

IN THE INCOME TAX APPELLATE TRIBUNAL
“GUWAHATI BENCH”, GUWAHATI
(VIRTUAL HEARING AT KOLKATA)

SHRI GEORGE MATHAN, JUDICIAL MEMBER
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No. 284/GTY/2025
Assessment Year : 2016-17

ACIT, Central Circle 1 Guwahati, Aayakar Bhawan Office, Room No. 510, Central Circle-1, 5 th Floor, Guwahati - 781006	Vs.	DS Systems Private Limited, R.G. Baruah Road, Sundarpur, Guwahati - 781005 [PAN: AACCD8183C]
APPELLANT		RESPONDENT

Assessee by	:	Sandeep Goel, Advocate
Revenue by	:	Santosh Kumar Karnani, Addl.CIT

Date of hearing	:	09.02.2026
Date of Pronouncement	:	11.02.2026

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

This is an appeal filed by the revenue against the order passed u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”) by the Ld. Commissioner of Income Tax (Appeals), Central NER, Guwahati [hereafter “the Ld. CIT(A)] dated 18.07.2025, DIN & order No.

ITBA/APL/S/250/2025-26/1078645797(1) on the following grounds of appeal:

“Ground 1. Whether on the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in deleting the addition of Rs. 3,25,93,500/- made by the Assessing Officer under section 69C of the Income-tax Act, 1961, as unexplained expenditure, being the cash payment made by 'M/s DS Systems Pvt. Ltd.' to 'M/s BMG Informatics Pvt. Ltd.' during Financial Year 2015-16, on a protective basis for the Assessment Year 2016-17.

Ground 2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not considering the fact that the Hon'ble ITAT's judgement in the case of M/s BMG Informatics Pvt. Ltd. is based on the premise that document in question is a dumb document, whereas the documents under consideration in the case of M/s DS Systems Pvt. Ltd. is first party document found from his premises and comprising accounted as well as unaccounted entries on same page.

Ground 3. Whether on the facts and in the circumstances of the case and in law, the Ld. CTT(A) erred in not appreciating that the earlier appeal in the case of M/s BMG Informatics was not filed on account of the document under consideration, being a third party recordings, and has no bearing on the facts of this case [DS SYSTEMS PRIVATE LIMITED], as in this case it is the same party recording the entries.

Ground 4. The appellate craves to leave to add, alter, modify OR 4 amend any of the grounds of appeal during the course of proceedings before the Hon'ble ITAT.”

2. Briefly stated the facts of the case are that the assessee filed return of income on 23.02.2017 declaring total income of Rs. 54,90,070/-. The return of income was processed u/s 143(1)(a) of the Act. During the year, assessee was engaged in supply/sale of items like computer laptops, UPS, Battery, power banks, laptop bags etc. After taking necessary approval from the competent authority u/s 151 of the Act, the case was selected for reassessment u/s 147 of the Act. Accordingly, notice u/s 148

of the Act was issued on 29.06.2021 which was served electronically. Thereafter, notice u/s 143(2) of the Act was issued on 15.02.2022, thereafter, the assessee asked for reason for selection of scrutiny u/s 147 of the Act which was provided to the assessee electronically. Thereafter, the DS System Pvt. Ltd. (assessee) submitted its objections for reopening of the case u/s 147 of the Act, the objections raised by the assessee were disposed of through speaking order which was served to the assessee. Thereafter, detailed questionnaire was issued to the assessee. During the course of reassessment proceedings, the assessee furnished reply time to time.

3. A survey u/s 133A of the Act was conducted in the case of DS Systems Pvt. Ltd. on 02.11.2017 at its factory and its office premises at Odalbakra, Near Sabitri Bharali School, Guwahati in the case of the assessee. During the course of survey proceeding, a bunch of loose sheets marked as DSS-05 containing page no. from 1 to 15 was impounded upon examination it was found that these pages contained details of transactions between M/s D S Systems Pvt. Ltd. (supplier) and BMG Informatics Pvt. Ltd.(purchaser) regarding contracts of supply of IT Sector related accessories as well as the corresponding billing and payment details.

4. On perusal of documentary evidence, DSS-05 impounded in the case of D S Systems Pvt. Ltd. it was seen that there were entries of payment made through cheques by M/s BMG Informatics Pvt. Ltd. to M/s D S System Pvt. Ltd. and entries of transaction of receipt of cash back by M/s BMG Informatics Pvt. Ltd. from M/s D S Systems Pvt. Ltd. During the year under scrutiny M/s BMG Informatics Pvt. Ltd. made payment of Rs. 7,30,95,000/- through cheque to M/s D S Systems Pvt. Ltd. towards purchase of goods against the said payment made towards purchase the company BMG Informatics Pvt. Ltd. received a sum of Rs.

3,25,93,500/- back in cash during the relevant year through which Director Mr. Bhaskar Kalita. During the course of post survey investigation and assessment proceeding, it was found that by the said transactions between buyer and seller were recorded into the regular books of accounts of purchaser as well as vendor (supplier) the cash transactions were not recorded and the regular books of accounts either of them. Accordingly, Rs. 3,25,93,500/- were made the addition u/s 69C of the Act in the hands of the assessee as protective assessment and substantive addition was made in the case of BMG Informatics Pvt. Ltd.

5. Aggrieved from the above order, the assessee filed appeal before the Ld. CIT(A) and additional evidence were also filed. The Ld. CIT(A) called a remand report from the AO during the remand proceeding the assessee was also summoned and against the notice issued during the remand proceedings the assessee furnished reply to the AO. The Ld. CIT(A) called second remand report and AO has submitted remand report on 14.11.2024 and 04.07.2025 which was provided to the assessee and the assessee furnished rejoinder and he relied on various case laws during the course of appellate proceedings, the assessee filed additional ground which has been admitted by the Ld. CIT(A) and adjudicated. The Ld. CIT(A) decided the issue in favour of the assessee on two counts i.e. on legal issue as well as on merits, the decision on legal issue is as under:-

“8.9 Now coming to the instant appeal, a plain reading of the assessment order passed under Section 147 of the Act on 24.03.2022 for the impugned A.Y.2016-17 indicates that "the notice u/s 148 of the Income Tax Act, 1961 was issued to M/s. D S Systems Private Limited on 29.06.2021 through ITBA System and served electronically." No mention has been made by the Assessing Officer in the assessment order on whether he had duly followed the proper procedure as specified in the CBDT's Instruction No. 1/2022 dated 11.05.2022 in compliance with the Hon'ble Supreme Court's judgment dated 04.05.2022 in the case of Union of India v. Ashish Agarwal (supra). The notice under Section 148 of the Act being issued after 01.04.2021, all the procedures specified above in the

CBDT's Instruction No.1/2022 [F.NO. 279/MISC/M-51/2022-ITJJ dated 11.05.2022 were to be adhered to by the Assessing Officer prior to issuance of the notice under the amended Section 148 of the Act for the A.Y.2016-17. However, it appears that the Assessing Officer had not done so in the instant appeal. In this regard, reference is made to the first remand report, in which the Assessing Officer himself has acknowledged that "new provisions as laid down by amending section 148 and section 151 of the act was applicable in this instant case of the assessee". Yet, despite this acknowledgment, the Assessing Officer did not the proper procedure specified in the CBDT's Instruction No. 1/2022 dated 11.05.2022.

8.10 The validity of a notice issued under section 148 of the Act must be examined on the basis of the law existing on the date on which such notice is issued. The provisions of sections 147 to 151 of the Act being procedural laws, the provisions existing as on the date of the notice would be applicable. Accordingly, any notice issued under section 148 of the Act after 01.04.2021 must comply with the amended provisions of the Act, as inserted by the Finance Act, 2021, which came into force on 01.04.2021. Thus, notices issued under section 148 of the Act after 01.04.2021 must comply with the amended provisions of law and cannot be sustained on the basis of the erstwhile provision. In view of these reasons, the notice issued by the Assessing Officer under the unamended Section 148 of the Act dated 29.06.2021 for the impugned A.Y.2016-17, is considered to be invalid and the reassessment proceedings quashed for want of valid notice issued under the amended Section 148 of the Act by the Assessing Officer."

6. The Ld. CIT(A) further noted that in the case of substantive addition in the case of BMG Informatics Pvt. Ltd. the Ld. CIT(A) had allowed the appeal of the assessee against which the revenue filed appeal before the coordinate Bench of the Tribunal in ITA No. 61/Gty/2022, order dated 07.08.2023 for the AY 2016-17, dismissed the appeal of the revenue observing that the very basis for making addition in the hands of BMG Informatics Pvt. Ltd. is based on the reason for dumb documents having no evidentiary value which is held as incomplete vague noting only. Accordingly, the Ld. CIT(A) decided the issue on merits as under:

“8.25 On the basis of the foregoing discussions and respectfully following the rationale of the Hon'ble jurisdictional ITAT, Guwahati and the other aforementioned judicial decisions, the impugned sole addition of Rs.3,25,93,500/- made by the Assessing Officer under Section 69C of the Act on protective basis is held to be not sustainable in law as the substantive addition made in the hands of M/s. BMG Informatics Pvt Ltd had been deleted on merits by the Hon'ble jurisdictional ITAT, Guwahati. Additionally, in absence of any specific enquiry and corroborative evidence relied upon by the Assessing Officer other than the loose sheets marked as "DSS-05", based on which the impugned sole addition has been made, the said loose sheets are considered to be "in the nature of dumb documents having no evidentiary value and these loose slips, perse, on their own, cannot be taken as the sole basis for foisting a tax liability on the Appellant. The Law is trite that no addition can be made simply on the basis of uncorroborated notings in loose papers. Accordingly. the impugned sole addition of Rs.3,25,93,500/- made by the Assessing Officer is, thus deleted and the instant Grounds of Appeal are, hereby, allowed.”

7. Aggrieved from the above order, the Revenue filed appeal before the ITAT.
8. The Ld. DR relied on the orders of AO.
9. On the other hand, the Ld. counsel for the assessee relied on the order of the Ld. CIT(A) and has filed a written synopsis which is as under:

“a. Notably and admittedly in its appeal (grounds before Hon'ble ITAT in ITA 284/GTY/2025), revenue has not assailed finding/conclusion of Ld CIT-A qua additional ground no.1 raised in para 8.5 page no.125 of CIT Appeals order and its decision in para 8.10 on page no. 142 of CIT Appeals order. Since the very basic issue of notice u/s 148 issued in old (unamended law) on dated 29.06.2021 is settled by Honorable Supreme Court first in Ashish Agarwal Case followed with CBDT effective Instruction No.1/2022 dated 11.05.2022 and thereafter reaffirming in UOI vs Rajeev Bansal Case. This settled view being consistently followed by all the revenue officers from Kashmir to Kanyakumari cannot be allowed to challenge as it is sheer wastage of judicial time of every litigant and government and against the national litigation policy. Notably this appeal is filed on ground no.1 to 3 as per form 36 without assailing the above

decision on validity of proceedings as per SC binding dictum under Article 141 of Constitution of India and so the present appeal is not maintainable as per principle of non-traverse.

b. So revenue appeal needs to be dismissed at the outset being "infructuous"/academic on this count alone. This is based on rudimentary principle that if revenue in its appeal has not raised any particular ground on which Ld. CIT-A has granted relief to assessee, ITAT in such a case cannot decide the revenue (academic) appeal, which has accepted one legal aspect (critical issue of time barring), and so, appeal of revenue being purely academic and infructuous. So no decision could be given in such case at end of Hon'ble ITAT as appeal was infructuous at the outset.

C. ON DECIDING ACADEMIC/INFRUCTUOUS APPEAL OF REVENUE SAME IS NOT PERMISSIBLE:

On word "infructuous" it is submitted that same is defined as The expression infructuous means ineffective, unproductive and unfruitful. It is derived from the Latin word "fructus" (fruit), Union of India v. Narender Singh, (2005) 6 SCC 106: 2005 SCC (L&S) 815. Further Reference is made to Hon'ble Karnataka high court decision In case of CIT Central vs ABDUL KARIM LADSAB TELGI reported at 218 TAXMANN 366 (on issue of infructuous /academic appeal) and coordinate Lucknow bench ITAT decision in case of ITO Vs Krishi Utpadan Mandi Samiti (ITAT Lucknow) ITA 185/LKW/2023 order dated 15.10.2024 "When Revenue has already accepted the assessee's aforesaid claim, then there was no ostensible justification for filing of this appeal by Revenue" as under:

Even otherwise, the appeal of the revenue is against the binding ratio of the decision given in case of BMG Informatics Pvt Ltd in ITA No.61/GTY/2022 (substantive assessee) as per para 8.25 of CIT Appeals order (page 165 of CIT Appeals order) where CIT Appeals have based its findings on basis of decision passed by higher court - ITAT in case of person assessed as substantive person on same loose document, same AO, same year and honorable bench.

Important finding of ITAT Order qua same facts in case of BMG Informatics PVT Ltd:

S. No.	Finding	Applicable in present case
1	'DSS-05' is loose dumb document having no evidentiary value without corroboration	Same in present case
2	'DSS-05' is undated	Same in present case
3	DSSS-05 is without any breakup	Same in present case
4	No enquiry & verification for substantiating any alleged unaccounted transactions	Same in present case
5	No discovery of unaccounted asset in possession of appellant	Same in present case

9. Thus, considering the facts record, elaborate discussion and analysis made by the Ld. CIT(A) both on the legal and factual aspect of the case as narrated above, we do not find any reason to interfere with the well reasoned finding arrived at by the Ld. CIT(A). Accordingly, grounds taken by the revenue are dismissed.

Thus it is prayed that appeal of the revenue may please be dismissed as not maintainable in toto as per pleadings before CIT Appeals on record.”

10. The Ld. Counsel for the assessee has also relied on the judgment of the coordinate Bench in the case of DCIT Vs. BMG Informatics Pvt. Ltd., CO No. 03/Gty/2023, order dated 07.08.2023.

11. Considering the rival submissions and perusing the entire material available on record and the orders of authorities below. We observed that the Ld. CIT(A) has allowed the appeal of the assessee on the above noted

points on legal issue as well as on merits of the case. However, the revenue has raised the grounds of appeal noted (supra) are not correlating with the decision of the Ld. CIT(A). The Revenue has not raised on the legal issue decided by the Ld. CIT(A) in favour of the assessee, the revenue has raised only merits of the case. If it is so, it is very difficult to decide the case. Therefore, the appeal of the Revenue does not survive.

12. In the result, appeal of the revenue is dismissed.

Order pronounced on 11.02.2026

Sd/-

(George Mathan)
Judicial Member

Sd/-

(Laxmi Prasad Sahu)
Accountant Member

Dated: 11.02.2026

AK, Sr. P.S.

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches