IN THE INCOME-TAX APPELLATE TRIBUNAL, MUMBAI "F" BENCH, MUMBAI
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
ITA No. 7228/MUM/2025(AY: 2010-11)

JAP Overseas Private Limited B-102, Twinkle Apartments, New Link Road, Lokhandwala Complex, Andheri (W), Mumbai-400053.	**vs.**	ITO Ward, 10(2)(1) Room No. 573, Aayakar Bhawan, Maharishi Karve Road, New Marine Lines, Mumbai-400020.
PAN/GIR No: AAACJ1573C		
(Appellant)		(Respondent)

Appellant by	Shri Ashok Bansal & Shri Ajay Daga
Respondent by	Shri Vivek Perampurna, CIT-DR
Date of Hearing	06.01.2026
Date of Pronouncement	29.01.2026

O R D E R

PER BIJYANANDA PRUSETH, AM:

This appeal filed by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'Act') by the learned Commissioner of Income-Tax, National Faceless Appeal Centre [in short, 'CIT(A)'], dated 12.09.2025 for the assessment year (AY) 2010-11.

2. The grounds of appeal raised by the assessee are as under:

> *"1. The Id. CIT(A) erred in confirming the validity of jurisdiction assumed by the ITO u/s 147 of the Act.*

1.i. In doing so, the Id.CIT(A) relied on some decisions without establishing how the facts of the said cases are identical to the facts of the appellant and erred in ignoring the decisions of the high courts including of the jurisdictional high court relied upon by the appellant which are on all fours with the facts of the appellant.

1.ii. Further in doing so, he drew adverse inference based on incorrect assumption of facts and erred in holding that the ITO was having fresh tangible material for re-opening of the assessment.

2. The Id. CIT(A) erred in dismissing Gr.No. 2 raised before him challenging the action of the AO of commencing the assessment proceedings by issue of notices u/s 143(2) & u/s 142(1) of the Act without first furnishing the reasons recorded and without waiting for the disposal of objections that may be raised to the reasons recorded.

2.i. In doing so, he decided the issue by relying on certain facts which were not germane to the issue and further did not appreciate that the said action of the ITO was contrary to the law laid down by the Apex Court in the case of GKN Driveshaft.

3. The Id. CIT(A) erred in dismissing Gr. No. 3 raised before him challenging the order of the AO of rejecting objections raised to the reasons recorded.

3.i. In doing so, he did not appreciate that the ITO in the said order did not at all deal with the objections that were actually raised by the appellant and even the issue of escapement of income as per the reasons recorded' and as per the 'said order' were altogether different.

4. The Id. CIT(A) erred in confirming the addition of Rs.5388134/- on account of alleged bogus loss generated by means of client code modification.

4.i. In doing so, the ld. CIT(A) did not appreciate that the plethora of evidence placed on record were not dislodged by the ITO who made the addition merely on the basis of some generalized report of the Investigation Wing /statements of alleged entry operators recorded by some other officers of the Deptt. in the enquiry unconnected with the appellant.

4.ii. Further in doing so, the Id. CIT(A) in adjudicating the ground merely reproduced the appellant's submissions but did not consider the same in its proper perspective.

5. The Id. CIT(A) erred in confirming the action of the ITO in making addition of Rs. 107763/- as unexplained expenditure u/s 69C of the Act.

5.i. In doing so, he did not appreciate that no such addition could have been made without bringing any material on record.

Your appellant, therefore, submits that the order under appeal be quashed and in alternative the disallowance and the addition so made be deleted.

Your appellant craves leave to add to, delete, amend or alter all or any of the grounds of appeal at or before the date of hearing."

3. The facts of the case in brief are that the assessee filed its return of income electronically on 14.10.2010 declaring total income of Rs.12,49,437/. The assessee company is engaged in the business of trading of in license and derivatives. It was processed u/s 143(1) of the Act. Subsequently, the case was re-opened and notice u/s 148 of the Act was issued on 24.03.2015. The re-opening was on the basis of information received from the DIT(I&CI), Mumbai that the client code modification (CCM) facility in F & O segment on NSE was misused and the assessee's name was in the list of beneficiaries. The assessee obtained fictitious loss of Rs.53,88,134/- due to CCM. In response to the notice u/s 148, assessee submitted that the original return filed on 14.10.2010 may be treated as the return u/s 148 of the Act. The AO has discussed the issue at para 6 of the assessment order and stated the modus operandi followed for trading through CCM, which involves shifting of ascertained losses from other client codes. The AO has accordingly disallowed the loss of Rs.53,88,134/- in respect of F & O transactions through broker R.K. Global Shares and Securities Ltd. He has also added 2% of the above amount as on unexplained expenditure u/s 69C of the Act.

Accordingly, total income was computed at Rs.67,45,330/- against the return income of Rs.12,49,437/-.

4. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The CIT(A) has dismissed the appeal both on jurisdictional grounds as well as on the grounds on merit. For validity of re-opening he has relied on a number of decisions of the Hon'ble Supreme Court and various High Courts including the decisions in cases of Rajesh Jhaveri Stock Broker (P.) Ltd. (2007) 161 Taxman 316/291 ITR 500 (SC) Vs. ACIT, Phool Chand Bajrang Lal Vs. ITO(1993)203 ITR 456 Raymond Woollen Mills Ltd. Vs. ITO(1993) 236 ITR 34 (SC) etc., which are at para 5.4 to 5.22 of the appellate order. He has also confirmed the disallowance of loss of Rs.53,88,134/- and addition of commission expenses of Rs.1,07,763/-.

5. Further aggrieved, the assessee has filed the present appeal before the Tribunal on the grounds mentioned above. The Ld.AR of the assessee submitted that the assessee incurred loss of Rs.1,51,82,615/- in F & O transactions and as per the reasons recorded by the AO, the loss of Rs.53,55,134/- was on account of CCM, which was not genuine. The objection of the assessee was not disposed of by the AO. The AO while disposing the objection has not dealt with the same. The disposal of the objection was not with reference to the reasons for re-opening the assessment. Further, the satisfaction arrived at by the AO was a borrowed satisfaction on the basis of report of the DIT(I&CI). The AO has also not brought

on record anything to prove that the broker has changed the client code and that too at the instruction of the appellant; that the Exchange, broker, and/or the counter parties have denied the transactions; that there is mismatch in the records of the appellant and that of the stock exchange; that the number of changes in client code, if any, were very high in comparison to total number of transactions carried out by the appellant; that the CCM by the broker, if any, was executed after the time permitted by the Exchange; that the same exceeded the tolerance limits fixed by the Exchange; and was in violation of rules and regulations of the Exchange; that any disciplinary and monetary action was taken by the Exchange against the broker, the counter parties, and/or the appellant for any misuse of CCM facility, that the Exchange has held the CCM trades, if any, to be invalid; that the appellant has received any cash against the loss arising out of the alleged CCM; that the broker has received any commission from the appellant for creation of fictitious loss and has offered the same in its return of income; that the payments by the appellant against the loss arising out of alleged CCM were not through proper banking channel; that the appellant and the counter parties were in collusion with the broker for the alleged creation of fictitious profits/losses; and that the alleged CCM in appellant's case significantly increased during the closing month of the financial year. The Ld. AR relied on the decision in case of DCIT Vs. M/s Comet Investment Pvt. Ltd. in ITA No.5689/Mum/2017 and

submitted that disallowance of loss of Rs.8,32,28,416/- on account of CCM was deleted by the jurisdictional ITAT under similar facts.

6. On the other hand, the Ld. Sr. DR of Revenue supported the order of lower authorities.

7. We have heard both parties and perused the materials on record. We have also carefully gone through the order of the ITAT in case of Comet Investments Pvt. Ltd (supra). We find that under similar facts the co-ordinate Bench of the ITAT, Mumbai has dismissed the appeal of Revenue by holding as under:

> *"7. After having heard the counsels for both the parties at length and after having fine through the facts of the present case, we find from the records that the assessee is not a registered broker on the Stock Exchange. Only the registered brokers can modify Client code (CCM) of their own clients. Therefore in such circumstances, the allegations of assessee having done or restored to CCM is apparently not correct. The AO has not brought on record that even the instructions for CCM was ever given by the assessee. Hence, in these circumstances, the assessee can't be held responsible for CCM if any done at the end of the broker. The AO except for the fact of receiving information from the DIT (1 & CI), has not considered the other aspects of the transaction to be considered as the transactions of the assessee. The other relevant aspect ie receipt and/or payments of monies, the time gap between the actual transactions on the stock exchange and the modification of the client code numbers of such transactions by the office of the registered share and stock broker, non-prohibition of client code modification by either the stock exchange or SEBI. In the order of assessment, the AO has stated the complete details of the Modus Operandi of creation of fictitious profit and / or losses with a malafide intention of escaping taxes. However, the AO has neither proved nor lead any evidence in case of any single transaction, which he has added to the income of the assessee,*

being of the type whose Modus Operandi is similar to the nature where he alleges to be added to the income of the assessee.

8. It is common knowledge that any transaction either relating to shares or derivatives to be considered as completed and taxable deductible in the hands of any assessee should compulsorily have the following ingredients ie

i) A valid transaction must have been executed on the Stock Exchange

ii) The customer of the registered share broker should confirm & agree that the transaction entered into by the broker belongs to him.

iii) The payment Ibr purchases and/or receipt of sale proceeds should have happened between the Bank Accounts of the broker & his customer

iv) The above transaction must have been accounted for in the hooks of account of the registered broker as well as his customer

v) The eventual profit/loss on the transactions executed on the Stock Exchange & exchange of monies having happened as well as getting accounted in the respective books of account would eventually result into taxable profit and/or loss in the hands of such customers of the registered broker.

9. Whereas, the AO in the present case has mechanically added amounts as income of assessee without verifying & furnishing evidences on record that all the above steps have actually happened in the case of all the transactions which he has added as assessee's income. In our view, by no stretch of imagination can any AO consider a transaction on the Stock Exchange as income of a person other than the one who has either actually received monies in his bank account (in case of profit) and/or paid any monies from his bank account (in case of losses).

10. For the above proposition, we rely upon the decision in the case of MA. Sambhavanath Investment ACIT LT.A. No.3109/Mum/2011 AY 2006-2007 dated 19/12/2013 (Mum) (Trib), ACIT Kunvarji Finance (P) Lad (2015) 61 Taxmann.com 52(Ahd.) (Trib) wherein it was held that CCM within 1% is absolutely normal. Accordingly the addition was deleted. In the facts of the present case also, CCM is within 1%, ITO vs. Pat

Commodity Services P. Ltd. ITA Nos. 3498 and 3499/Mum/2012 dt. 7th Aug,2015 (Mum.) (Trib.), DCITv Sunil J Anandpara ITA No. 3132/MUM/2015 Assessment Year: 2010-11 Bench I dated 15/9/2017 (Mum.)(Trib.) and ITO vs. M/s. M.N. Shares & Stock Brokers Pvt. Ltd. IT No. 5399/M/2017, AN, 2009-10 Bench-SMC.

11. Even nothing has been placed on record by the AO to demonstrate that any proceedings were ever initiated against the assessee by the SEBI or any stock exchange. It was also clarified by the Ld. AR that the broker, through whom the assessee carried on share transactions, were also not imposed any penalty. No co-relation between the assessee on the one hand and the other parties on the other hand has been brought on record to co-relate that the parties to whom the alleged profits or loss is supposed to have been diverted to reduce the taxable income of the assessee, has been brought on record to show that there was any collusion with each other and were known to each, so that one party diverted its profit or loss to the other parties. Even nothing has been brought on record to suggest that the said losses were purchased and the party were given cheque or cash payment in view of such favours. According to us, such co-relation was necessary to fasten any liability upon the assessee.

12. No new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld CTT. Therefore, there are no reasons for us to interfere into or deviate from the findings so recorded by the Ld. CIT Hence, we are of the considered view that the findings so recorded by the Ld. CIT are judicious and are well reasoned. Resultantly, these grounds raised by the assessee stands dismissed.

13. Since we have dismissed the appeal of revenue by upholding the deletion of addition on merits, therefore the appeal filed by the assessee challenging the order of reopening becomes academic in view of our decision in the appeal filed by the revenue."

8. We find that the facts of the present appeal are similar to the facts of the case reproduced above. The revenue has not been able to distinguish facts of the present appeal from the facts of the case relied upon by the appellant. Therefore, following the above decision, the grounds of the appellant are allowed.

9. Since, we have allowed the appeal of the assessee on merit, therefore, the grounds challenging the validity of re-opening u/s 147 by issue of notice u/s 148 of the Act becomes academic in nature and does not require adjudication.

10. In the result, the appeal by the assessee is allowed.

Order is pronounced on 29.01.2026.

Sd/-	Sd/-
(SANDEEP GOSAIN)	**(BIJYANANDA PRUSETH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

*Aniket Chand; Sr.PS
MUMBAI
Date:29.01.2026

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, MUMBAI
6. Guard File

By Order

Assistant Registrar
ITAT, MUMBAI