

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH MUMBAI**

**BEFORE HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No. 2208/Mum/2024
(Assessment Year: 2017-2018)**

ITO – 5(2)(1) Aayakar Bhavan, MK Road, New Marine Lines, Mumbai – 400020	Vs.	Moxa Diamond Pvt Ltd 72/B-12, Tikam House, JSS Road, Opera House, girgaon S.O, Mumbai – 400004.
PAN/GIR No. AAGCM1959H		
(Applicant)		(Respondent)

**ITA No. 5169/Mum/2025
(Assessment Year: 2017-2018)**

Moxa Diamond Pvt Ltd 72/B-12, Tikam House, JSS Road, Opera House, girgaon S.O, Mumbai – 400004.	Vs.	ITO – 5(2)(1) Aayakar Bhavan, MK Road, New Marine Lines, Mumbai – 400020
PAN/GIR No. AAGCM1959H		
(Applicant)		(Respondent)

Assessee by	Shri Bharat Kumar
Revenue by	Shri Surendra Mohan, Sr. DR

Date of Hearing	10.12.2025
Date of Pronouncement	27.01.2026

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeals have been filed by the revenue as well as assessee challenging the impugned order dt. 26.02.2024

passed under section 250 of the Income Tax Act, 1961 ('the Act'), by the National Faceless Appeal Centre (NFAC) / CIT(A) for the assessment year 2017-2018.

2. Since all the issues involved in these two appeals are common and identical, therefore, they have been clubbed, heard together and consolidated order is being passed for the sake of convenience and brevity. We shall take up appeal **ITA No. 2208/Mum/2024, A.Y 2017-18** filed by the revenue as lead case and facts narrated therein.

ITA No. 2208/Mum/2024, A.Y: 2017-18

The revenue has raised the following grounds of appeal:

1. *On the facts and circumstances of the case in law, Ld. A.O. erred in reopening of the case without following respective provision of the Act.*
2. *On the facts and circumstance`es of the case in law, Ld. A.O. erred in reopening of the case is bad in Law.*
3. *On the facts and circumstances of the case in law, Ld. CIT(A) erred in confirming reopening of the case whereas Ld. A.O. reopened the case on the basis of vague reasons, borrowed satisfaction and non-application of Mind.*
4. *On the facts and circumstances of the case in law, Ld A.O. erred in reopening of the case u/s 148 and overridden specific provision of the act u/s 153C which is bad in law.*

3. All the grounds raised by the revenue relates to challenging the order of Ld. CIT(A) in deleting the additions of Rs. 61,53,804/- made u/s 68 of the Act. therefore we have decided to adjudicate all these ground through the present consolidated order.

4. We have heard the counsels for both the parties, perused the material placed on record, judgments cited before us and also the orders passed by the revenue authorities. From the records we noticed that assessee being a private limited company was engaged in business of import and export and trading of diamonds etc. The case of the assessee was reopened u/s 148 of the Act and

after providing opportunity of hearing to the assessee order of assessment was passed thereby making addition of Rs. 61,53,804/- u/s 68 of the Act on account of '*unexplained credit*' being the accommodation entries taken from companies managed by Shivpal Vora.

5. In this regard, Ld. AR submitted that the assessee had discontinued its business activities for the last 2 to 3 years and does not know any person name as Shivpal Vora and had not entered into any transactions with such person. It was further submitted that AO had not only relied upon the information received from inside portal but had assumed that the income has escaped assessment. It was categorically submitted that assessee did not know any person named as Shivpal Vora and had not entered into any transaction with any such person and thus no addition could have been made on the basis of information not disclosed to the assessee and moreover there is no documentary evidence before the AO to connect the assessee with the alleged Shivpal Vora and all the documents reflects that the assessee had not dealt with Shivpal Vora.

6. In order to substantiate its arguments the assessee had submitted the details with regard to the concern assessment year which includes *full audited financial*

statement of assessee, copy of purchase register, copy of sale register and copy of bank statement.

7. After having considered the submissions of the parties, we found that Ld. CIT(A) had dealt in detail the said ground and the operative portion of the same is contained at page 19 to 22 of the its order and the same is reproduced:

Ground No.2 & 3:- These grounds of appeal are interrelated and pertain to an addition of Rs.61,53,804/- made by the Ld. A.O. being cash credits u/s 68 of the Act in form of accommodation entries received from companies managed by Shri Shivpal Vohra.

4.1. The assesment order u/s 143(3) r.w.s. 144 of the Act was completed by Ld. A.O. without the necessary compliance of the assessee. Now, during the course of appellate proceedings the appellant has filed all the requisite details explaining the impugned additions. In the normal course, the stated submissions are to be taken as additional evidence and a remand report for comments/inquiries is sought from the assessing officer. However, in view of the facts of the case, the matter is being adjudicated herewith based on the merits of the submission of the appellant.

4.2 Further, reliance is hereby placed on the decision of Hon'ble Supreme Court in the case of CIT vs. Kanpur Coal Syndicate (1964) 53 ITR 225 (SC) wherein the Hon'ble Supreme Court has ruled that- AAC has, plenary powers in disposing of appeal and scope of his power is conterminous with that of ITO and he can do what ITO can do and also direct in to do what he has failed to do".

4.2.1 Similarly, Hon'ble High Court of Delhi in its judgment in the case of CIT vs. Jansampark Advertising & Marketing (P) Ltd. (2015) 375 ITR 373 (Delhi) has opined that-Two appellate authorities, viz., Commissioner (Appeals) and Tribunal, are also

forums for fact-finding, in event of Assessing Officer failing to discharge his functions properly, obligation to conduct proper inquiry on facts would naturally shift to door of said appellate authorities and they having noticed want of proper inquiry, cannot close chapter simply by allowing appeal and deleting additions made".

4.3 As per the assessment order, the assessee company was beneficiary of unsecured loans which were actually accommodation entries amounting to Rs.61,53,804/- from shell companies managed and operated by Shri Shripal Vohra. The assessee was asked to explain the source of credits from shell companies in the bank account. No compliance was made by the assessee. Hence, necessary additions were made u/s 68 of the Act by the Ld. AO.

4.4 In his submissions made during the course of appellate proceedings, the appellant has submitted that he does know Shri Shivpal Vohra and he has not entered into any transaction with any such person. Therefore, the provision of section 68 of the Act is not applicable. The appellant has submitted copy of his bank statements, copy of purchase register, copy of sale register, full audited financial statement and 3CD report to substantiate his claim.

4.5 On the perusal of all the documents submitted by the appellant, it is evident that the name of Shri Shivpal Vohra does not appear in any of the documents or in any financial transactions. The submissions made by the appellant are correct and corroborative in this regard. The Ld. AO in his assessment order has not pointed out the name of the company or entity from which the stated cash credits of Rs.61,53,804/- have been received. The entire premises of the Ld. AO is based on incoherent information which is incomplete and vague. Further, Ld. AO has not carried out any inquiry to determine the nature of cash credits thereof.

4.6 In view of the facts and circumstances as highlighted above, the addition of Rs.61,53,804/- u/s 68 of the Act made by the Ld. AO is hereby deleted.

The grounds of appeal No.2 & 3 are hereby allowed.

Ground no.4:- This ground is general in nature and does not require any adjudication.

8. After having meticulously gone through the facts of the present case and the documents placed on record, we found that Ld. CIT(A) had rightly come to the conclusion that the assessment order was passed by the AO by holding that the assessee company was beneficiary of unsecured loans taken from shell companies managed and operated by Shivpal Vora. Whereas assessee had submitted all the requisite documents which goes to show that named of Shivpal Vora does not appeared in any of the documents or in any financial transactions. Even the entire order of assessment is not pointing out the name of the company or entity from which the stated cash credit of Rs. 61,53,804/- had been received by the assessee thus in the absence of any documentary evidences in order to connect the assessee, no liability could have been fastened upon the assessee. Thus Ld. CIT(A) rightly deleted the additions. Thus we find no reasons to interfere into the orders passed by the Ld. CIT(A).

9. We also noticed that during the course of appellate proceedings before Ld. CIT(A), the assessee had filed requisite details thereby challenging the impugned additions. Ld. CIT(A) categorically mentioned that in the normal course the said documents submitted by the

assessee could be taken as additional evidence and remand report from the concern AO was required to be sought. However since the matter was being adjudicated on the merits of the submissions of the assessee and moreover reliance was being placed on the decision of Hon'ble Supreme Court in the case of **CIT vs. Kanpur Coal Syndicate (1964) 53 ITR 225 (SC)** wherein the Hon'ble Supreme Court has held that- *AAC has, plenary powers in disposing of appeal and scope of his power is conterminous with that of ITO and he can do what ITO can do and also direct in to do what he has failed to do*".

Similarly, Hon'ble High Court of Delhi in its judgment in the case of **CIT vs. Jansampark Advertising & Marketing (P) Ltd. (2015) 375 ITR 373 (Delhi)** has opined that-*Two appellate authorities, viz., Commissioner (Appeals) and Tribunal, are also forums for fact-finding, in event of Assessing Officer failing to discharge his functions properly, obligation to conduct proper inquiry on facts would naturally shift to door of said appellate authorities and they having noticed want of proper inquiry, cannot close chapter simply by allowing appeal and deleting additions made*".

10. After having gone through the facts and the legal preposition we found that Ld. CIT(A) rightly concluded that no liability can be fastened upon the assessee in the absence of any documents placed on record by the AO to

connect the assessee, thus while relying upon the decision of Hon'ble Supreme Court in the case of **CIT vs. Kanpur Coal Syndicate (supra)** and also the decision of Hon'ble Delhi High Court in the Case of **CIT vs. Jansampark Advertising & Marketing (P) Ltd (supra)** the Ld. CIT(A) was well within his powers to decide the matter on merits after considering the documents relied upon by the assessee.

11. Even no new facts or circumstances have been placed on record before us in order to controvert or rebut the findings so recorded by Ld. CIT(A). Therefore, we see no reasons to interfere into or to deviate from the lawful findings so recorded by Ld. CIT(A). Hence, the grounds raised and by the revenue stands dismissed.

11. In the result, the appeal filed by the revenue stands dismissed.

ITA No. 5169/Mum/2025, 2017-18

12. Since, we have dismissed the appeal filed by the revenue and upheld the order of deletion of addition therefore in view of our finding in the above appeal the present appeal bearing **ITA No. 5169/Mum/2025, A.Y 2017-18** filed by the assessee and grounds taken therein are academic and thus stands dismissed.

13. In the result, both the appeals filed by the revenue as well as assessee stands dismissed.

Order pronounced in the open court on 27.01.2026

Sd/-
(PRABHASH SHANKAR)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 27/01/2026

KRK, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai