

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

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

**ITA No. 6713/Mum/2025
(Assessment Year: 2011-12)**

Ashish N. Gupta 1501, Anmol Enclave S.V Road, Goregoan, Mumbai – 400 062.	Vs.	ITO, Ward 41(4)(1) Kautilya Bhavan, BKC Bandra (E), Mumbai
PAN/GIR No. AAZPG7658K		
(Applicant)		(Respondent)

Assessee by	Shri. Nishit Gandhi
Revenue by	Shri. Surendra Mohan – SR. DR.

Date of Hearing	23.12.2025
Date of Pronouncement	19.01.2026

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeal has been filed by the revenue challenging the impugned order 19.09.2025 passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the National Faceless Appeal Centre, Delhi (NFAC) for the assessment year 2011-12. The assessee has raised the following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the order passed by the Ld. A.O. u/s 143(3) r.w.s 147 of the I. T. Act, 1961 and dismissing

the ground without understanding the facts and circumstances of the case that the order passed by the Ld. A.O. is grossly incorrect, invalid and bad in law. Also, the notice issued u/s 148 of the I. T. Act, 1961 is grossly incorrect, invalid and bad in law.

2. On the facts and circumstances of the case and in law, the Ld. A.O. has erred by passing the assessment order within 4 weeks from the disposal of objection. The appellant had filed objection on 05.09.2018 vide letter dated 03.09.2018 and the same was disposed by the Ld. A.O. on 14.12.2018 and the assessment order was passed on 30.12.2018. A summary of the same is as follows:

- 1. Copy of reason recorded provided on 24.08.2018*
- 2. Objection filed by the appellant vide letter dated 03/09/2018 on 05.09.2018*
- 3. Disposal of objection filed by appellant 14.12.2018*
- 4. Assessment order passed on 30.12.2018*

Therefore, the assessment order passed within four weeks from the date of disposal of objection is bad in law and void. Reliance is placed on the decision of GKN Driveshafts (India) Ltd. vs. ITO [2002] 125 Taxman 963 (SC),s Bharat Jayantilal Patel v. UOI (2015) 378 ITR 596 (Bombay (HC) and Asian Paints v. Dy. CIT (2009) 308 ITR 195 (Bom HC)

3. On the facts and circumstances of the case and in law, the Ld. A.O. has erred by initiating the reassessment proceedings u/s 147 of the I. T. Act, 1961 by merely relying on the information received by his office from Dy. Director (Inv.) Unit- 6(2), Mumbai without understanding the provisions of section 147 that the same was only borrowed satisfaction withing the meaning of section 147. The Ld. A.O. has not made any independent inquiry before issuing the notice u/s 148 of the I. T. Act, 1961. Therefore, the notice issued u/s 148 and reassessment order passed thereafter is grossly incorrect, invalid and bad in law.

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by upholding the addition of Rs. 2,45,01,804/- made by the Ld. A.O. u/s 69A of the I. T. Act, 1961 and dismissing the ground filed by the appellant without understanding the facts and circumstances of the case.

5. On the facts and circumstances of the case and in law, the Ld. A.O. has erred by not considering the fact that, the appellant was an entry operator and the maximum addition which could be in this case was of 0.05% on total turnover entries made in bank account which was the commission income earned by the appellant.

6. The appellant craves leave to add, alter, amend or modify any or all grounds till the disposal of the Appeal.

2. The ground No. 1 & 2 raised by the assessee are interrelated and interconnected and relates to challenging the order of Ld. CIT(A) in upholding the order of AO passed u/s 143(3) r.w.s 147 of the Act. Therefore we have decided to adjudicate these grounds through the present consolidated order.

3. Ld. AR reiterated the same arguments as were raised by him before the revenue authorities and submitted that Ld. CIT(A) erred in upholding the order passed by the AO and dismissing the grounds raised by the assessee without understanding the facts and circumstances of case, as the order of AO was invalid and bad in law as the same was passed within four weeks from the disposal of the

objections filed by the assessee and thus the order of AO and also that of Ld. CIT(A) is in clear violation of the decision of Jurisdictional Bombay High Court and also the Hon'ble Supreme Court in the following cases:

1. GKN Driveshafts (India) Ltd. Vs. ITO, [2002] 125 Taxman 963 (SC)

2. Bharat jayantilal Patel Vs. UOI (2015) 378 ITR 596 (Bombay) HC

3. Asian Paints Vs. DCIT (2009) 308 ITR 195 (Bom HC)

4. Whereas on the contrary Ld. DR relied upon the orders passed by the revenue authorities and submitted that the decisions relied upon by the assessee are not applicable to the facts of the present case.

5. 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 in the present case the copy of reasons recorded were provided to

the assessee regarding which assessee had filed objections. The details and the dates with regard to filing of objections and disposal of objection and passing of order of assessment are tabulated herein below for clear understanding.

1. *Copy of reason recorded provided on 24.08.2018*
2. *Objection filed by the appellant vide letter dated 03/09/2018 on 05.09.2018*
3. *Disposal of objection filed by appellant 14.12.2018*
4. *Assessment order passed on 30.12.2018*

6. After evaluating the factual position in the present case, we noticed that the objections filed by the assessee regarding challenging reopening of assessment were disposed off by the AO on 14.12.2018 and the order of assessment was passed on 30.12.2018. Therefore in this regard as per Ld. AR the AO had erred in passing the assessment within four weeks from the date of disposal of objections.

7. We noticed that the assessee had raised this specific ground before Ld. CIT(A), although Ld. CIT(A) did not disputed the facts and also the decisions relied upon by the assessee passed by the Jurisdictional High Court but still dismissed the grounds by holding that the decision

referred to and relied upon by the assessee are applicable only in “*particular case*”. In our view Ld. CIT(A) has not at all considered the specific directions of Hon’ble Jurisdictional High Court in the case of ***Asian Paints Vs. DCIT (2009) 308 ITR 195 (Bom HC)***, wherein it has specifically been directed that ‘***the Income-tax Officer concerned shall follow the above procedure strictly in all such cases of reopening of assessment.***”

8. Therefore, when Hon’ble Jurisdictional High Court has specifically directed the ITO’s to follow the “*procedure strictly in all such cases of reopening of assessment*”. Hence under these circumstances Ld. CIT(A) had no other option except to follow the direction passed Hon’ble High Court but by not doing so, the Ld. CIT(A) committed a grave illegality.

9. Since the facts of the present case are not dispute and admittedly the assessment order had been passed on 30.12.2018 i.e within four weeks from the date of disposal of the objections i.e on 14.12.2018 therefore the order of assessment is not sustainable in the eyes of law as the same is in clear violation of the specific directions given by Hon’ble Jurisdictional High Court in the case of ***Asian***

Paints Vs. DCIT (supra) thus the same stands quashed. Consequently the ground Nos. 1 & 2 raised by the assessee stands allowed.

10. Since we have already quashed the order of assessment by holding the same as bad in law while adjudicating the Ground Nos. 1 & 2 raised by the assessee therefore other grounds needs no adjudicating at this stage as the same are now academic in nature.

11. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 19.01.2026

Sd/-

(PRABHASH SHANKAR)
ACCOUNTANT MEMBER

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 19/01/2026
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.

सत्यापित प्रति //True Copy//

आदेशानुसार/BY ORDER,

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