of the case.*

(viii) Reliance is also placed on the decision of the Hon'ble Delhi High Court in the case of N.R. Portfolio Pvt Ltd., wherein it was held that genuineness and credibility are deeper and obtrusive. Similarly, bank statements provided by assessee to prove genuineness of transactions cannot be considered in view of judgment of Hon'ble Court in case of Pratham Telecom India Pvt. Ltd., wherein, it was stated that bank statement is not sufficient enough to discharge burden.

In view of the above facts and legal precedents, it is held that the action of the Assessing Officer in treating the unsecured loan as unexplained cash credit under Sec, 68 of the act is justified. In the result, the grounds raised on this issue stands "Dismissed".

9. In the result, the appeal is "Dismissed".

2.3 The Assessee being Aggrieved by the **"Impugned Order"** has preferred the instant second appeal before this Tribunal and has raised following grounds of appeal in the form No. 36 against the **"Impugned Order"** which are as under:-

"1. On the facts and circumstances of the case and in law, the learned Commissioner of Income tax (Appeals) (CIT(A)) erred in upholding the reassessment proceedings as the income has not escaped assessment and the assessment order passed by the AO was bad in law. The Appellant prays that the said order be quashed and the additions thereby be deleted.

2. On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the addition of Rs.23,00,000 under Section 68 of the Act which is prayed to be deleted.

3. On the facts and circumstances of the case and in law the learned CIT(A) erred in not providing appellant adequate opportunity. The Appellant prays that the said order of CIT(A) passed without proper opportunity be directed to be quashed.

4. The Appellant craves leave to add to, alter and/or amend all or any of the foregoing grounds of appeal."

3.

Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 13.01.2026 when the Ld. AR for & on behalf of the Assessee appeared before us & interalia contended that the **“Impugned Order”** is bad in law, illegal & not Proper. It is in the violation of the principles of natural justice. It therefore deserves to be set aside. It was next contended that the registry has pointed out the delay of **21 days** in filing the instant second appeal. It was submitted that the **“Impugned Order”** is dated **29.08.2024** & instant appeal ought to have been filed on or before **28.10.2024** however the instant appeal was filed on **15.11.2024**. A condonation of delay application dated 06.08.2025 is placed on record of this Tribunal along with an affidavit in support dated 06.08.2025. With regard to the delay it was submitted that delay occurred due to continuous technical issues due to migration on the ITAT e-filing portal although the appeal fee was paid on 25.10.2024 well with the limitation period. The assessee has acted bonafidely & with due diligence at all times. There is no malafide intention or negligence in delayed

filing. It is a nominal delay. The Ld. Dr has left the issue of condonation of delay to the wisdom of the Tribunal. We after hearing both the parties condone the delay as assessee has shown sufficient cause. The delay is bonafide too. Accordingly we admit the appeal. The Ld. AR submitted that the issue under second appeal of addition is a covered issue by several orders & decisions of this Tribunal. The same may be noted. Per contra the Ld. DR appearing for & on behalf of the Revenue contended that the revenue would go by the orders passed by the lower authorities in this regard. Hearing was closed.

4. **Observations Findings & conclusions**

4.1 We now have to decide the legality, validity and propriety of the **"impugned order"** basis records of the case & the rival submission canvassed before us.

4.2 We have carefully perused the records of the case and have heard the submissions.

4.3 We basis records of the case & after hearing & upon examining the rival contentions of the Ld. AR & the Ld. DR canvassed before us, are of the considered opinion that the credit loan entry shown by the assessee of Rs.23 lakhs basis para 4.15 of the Impugned Assessment Order cannot be added u/s 68 of the Act. Hence addition aggregating to Rs.23 lakh made in the "Impugned Assessment Order & upheld by the Ld. CIT(A) in the "Impugned Order" is deleted. We refer to the following cases:-

- (i) **Sanjay Shukla V/s ACIT Central Circle-2, Indore. ITA No.333&49/Ind/2020 order dated 15.03.2022**
- (ii) **M/s Hi Link City Homes Pvt. Ltd V/s ITO 21), Indore. ITA No.2/Ind/2021 order dated 19.09.2022.**
- (iii) **ACIT, Central-2, Indore V/s Shri Sanjay Shukla. ITA No.333/Ind/2020 order dated 15.03.2022.**
- (iv) **ACIT, Central-1, Indore V/s Shri Krishna Devcon Ltd. ITA No. 8 to 10/Ind/2022, IT(SS)A No.11&3/Ind/2022, C.O. No.03/Ind/2022 order dated 21.08.2023.**
- (v) **Joint CIT (OSD)-CC-7(4) V/s M/s. Shalimar Housing & Finance Ltd. ITA No.4079/Mum/2019 order dated 01.06.2021.**
- (vi) **ACIT,3(1), Indore V/s Shri Pramod Kumar Sethi. ITA No.382 & 383/Ind/2014 order dated 06.11.2018.**
- (vii) **Sanjeev Kumar Agrawal V/s ACIT(Cntral)-2, Bhopal ITA No.899/Ind/2024 order dated 24.06.2025**
- (viii) **Globus Housing V/s Assessment Unit, NFAC, Delhi ITA No.872/Ind/2024 order dated 10.10.2025**

**(ix) Shivkripa Devcons Pvt. Ltd. Vs. ITO in ITANo.594/Ind/2024
A.Y.2013-14 order dated 16.10.2025**

Wherein this Tribunal has held that M/s Jay Jyoti (India) Pvt. Ltd. & other Companies of Sharad Darak Group including Jayant Securities Pvt. Ltd. are not paper company nor a shell company. Hence we too respectfully following above decisions (supra) concur with the view of the Ld. AR that the issue in appeal is covered one. Consequently we set aside the Impugned order & allow the appeal of the assessee.

5

Order

5.1 The appeal of the assessee is allowed & the "Impugned Order" is set aside.

5.2 In result-the appeal of the assessee is allowed.

ITANo.814/Ind/2024 for A.Y.2013-14

5.3 Since the facts & circumstances of this appeal are *perimateria* with ITANo.812/Ind/2024 for A.Y.2014-15. this appeal is too

allowed and Impugned Order therein is also set aside *mutatis mutandis*.

5.2. In result, both appeals are allowed.

pronounced in open court on 22.01.2026.

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

Dated : 22 /01/2026

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore