

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSHETH, ACCOUNTANT MEMBER**

**I.T.A. No. 5275/Mum/2024
A.Y: 2018-19**

Sunil Ghanshyamdas Khandelwal. C-225, Bonanaza Indl Estate, Ashok Road, Kandivali East. PAN – AAPPK3053N	Vs	DCIT, Circle42(1)(1), Kautilya Bhavan, Maharashtra.
(Appellant)		(Respondent)

Assessee by	Shri Rajiv Khandelwal
Revenue by	Shri Vivek Perampuran (CIT-DR)

Date of Hearing	07.01.2026
Date of Pronouncement	20.01.2026

ORDER

Per: SHRI. SANDEEP GOSAIN, J.M.:

The present appeal has been filed by the assessee challenging the impugned order dt. 12.08.2024 passed by National Faceless Appeal Centre, Delhi (NFAC) / CIT(A) for the A.Y 2018-19. The assessee has raised the following grounds of appeal:

1. *On the facts and the circumstances of the appellant's case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in not quashing the assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961.*
2. *On the facts and the circumstances of the appellant's case and in law, the Ld. Commissioner of Income Tax*

(Appeals) failed to give credence to the documents/details filed during the course of assessment proceedings and erred in confirming the alleged additions made by the Assessing Officer to the tune of Rs 10,06,30,085/- u/s 69C r.w.s 115BBE of the Income Tax Act, 1961.

3. *On the facts and the circumstances of the appellant's case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in adhering to incorrect figures of capital in the return and ignoring the revised figures of closing balance of the appellant's capital account as on 31st March, 2017 viz-a-viz the closing balance as on 31st March, 2018 despite the fact the appellant had furnished its restated capital account balances during assessment proceedings and therefore, both the lower authorities erred in ignoring the ratio of judgment of Hon'ble Supreme Court in Pullangode Rubber Produce Co Ltd vs. State of Kerala [1973] 91 ITR 18 [SC], wherein, the Apex Court held that it is open to the assessee, who made an erroneous admission earlier to show that it is incorrect and the assessee should be given proper opportunity to do so.*

4. *On the facts and circumstances of the appellant's case and in law, the Ld. Commissioner of Income Tax (Appeals) ignored the fact that the appellant did not have proper assistance of an accountant to maintain books of accounts during the Assessment Year/s 2017-18 and 2018-19, leading to the erroneous figures of 'Assets & Liabilities Schedule' declared in the return of income for AY 2017-18 and 2018-19, wherein, the respective capital balances of Rs 2,69,53,800/- and Rs 14,28,86,529/- was derived as a balancing figure i.e., after netting off the assets and liabilities, erroneously mentioned in the accounts and hence the lower authorities, without disputing factual legitimacy of assets and liabilities included in the revised statement and duly supported by evidences to prove that they were brought forward from earlier years, ought to have considered the revised figures submitted during the assessment proceedings.*

5. *On the facts and circumstances of the appellant's case and in law, the Ld. Commissioner of Income Tax (Appeals) failed to consider the fact that the alleged increase in the capital account as per the restated capital account (being*

balancing figure of revised assets and liabilities) during the relevant assessment year was only to the tune of Rs 50,05,366/- duly supported by income disclosed for the year instead of the alleged additions to the tune of Rs 10,06,30,085/- based on erroneous opening balance of capital as per the return of income.

6. On the facts and circumstances of the appellant's case and in law, the Ld. Commissioner of Income Tax (Appcals) failed to invoke any specific provision of the Act that could allow the revenue to tax difference between closing and opening balance of capital without identifying specific undisclosed assets or understated liabilities that pertained to the year under consideration.

7. On the facts and circumstances of the appellant's case and in law, and without prejudice to preceding grounds the Ld. Commissioner of Income Tax (Appeals), failed to consider the 'Income from Other Sources to the tune of Rs 15,08,243/- whilst providing a relief to the appellant on account of explained sources of investments of Rs 1,53,02,644/-.

8. On the facts and the circumstances of the appellant's case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in not providing opportunity of being heard, despite the fact that the appellant had specifically requested the Ld. Commissioner of Income Tax (Appeals) to afford an opportunity of personal hearing via video-conferencing before finally deciding on the matter vide letter/s dated 08.03.2021, 19.03.2021 and 09.04.2021 and thereby rendering the appellate order devoid of principles of natural justice and liable to be quashed summarily.

9. The appellant craves leave to add to, alter, amend, modify and/or delete all or any of the foregoing grounds of appeal. The appellant prays before the Hon'ble Tribunal to delete the addition made by the AO and confirmed by the Ld. CIT(A) and/or any other relief as the Hon'ble Tribunal may deem fit.

2. 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 the addition u/s 69C of the Act was made in the case of assessee which were also upheld by Ld. CIT(A). After evaluating the documents placed on record, we noticed that initially the case of the assessee was scrutiny through CASS on the issue of “*business loss and substantial increase in capital in a year*”.

3. It was observed by the AO that the assessee’s capital had been shown at Rs. 14,28,86,529/-, whereas during the previous assessment year i.e 2017-18, the capital was shown only Rs. 2,69,53,800/-. In this regard explanation with regard to source of huge increase in capital was sought from the assessee and after considering the reply of the assessee, AO concluded that the assessee is constantly claiming depreciation for A.Y 2015-16, 2016-17 & 2017-18 and now suddenly he started claiming that his balance sheet had not correctly been made and had thus amended his balance sheet as per his convenience. Therefore after accepting the part source of capital introduced during the year under considering, according to the AO the source of remaining capital amounting to Rs. 10,06,30,085/- (11,59,32,729-1,53,02,644), still remained unexplained in the absence of any documentary evidence and thus the same was added back.

4. Whereas, against this order of assessment, assessee preferred appeal before Ld. CIT(A) and relied upon the revised assets and liabilities statement as on 31.03.2017 and consequential reworking of capital account which find mentions in the order of Ld.CIT(A) from page 7 to 15. Apart from this assessee also relied upon the documentary evidences filed before Ld. CIT(A) which are at paper book page No. 1 to 100. However, the Ld. CIT(A) had rejected the claim of the assessee only on the observation that there was vast differences in the capital as noticed by AO, thereafter assessee prepared a balance sheet after a lapse of two years as per his convenience to avoid the addition thus in this way upheld the addition made by the AO.

5. After having heard the counsels at length, we found that assessee had relied upon the revised assets and liabilities statement as on 31.03.2017 and consequential reworking of capital account which has been submitted before the revenue authorities and also found mentioned at page 7 to 15 of the order of the Ld. CIT(A), which is reproduced herein below:

Revised Assets & Liabilities Statement as at 31-03-2017 and consequential reworking of my capital account :-

Sr-no.	Description of Assets	Amount as per statement filed in income tax return for AY 2017-18 (as at 31-03-2017) Rs.	Revised figures now correctly stated (as at 31-03-2017) Rs.	Explanatory remarks for the corrections with documentary evidences references
1	Jewellery	0	33,85,152	<ul style="list-style-type: none"> This amount of Rs. 33,85,152 is fully supported by jewellery bills filed as Exhibits J1 to J16. Bill wise list has been submitted earlier on 06.03.2021. A perusal of these bills will show that the purchases have been made from 2007 to 2017. The bills are for jewellery <u>'purchases'</u> and <u>not 'sales'</u> as noted by you in annexure to notice u/s 142 (1)
2	Plot of land at Shankar Lane	0	27,32,370	<ul style="list-style-type: none"> This property is purchased in 2001 @ cost of Rs. 21,70,000 vide agreement dated 25-06-2001 filed as Exhibit P1. Stamp Duty paid Rs. 3,19,190 & Registration Cost of Rs. 20,110. Further stamp duty and registration costs on gift received - Rs. 2,23,070
3.	Property at Bonanza	19,95,501	48,160	<ul style="list-style-type: none"> This property is purchased in 1980. The correct cost is only Rs. 48,160 vide agreement dated 24-11-1980, Exhibit no. P2. Rent earned from letting out disclosed in income tax returns from time to time

4.	Property at Vasai (Jay/ Vijay)	8,75,000	2,83,920	<ul style="list-style-type: none"> Property purchased in 1992 .Agreement dated 08-10-1992. Exhibit P3. Rent earned from letting out disclosed in income tax returns from time to time.
5.	Another property at Vasai	8,75,000	2,83,920	<ul style="list-style-type: none"> Property purchased in 1992 .Agreement dated 08-10-1992. Exhibit P7. Rent earned from letting out disclosed in income tax returns from time to time.
6	Flat no. 1502 at Evershine	0	40,61,360	<ul style="list-style-type: none"> This property was purchased in 2003 in two agreements. First agreement dated 16-12-2003 - @ cost of Rs. 25,20,926 as per agreement. Stamp duty of Rs. 1,50,450 and registration costs of Rs. 26,850 were incurred. Second agreement dated 16-12-2003 - @ cost of Rs. 12,92,484. Stamp duty of Rs. 56,300 and registration costs of Rs. 14,350 were also incurred. The abovementioned two agreements filed in Exhibits P4 & P4A Rent earned from letting out disclosed in income tax returns from time to time
7.	Flat no. 1403 at Evershine	0	30,64,835	<ul style="list-style-type: none"> Property purchased in 2003 as per agreement dated 05-12-2003 @ cost of Rs.28,57,485. Stamp duty incurred Rs. 1,77,350 and registration costs of Rs. 30,000. Agreement filed – Exhibit P5. Self occupied property. Hence, no rental income.

8.	Property at Gokul Heaven - J 504	32,50,100	3,23,320	<ul style="list-style-type: none"> Property purchased in 1993 vide agreement dated 14-07-1993 @ cost of Rs. 2,98,270. Stamp duty incurred Rs. 25,050 Agreement filed - Exhibit P6. Rent earned from letting out disclosed in income tax returns from time to time.
9	Another property at Gokul Heaven - J 503	0	3,46,960	<ul style="list-style-type: none"> Property purchased by mother in 1993 and gift received by assessee from her on 11-09-2015. Purchase and Gift agreements filed - Exhibit P6 Rent earned from letting out disclosed in income tax returns from time to time
10	Motor Car	0	25,90,000	<ul style="list-style-type: none"> Purchased in 2016 @ Rs. 28,50,578. Motor Car disclosed to income tax department by claiming depreciation . Rs. 25,90,000 is the w.d.v. after depreciation.
11	Cash on Hand	78,401	78,401	This figure has been retained without change
12	Bank Balances	1,53,653	1,53,653	These are actual balances and no change
13.	PPF	0	14,64,250	PPF contributions are being made every year and shown in past income tax returns. The balance now shown is as per PPF passbook.
14.	Investments	1,38,75,622	13,43,04,392	<ul style="list-style-type: none"> As per Investment List submitted on 06-03-2021 Copy of demat account of April 2017 with opening balance at April 2017 start submitted on 22-03-2021 The investment is built up over several years of past. See copy of Mumbai ITAT order in my own case - ITA no. 2768/Mum/2009 -

				"I" Bench- dated 03-03-2010 for Assessment Year 2005-06. A copy of the ITAT order has been shared with earlier vide my submission dated 19-03-2021. In this order, the Tribunal has recorded the fact that the assessee had investments in shares of Rs. 2,90,81,096 as at 31-03-2004 (Page 3, para no. 4 of the ITAT order) and of Rs. 5,40,86,646 as at 31-03-2005 (Page 4 of the ITAT order).
15.	Loans & Advances	19,90,512	19,90,512	Details now furnished in Exhibit no.LA 1
16	Sundry Debtors	3,73,93,819	12,57,026	Exhibits for both figures attached. It will be clear that the figure of Rs,3,73,93,819 was generated from incomplete accounts. Exhibit nos.SD 1 & SD 2 now filed.
Total Assets (A)		6,04,87,608	15,63,68,231	

Sr-no.	Description of Liabilities	Amount as per statement in income tax return for AY 2017-18 (as at 31-03-2017) Rs.	Revised figures now correctly stated (as at 31-03-2017) Rs.	Explanatory remarks for the corrections with documentary evidences references
17	Bank Overdrafts	1,54,27,202	1,54,27,202	These are actual balances and without any change
18	Sundry Creditors	1,81,06,606	3,00,72,248	Exhibits for both figures attached. It will be clear that the figure of Rs, 1,81,06,606 was generated from incomplete accounts. Exhibit nos. SC 1 & SC 2 now filed.
Total Liabilities (B)		3,35,33,808	4,54,99,450	

Computation of Revised Capital Account Balance as at 31-03-2017

	Amount as per statement in income tax return for AY 2017-18 (as at 31-03-2017) Rs.	Revised figures now correctly stated (as at 31-03-2017) Rs.	
Total Assets (A) as above	6,04,87,608	15,63,68,231	
Less :- Total Liabilities (B) as above	3,35,33,808	4,54,99,450	
Capital Account (Balancing Figure) (A) minus (B)	2,69,53,800	11,08,68,781	

8. I am now presenting hereunder a revised assets and liabilities tabular statement as at 31-03-2018 and my capital account balance reworked on this basis. The contents and values of assets and liabilities are also authenticated by evidences and explanations cited therein. The corresponding revised figures of assets and liabilities as at 31-03-2017 as worked out in para no. 7 are also provided side by side for comparison and change.

Sr-no.	Description of Assets	Revised figures now correctly stated as per the previous chart (as at 31-03-2017) Rs.	Revised figures now consequently correctly stated (as at 31-03-2018) Rs.	Explanatory remarks for the corrections with documentary evidences references
1	Jewellery	33,85,152	45,07,346	<ul style="list-style-type: none"> This amount increase of Rs. 11,22,194 is fully supported by jewellery bills filed as Exhibits J17 to J20. Bill wise list has been also submitted earlier on 06.03.2021. A perusal of these bills will show that the purchases of

				<p>Rs.11,22,194 has been made during FY 2017-18.</p> <ul style="list-style-type: none"> The bills are for jewellery '<u>purchases</u>' and not '<u>sales</u>' as noted by you in annexure to notice u/s 142 (1)
2	Plot at Shankar Lane	27,32,370	27,32,370	<ul style="list-style-type: none"> No change. No capital introduction during the year on account of this asset
3.	Property at Bonanza	48,160	48,160	<ul style="list-style-type: none"> No change. No capital introduction during the year on account of this asset
4.	Property at Vasai (Jay/ Vijay)	2,83,920	2,83,920	<ul style="list-style-type: none"> No change. No capital introduction during the year on account of this asset
5.	Another property at Vasai	2,83,920	2,83,920	<ul style="list-style-type: none"> No change. No capital introduction during the year on account of this asset
6	Flat no. 1502 at Evershine	40,61,360	40,61,360	<ul style="list-style-type: none"> No change. No capital introduction during the year on account of this asset
7.	Flat no. 1403 at Evershine	30,64,835	30,64,835	<ul style="list-style-type: none"> No change. No capital introduction during the year on account of this asset
8.	Property at Gokul Heaven - J 504	3,23,320	3,23,320	<ul style="list-style-type: none"> No change. No capital introduction during the year on account of this asset
9	Another property at Gokul Heaven - J 503	3,46,960	3,46,960	<ul style="list-style-type: none"> No change. No capital introduction during the year on account of this asset
10	Motor Car	25,90,000	22,01,500	<ul style="list-style-type: none"> Rs. 22,01,500 is the w.d.v. after depreciation.
11	Cash on Hand	78,401	78,401	<ul style="list-style-type: none"> Retained at same figure.
12	Bank Balances	1,53,653	3,87,077	<ul style="list-style-type: none"> Rs. 3,87,077 is actual bank balances taken at 31-03-2018
13.	PPF	14,64,250	17,28,095	<ul style="list-style-type: none"> Figure as per PPF pass book

14.	Investments	13,43,04,392	13,78,48,944	<ul style="list-style-type: none"> Rs. 13,78,48,944 is as at 31-03-2018 as per closing statement of investment submitted on 06.03.2021. Detailed list of year end investments has been submitted in this. Copy of demat account for months of April 2017 to March 2018 submitted on 22-03-2021 The investment is built up over several years of past. See copy of Mumbai ITAT order in my own case – ITA no. 2768/Mum/2009 – “J” Bench- dated 03-03-2010 for Assessment Year 2005-06. A copy of the ITAT order has been shared with earlier vide my submission dated 19-03-2021. In this order, the Tribunal has recorded the fact that the assessee had investments in shares of Rs. 2,90,81,096 as at 31-03-2004 (Page 3, para no. 4 of the ITAT order) and of Rs. 5,40,86,646 as at 31-03-2005 (Page 4 of the ITAT order).
15.	Loans & Advances	19,90,512	1,18,973	<ul style="list-style-type: none"> Details now furnished in Exhibit no.LA 2 for Rs. 1,18,973
16	Sundry Debtors	12,57,026	10,91,793	<ul style="list-style-type: none"> Details now furnished in Exhibit no.SD 3 for Rs. 10,91,793
	Total Assets (A)	15,63,68,231	15,91,06,974	

Sr-no.	Description of Liabilities	Revised figures now correctly stated (as at 31-03-2017) Rs.	Revised figures now consequently correctly stated (as at 31-03-2018) Rs.	Explanatory remarks for the corrections with documentary evidences references
17	Bank Overdrafts	1,54,27,202	1,35,85,971	Actual bank balances figures as at 31-03-2018 now taken.
18	Sundry Creditors	3,00,72,248	2,96,46,866	Details of Rs. 2,96,46,866 now furnished in Exhibit no.SC 3
	Total Liabilities (B)	4,54,99,450	4,32,32,827	

9. With the above data, the actual increase in capital during FY 2017-18 is worked out in the table hereunder :-

	Revised figures now correctly stated (as at 31-03-2017) Rs.	Revised figures now consequently correctly stated (as at 31-03-2018) Rs.	
Total Assets (A) as above	15,63,68,231	15,91,06,974	
Less :- Total Liabilities (B) as above	4,54,99,450	4,32,32,827	
Capital Account (Balancing Figure) (A) minus (B)	11,08,68,781	11,58,74,147	Increase in capital during the F.Y. 2017-18 - Rs. 50,05,366.

10. The funding of the increase in capital of Rs. 50,05,366 is shown in table hereunder :-

Increase in capital account during FY 2018-19 Rs. 50,05,366	Income earned during FY 2017-18 as per income tax return filed for AY 2018-19 - Rs	
	Salaries	5,00,000
	Rental incomes (Gross)	16,71,386
	Business - Speculation Profit (loss)	(-) 23,21,018
	Short Term Capital Gains	16,57,875
	Dividends (exempt income)	8,26,159

	Long Term Capital Gains on sale of listed shares (exempt)	1,33,54,291
	Bank Interest	20,120
Increase in capital as above - Rs. 50,05,366	←- As compared to sources of income during FY 2017-18 →	1,56,88,693

From the above table, it ought to be clear that the income earned @ Rs. 1,56,88,693 during FY 2017-18 is more than the increase in capital increase of Rs. 50,05,366 and therefore, no addition w/s 69C is essential.

[In the annexure to the notice w/s 142 (1), you have considered only losses and not the exempt long term capital incomes and dividends]

11. Summary of my responses to the issue raised by you in annexure to notice w/s 142 (1)

(a) The statement of assets, liabilities & capital as at 31-03-2017 & 2017-18 as shown in income tax returns for AYs 2017-18 & 2017-19 contained inherently apparent mistakes [para nos. 5 & 6 above] and these have been corrected by revised balances supported with documentary evidences and explanations. [para nos. 7 & 8 above]

(b) After corrections as stated above, actual capital increase during FY 2017-18 is only Rs. 50,05,366 and not Rs. 11,59,32,729 [para no. 9 above]

(c) Incomes earned by me - Rs. 1,56,88,693 is more than the capital increase of Rs. 50,05,366 during FY 2017-18 [para no. 10 above]

(d) Investments as at 31-03-2017 & 31-03-2018 have been explained in tables as under :-

As at 31-03-2017 - [para no. 7- table Sr no 14]

As at 31-03-2018 - [para no. 8 - table Sr no. 14]

Incidentally I also have to point out that from A.Y. 2004-05 to A.Y. 2018-19 I have long Term Capital Gains (exempt) of Rs 12,39,15,613 and Dividend income (exempt) of Rs 93,43,190. Over a period of years these incomes have been reinvested in Shares resulting in a total investment of Rs 13,78,48,944 as on 31.03.2018. The Chart of Long Term Capital Gains and Dividend over the years is attached as Exhibit

E1
(e) Jewellery as at 31-03-2017 & 31-03-2018 have been explained in tables as under :-

As at 31-03-2017 - [para no. 7- table Sr no 1]

As at 31-03-2018 - [para no. 8 - table Sr no. 1]

12. With the above submissions, I trust I have answered the queries and issues raised by you in the annexure to your notice w/s 142 (1). Do revert for any clarification needed or provide opportunity for video conferencing - so that my submissions are properly attended to you

S. Khandelwal

6. Apart from this assessee had also relied upon the documentary evidences annexed at paper book page No. 1 to 100. However the claim of the assessee was rejected by Ld. CIT(A) merely by holding that the assessee had corrected balance sheet and filed revised balance sheet after lapse of about two years. To our mind this alone cannot be a reason for rejecting the claim of the assessee more particularly when the assessee had relied upon number of documents, but Ld. CIT(A) had not pointed out any error or defect in the documents filed by the assessee.

7. Since, Ld. CIT(A) is statutory authority therefore it was its legal duty and obligation to pass well reasoned speaking order. The requirement for passing "speaking order" is necessitated as the order passed by Ld. CIT(A) being a statutory authority is expected to be an order that speaks for itself, provides reason and said mandate gives satisfactory to the effected party by showing them, rational beyond the decision which in our view aligns with wider principle that "*justice must not only be done but must also appears to have been done*" therefore failure to apply with the mandatory provisions invalidates the action of Ld. CIT(A). With these observations we restore the matter back to the file of Ld. CIT(A) to relook the entire issue again and to pass a well reasoned, cogent and clear order indicating the reasons for reaching to a conclusion.

Needless to mention that order shall be passed by Ld. CIT(A) after providing opportunity of hearing to the assessee.

8. Before parting, we make it clear that our decision to restore the matter back to the file of the Ld. CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute which shall be adjudicated by the Ld. CIT(A) independently in accordance with law.

9. In the result the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20/01/2026

Sd/-
(BIJAYANANDA PRUSHETH)
(ACCOUNTANT MEMBER)

Sd/-
(SANDEEP GOSAIN)
(JUDICIAL MEMBER)

Mumbai:

Dated: 20/01/2026

KRK, Sr. PS.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai