

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.2793/Del/2025
(ASSESSMENT YEAR 2013-14)**

M/s Fairdeal Information Technology Private Limited, 116A, First Floor, Somdutt Chamber-1, 5, Bhikaji Cama Place, New Delhi-110066. PAN-AAACF9581G	Vs.	Income Tax Officer, Ward-9(1), New Delhi.
(Appellant)		(Respondent)

Assessee by	Shri Ashwani Kumar, CA and Shri Ankur Agarwal, CA
Department by	Ms. Indu Bala Saini, Sr. DR
Date of Hearing	20/01/2026
Date of Pronouncement	13/02/2026

ORDER

PER MANISH AGARWAL, AM:

This appeal is filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 27.03.2025 in Appeal No. NFAC/2012-13/10259473 passed u/s 250 of the Income Tax Act, 1961 ('the Act') arising out of the assessment order dated 22.05.2023 passed u/s 147 r.w.s. 144B of the Act for Assessment Year 2013-14.

2. Brief facts of the case are that assessee filed its return of income on 29.09.2013, declaring total income of Rs.5,81,730/-. The case of the assessee was

re-opened u/s 147 by way of issue of notice u/s 148 of the Act on 20.04.2021. However, in terms of the Hon'ble Supreme Court in the case of ***Union of India & Ors. vs. Ashish Agarwal [2022] 444 ITR 1 (SC)***, the said notice was considered as issued u/s 148A of the Act and information available was supplied to the assessee. After considering the submissions of the assessee, order u/s 148A(d) of the Act was passed wherein it is alleged that assessee has received deposits in the bank account to the extent of Rs.13,58,00,000/- which remained unexplained. Thereafter, the assessment order was passed u/s 147 r.w.s. 144B of the Act dated 22.05.2023 by making addition of Rs.13,58,00,000/- u/s 68 of Act.

3. Against the said order, assessee preferred an appeal before Ld. CIT(A) who allowed part relief to the assessee and deleted the additions of Rs.1,58,00,000/- on account of loans received, however, confirmed the additions of Rs.12,00,00,000/- being amount received as consideration from the sale of shares owned by assessee by holding the same as unexplained cash credit.

4. Aggrieved by the said order, assessee filed the present appeal before the Tribunal by taking following grounds of appeal:

1. *“That the order dated 27.03.2025 passed u/s 250 of the Income -tax Act, 1961 (hereinafter called the "Act") by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi is against law and facts on the file in as much as he has not justified to uphold the action of the Ld. Assessing Officer, Income Tax Department, NFAC in resorting to reassessment proceeding and issuing notice u/s 148 of the Act as being bad in law.*
2. *That the order dated 27.03.2025 passed u/s 250 of the Act by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Ld. Assessing Officer, Income Tax Department, NFAC in restricting the addition of Rs. 12,00,00,000/- received from various concerns by treating the*

same as unexplained credit u/s 68 r.w.s 115BBE of the Act on the ground that the Appellant Company had failed to submit the genuineness of the transaction.

3. *That the order dated 27.03.2025 passed u/s 250 of the Act by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Ld. Assessing Officer, Income Tax Department, NFAC in passing the order without giving an opportunity of being heard to the Appellant company in violation of the principles of natural justice as the Ld. Assessing Officer has neither disposed of the adjournment application nor granted any further time to the Appellant Company to reply the show cause notice.*
4. *That the Appellant craves to add, amend, alter, modify or delete any or all of the grounds of appeal before or at the time of hearing.”*

5. Heard both the parties at length and perused the material available on record. It is observed that the Assessing Officer had supplied the information u/s 148(b) of the Act to the assessee, according to which assessee had made huge transactions in its bank account of Rs. 38,66,95,316/- (credit) and Rs. 38,66,70,750/- (debit). Besides this, it was observed by AO that assessee was having transactions with M/s Concise Exim Pvt. Ltd. totaling to Rs. 4.58 crores. Based on this information, reassessment proceedings were initiated by issue of notice u/s 148 on 20.04.2021. Thereafter, in terms of the order of Hon'ble Supreme Court in the case of Union of India vs. Ashish Agarwal (supra), the said information was supplied u/s 148A(b) of the Act. In response the assessee submits that during the year assessee has not entered into any transactions with M/s Concise Exim Pvt. Ltd. Thereafter, in order passed u/s 148A(d) of the Act, AO has recorded the satisfaction of escapement of income that assessee has credits entries of Rs.13,58,00,000/- in its bank account which remained unexplained. Once the earlier notice u/s 148 was issued for the reason that assessee has made transaction with Concise Exim (P) Ltd. which were alleged as rotation of money and such information was supplied to the assessee alongwith the notice u/s 148A(b) of the Act, in the final order passed u/s 148A(d)

satisfaction was recorded on different issues, therefore, assessee was never confronted on the issue on which reassessment proceedings were initiated by recording the satisfaction in the order passed u/s 148A(d) of the Act which is against the principal of natural justice and, therefore, the order passed u/s 148A(d) and subsequent notice issued u/s 148 cannot be held as valid.

6. It is further observed that the AO has made addition of Rs. 13,58,00,000/- u/s 68 of the Act towards the amounts received from various companies tabulated at pages 49 to 52 of the appellate order, wherein it is accepted by Id. CIT(A) that out of total amount of Rs. 13.58 crores, a sum of Rs. 12.00 crores were received against the sale of shares of M/s Rose Capital Services Pvt. Ltd. owned by the assessee company and balance Rs. 1.58 crores were received as unsecured loans. The Id. CIT(A) deleted the addition of Rs. 1.58 crores made u/s 68 of the Act towards unsecured loans by holding that the assessee has been able to established the identity and creditworthiness of the lenders and further the genuineness of transactions were also proved and revenue has not filed any appeal against these observations of Id. CIT(A).

7. As regards the sale consideration of Rs. 12.00 crores received from various companies; it is an admitted position that assessee has filed copy of share of transfer certificate of all the companies to whom the shares were sold which contained their complete names and addresses. Besides this, assessee also filed their financial statements, confirmations, copy of ITR's and bank statements. Both the lower authorities have wrongly presumed the sale of shares of Rose Capital Services Pvt. Ltd. held by the assessee as non-current investment as issue of share capital.

Therefore, the assessee has satisfied all the three ingredients of section 68 of the Act and thus it is not applicable to the facts of the present case. The assessee in its return of income filed had disclosed the transactions of sale of shares. Though the assessee has sold the shares at cost however, the transaction of sale was part of the transactions of sale of shares from which STCG of Rs.6,60,250/-as declared and due taxes were paid. Once the said transactions of sale of shares were disclosed, treating the sale consideration as unexplained cash credit by wrongly treating the sale consideration as receipts against issue of share capital clearly shows the arbitrary approach of the lower authorities who made / uphold the additions on wrong pretext. Once the assessee has been able to show that it had sold the shares owned by it as non-current investment, which facts is verifiable from the copy of the financial statements wherein in Note No.8 under the title “Non Current Investments Long term”, assessee was holding 4,00,000 equity shares of Rs. 10/- each of M/s Rose Capital Pvt. Ltd. Services which were sold during the year and, therefore, it cannot be held that the said amount is received against the issue of share capital.

8. It is further observed that an amendment is made vide Finance Act, 2022 wherein second proviso to section 68 is added, so as to provide that the nature and source of any sum, whether in the form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider. This amendment has taken effect from 1st April, 2023 and accordingly applies on and from Assessment Year 2023-24 and onwards. Since the year before us is AY 2013-14 thus, the said amendment is not applicable.

9. From the perusal of the financial statements, it is further observed that share capital of the assessee company remained the same and no fresh shares were issued not any application money was received during the year under appeal, therefore, the allegation of the lower authorities that the sum of Rs.12.00 crores was received against the issue of share capital is contrary to the facts on records. At this juncture, we refer to the provision of section 68 of the Act, which reads as under:

Cash credits.

68. “Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

Provided that where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by such assessee shall be deemed to be not satisfactory, unless,—

- (a) the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided also that nothing contained in the first proviso or second proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.”

10. That a bare reading of Section 68 suggests that there has to be credit of amounts in the books maintained by an assessee; such credit has to be of a sum during the previous year; and the assessee offer no explanation about the nature and source of such credit found in the books; or the explanation offered by the assessee in the opinion of the Assessing Officer is not satisfactory, it is only then the sum so credited may be charged to income-tax as the income of the assessee of that previous year. The expression "the assessee offer no explanation" means where the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. It is true that the opinion of the Assessing Officer for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record. The opinion of the Assessing Officer is required to be formed objectively with reference to the material available on record. Application of mind is the *sine qua non* for forming the opinion.

11. Coming to the facts of the present case in the line of the above proposition of Act, from the perusal of details filed by the assessee, it is observed that not only assessee explained the nature of credits as consideration received from the sale of shares but also filed their confirmations, Bank statement, audited financial statements, copy of ITR acknowledgement and share transfer deeds. It is further seen that the assessee not only prove the source in the hands of the buyer but further prove the source of source of the funds received by the assessee company.

12. Since, by filing the share transfer deeds, assessee has successfully demonstrated the nature of the transactions being sale of shares and further by filing the confirmations, ITR and bank statements, the identity, genuineness and credit

worthiness of the buyers was also established. Section 68 of the Act stipulates that the nature and the source of credits should be explained to the satisfaction of the Ld. Assessing Officer however, in the instant case the credits alleged as unexplained were not the liability but was an income already offered being sale consideration and stood accepted thus no addition could be made for the same by holding as unexplained credits u/s 68 of the Act.

13. The Hon'ble Orrisa High Court in the case of *PCIT Vs. Ahinsa Vinimay Pvt. Ltd.* reported in *(2024) 169 Taxmann.com 134 (Orrisa)* has held that where Assessing Officer made additions under section 68 on account of unexplained cash credit in respect of amount received by assessee towards sale consideration of shares held by assessee in a company, since assessee had duly disclosed receipt of capital gains in regular books of account and offered capital gains to tax, there was no occasion to make addition on basis of unexplained cash credit. The SLP filed by the revenue against the aforesaid order of Hon'ble Orrisa High Court was dismissed by the Hon'ble Supreme Court reported in *(2024) 169 Taxmann.com 135 (Orrisa)*.

14. Once the assessee has able to establish that the identity of the buyers of the shares and filed share transfer deed, we find that the assessee has discharged the burden casted upon it to prove the genuineness of sales of the shares. It is also a fact that the AO has not doubted the purchases of shares sold during the year. Further the sale of shares has been recorded in the books of accounts which were not in dispute and entire consideration was received through banking channels. Further the identity of the parties to whom shares were sold has been established and their creditworthiness was also proved. The Hon'ble Supreme Court of India in the case

of CIT v. Kamdhenu Steel & Alloys Ltd., SLP (CC) no. 15640 of 2012 (SLP Dismissed against Decision of Delhi HC):

"... assessee discharged the burden in proving the identity of shareholders, genuineness of the transaction and creditworthiness of the shareholders, thereafter, in case such evidence is to be discarded or it is proved that the assessee has "created" evidence, the Revenue is supposed to make thorough probe before it could nail the assessee and fasten the assessee with such a liability under Section 68 and 69 of the Act..."

15. The Hon'ble Apex Court in the case of ***CIT vs. Orchid Industries (P.) Ltd reported in [2020] 116 taxmann.com 113 (SC)*** dismissed the SLP filed by the department against the judgment of Hon'ble Bombay High court in the case of ***CIT Vs. Orchid Industries (P.) Ltd reported in [2017] 88 taxmann.com 502 (Bombay)***, where it was held as under:

"The assessee had produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money, only because those persons had not appeared before the Assessing Officer would not negate the case of the assessee. Therefore, the addition was liable to be deleted."

16. Further, the Hon'ble Apex Court in ***PCIT Vs. Himachal Fibres Ltd. reported in (2018) 259 Taxmann 5*** in which the decision of Hon'ble Delhi High Court was confirmed , held as under:

"In a case where the assessee has furnished all the relevant facts within the knowledge and offered a credible explanation, then the onus reverts to the Revenue to prove that these facts are not correct. In such a case, Revenue cannot draw inference based on suspicion or doubt or perception of culpability etc."

17. As observed above, assessee has proved creditworthiness of the buyers by submitting their relevant bank statement, financial statements and ITR's. The Assessing Officer has not proved that any cash has been deposited prior to transfer of sale consideration to the assessee. Even though assessee was not required to prove sources of source, however, bank statements submitted clearly reflects such sources

which is not doubted by A.O. nor any inquiry has been made by A.O. for concluding that sale consideration received by appellant is not genuine. The coordinate Bench of ITAT Delhi in the case of *ACIT v Smt. Prem Anand (ITA No. 3514/Del/2014)* vide its decision dated 13.04.2017 has held that amendment made in section 68 of the Act w.e.f. 01.04.2013 empowers the A.O. to examine source of source in case of share application money / share capital / share premium from 01.04.2013 and this amendment does not give power to the A.O. to examine source of source of non-share capital cases. It is clear that the assessee has furnished source of source and if the AO has any doubts with respect to the source of source in the hands of the buyers, it could have made further enquiries from all such parties by issue summons u/s 133(6) of the Act however, the AO choose to issue summons u/s 133(6) to only four parties out of which one is loan creditor from whom reply was received and rest three are buyer of shares who had not responded. It is observed by us, that the Id. CIT(A) despite of fact that no enquiry was made from the remaining three loan creditors, had deleted the addition.

18. The Hon'ble Supreme Court in the case of *Orissa Corporation reported in [1986] 159 ITR 78 (SC)* has held that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw an adverse inference against the assessee.

19. It is trite law that suspicion, howsoever strong, cannot take the place of proof as held in *Umacharan Shaw & Bros. vs. CIT* reported in (1959) 37 ITR 271 (SC). The Hon'ble Supreme Court in the case of *Dhakeswari Cotton Mills Ltd v. Commissioner of Income Tax* reported in (1954) 26 ITR 775 (SC) has observed that powers given to the Revenue authority, howsoever, wide, do not entitle him to make the assessment on pure guess without reference to any evidence or material. The assessment cannot be framed only on bare suspicion. The assessment should rest on principles of law and one should avoid presumption of evasion in every matter. In the present case, by filing all the details as stated above, assessee has been able to establish the genuineness of transaction and creditworthiness of the buyers. Accordingly, we delete the additions made u/s 68 of Rs. 12.00 crores made by holding the same as unexplained credits. In the result all the three grounds of appeal of the assessee are allowed.

20. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court 13.02.2026.

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated:13.02.2026

Amit Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI