

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"E" BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**MA No.281/MUM/2024**

**(Arising out of ITA No.1923/MUM/2022)**

**(Assessment Year : 2017-18)**

**Krishraj Enterprises,**

Flat No.15, Building No.1,

Bhagirathi Apartment

Ameya Park, Boisar (West)

Mumbai – 401501

PAN: AAHFK9411C

..... Applicant  
(Original Respondent)

v/s

**Deputy Commissioner of Income Tax,**

**Central Circle – 5(2),**

Mumbai

.....Respondent  
(Original Appellant)

Assessee by : Shri Hitesh Chimnani, CA (Virtually present)

Shri Kunal Agrawal, CA (Virtually present)

Revenue by : Shri Layaqat Ali Aafaqui, Sr.DR

Date of Hearing – 21/11/2025

Date of Order – 17/02/2026

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The assessee has filed the present miscellaneous application under section 254(2) of the Income Tax Act, 1961 (*"the Act"*) seeking recall of the order dated 27/09/2023 passed by the Coordinate Bench of the Tribunal under section 254(1) of the Act in Revenue's appeal, being ITA No. 1923/Mum/2022, for the assessment year 2017-18.

2. From the perusal of the record, we find that the solitary grievance of the Revenue in its appeal was against the deletion of the addition of Rs. 1,63,92,000, on account of cash deposited by the assessee in its bank account during the demonetisation period. As is evident from the record, during the assessment proceedings, it was the plea of the assessee that the cash deposit was made out of the cash balance available from the income earned in cash amounting to Rs.1,75,00,000, which was duly offered to tax before the Hon'ble Income Tax Settlement Commission ("*Hon'ble ITSC*"). However, the Assessing Officer ("*AO*"), vide order passed under section 143(3) of the Act, disagreed with the submissions of the assessee and held that the assessee failed to prove the link or nexus between the income offered before the Hon'ble ITSC and the cash deposited during the demonetisation period. In appeal, the learned CIT(A) agreed with the submissions of the assessee that the cash of Rs.1,75,00,000 was available with the assessee and out of the same, the assessee deposited Rs.1,63,92,000 in its bank account during the demonetisation period. Accordingly, the learned CIT(A) deleted the entire addition of Rs.1,63,92,000 made by the AO under section 68 of the Act on account of cash deposited in the bank account during the demonetisation period.

3. In the appeal filed by the Revenue against the order passed by the learned CIT(A), the Coordinate Bench of the Tribunal, vide order dated 27/09/2023 passed in ITA No. 1923/Mum./2022, overturned the findings of the learned CIT(A) and sustained the addition made by the AO under section 68 of the Act, by observing as follows: –

"8. We have considered the submissions of both sides and perused the material on record. As per the assessee, it is a partnership firm and is engaged in the business of investment in shares, securities, and immovable properties. As evident from the record, during the assessment proceedings, it was observed that the assessee has deposited cash total amounting to Rs.1,63,92,000 in its bank account in RBL Bank on 25/11/2016, vide 4 entries. As per the assessee, the cash of Rs.1,63,92,000, was deposited out of cash of Rs.1,75,00,000, earned by the assessee from the sale of land and brokerage income, which was offered to tax before the Hon'ble ITSC, and the same has also been accepted vide order dated 30/01/2018, passed under section 245D(4) of the Act.

9. From the perusal of the order dated 30/01/2018, passed by the Hon'ble ITSC under section 245D(4) of the Act, forming part of the paper book from pages 37-74, we find that during the course of search at the premises of Responsive Industries Ltd and Axiom Coedrages Ltd a writing pad was found and seized. On the basis of the said document, it was found that the assessee had received a commission for the sale of the land, and commission income was earned in the assessment year 2012-13. During the proceedings before the Hon'ble ITSC, the assessee submitted that apart from the above income it had earned the brokerage income on minor land deals. Accordingly, the sum of Rs.1,75,00,000 was, inter-alia, offered to tax by the assessee as additional income. The assessment year-wise details are as under:-

Assessment Year	Amount (Rs.)
2009-10	2,50,000/-
2010-11	3,75,000/-
2011-12	3,25,000/-
2012-13	1,52,00,000/-
2013-14	4,00,000/-
2014-15	4,50,000/-
2015-16	3,50,000/-
2016-17	1,50,000/-
Total:	1,75,00,000/-

10. After considering the statement of facts, Rule 9 report, reply to Rule 9 report, and further submissions, the Hon'ble ITSC accepted that additional income offered by the assessee. It is the claim of the assessee that the said additional income of Rs.1,75,00,000, which was offered before the Hon'ble ITSC is the source of the deposit of cash of Rs.1,63,92,000. We find that the AO specifically asked the assessee to prove the link or nexus between the aforesaid income offered before the Hon'ble ITSC and cash deposited in its bank account on 25/11/2016, during the demonetisation period. However, as evident from the record, despite sufficient opportunity being granted, the assessee could not prove the live link/nexus between the additional income offered to tax before the Hon'ble ITSC and the cash deposited in its bank account. It is undisputed that the cash of Rs.1,63,92,000, was deposited by the assessee in its bank account in 4 trenches on 25/11/2016, and the application before the Hon'ble ITSC was filed on 28/11/2016. Therefore, despite the fact that the cash was deposited in the bank account well before

*the application was filed by the assessee before the Hon'ble ITSC for settlement of its tax dispute, no material could be brought on record by the assessee, despite specific query being raised during the hearing, to prove the least that the assessee submitted before the Hon'ble ITSC that out of the additional income of Rs. 1,75,00,000 the cash of Rs.1,63,92,000, has now been deposited by it in its bank account and the same has also been shown in its cash book for the financial year 2016-17. Since, even in the proceedings before us, the assessee could not establish the link/nexus between the cash deposited in its bank account and additional income offered before Hon'ble ITSC, we find no merits in the submissions of the assessee. The entire basis of arguments of the assessee appears to be a mere afterthought after receipt of the order dated 30/01/2018, passed by the Hon'ble ITSC under section 254D(4) of the Act. Further, from the aforesaid table of additional income offered by the assessee before the Hon'ble ITSC, it is evident that the amount totalling Rs.1,75,00,000, pertains to the assessment years 2009-10 to 2016-17. We are of the considered view that when the said additional income was not at all disclosed earlier by the assessee, the onus cannot be cast on the AO to prove its utilisation by the assessee for any other purpose. Rather, the onus is on the assessee to prove that the said undisclosed additional income was not utilised by it for any other purpose in the aforesaid years and was the source of the deposit of Rs.1,63,92,000, in its bank account on 25/11/2016. We find that the decisions relied upon by the learned AR are factually distinguishable and thus not applicable to the present case. Accordingly, we find no merits in the findings of the learned CIT(A) and thus the impugned order is set aside. As the assessee failed to establish beyond doubt with any cogent evidence the nature and source of the cash deposit in its bank account, the addition of Rs.1,63,92,000, made by the AO under section 68 of the Act is affirmed. As a result, grounds raised by the Revenue are allowed.*

4. By way of the present miscellaneous application, the assessee has sought a recall of the aforesaid order passed by the Coordinate Bench of the Tribunal, on the following basis: –

- (a) Various documents filed in the paper book clearly demonstrate that the undisclosed income declared before the Hon'ble ITSC was the source of the cash deposit during the demonetisation period.
- (b) Direct nexus between the cash deposited and the income offered for earlier years, which was lying with the assessee in cash, is evident with the help of the documents and evidence already on record.
- (c) The AO failed to telescope the income offered, which was not taken into consideration by the Coordinate Bench.

- (d) The submissions of the assessee were not afterthought after receipt of the order dated 30/01/2018, passed by the Hon'ble ITSC under section 254D(4) of the Act.
- (e) The assessee cannot be asked to prove non-utilisation of the undisclosed income for any other purpose in the earlier years.
- (f) The decision relied upon by the assessee, forming part of the paper book, was not considered.

5. On the other hand, the Revenue vehemently objected to the present miscellaneous application and submitted that an attempt has been made by the assessee to re-argue what has already been considered by the Tribunal, and therefore, the present application is seeking the review of the order, which is completely impermissible.

6. We have considered the submissions of both sides and perused the material available on record. In the present case, the AO specifically asked the assessee to prove the link or nexus between the undisclosed income offered before the Hon'ble ITSC and cash deposited in the bank account amounting to Rs.1,63,92,000 on 25/11/2016, during the demonetisation period. It is the plea of the assessee that it had earned undisclosed income of Rs.1,75,00,000 during the assessment years 2009-10 to 2016-17, which was offered before the Hon'ble ITSC, and thus the cash of Rs.1,75,00,000 was available with the assessee from which the cash of Rs.1,63,92,000 was deposited in the bank account on 25/11/2016. The AO disagreed with the submissions of the assessee and made the addition of Rs.1,63,92,000 under section 68 of the Act as the assessee failed to satisfactorily explain and

substantiate the nature and source of the cash deposited during the demonetisation period. In this regard, we deem it relevant to note the following findings of the AO in the assessment order passed under section 143(3) of the Act: –

*"9. In view of the foregoing it is seen that the assessee has failed to furnish documentary supporting and corroborative evidence in respect of sources of the cash deposits of Rs. 1,63,92,000/-. The assessee has **failed to prove the link or nexus between the income offered before the Hon'ble ITSC and the cash deposited** during the demonetization period. The search was conducted on 26.11.2014 and the incomes offered by the assessee before the ITSC are on account of sale of land and brokerage earned, spanning for the period from A.Y. 2009-10 to A.Y. 2016-17 but it **does not establish and prove the availability of physical cash which was deposited by the assessee** during the demonetization period of Rs. 1,63,92,000/- in its account with RBL Bank."*

*(Emphasis supplied)*

7. It is evident from the record that during the hearing of Revenue's appeal, the assessee did not furnish any new documentation, and all the documents/evidence as furnished before the AO were forming part of the paper book. However, no material/document was furnished to overturn the aforementioned findings of the AO regarding the availability of physical cash pertaining to the assessment years 2009-10 to 2016-17 for deposit in bank accounts on 25/11/2016, during the demonetisation period. Further, none of the documentary evidence relied upon by the assessee indicates the availability of physical cash with the assessee for depositing in the bank account during the demonetisation period. There is also no observation anywhere in the documents relied upon by the assessee regarding cash being seized during any search proceedings.

8. Further, it is evident from the record that the cash was deposited on 25/11/2016, and the application before the Hon'ble ITSC was filed on

28/11/2016. However, there is no material to prove any submission by the assessee before the Hon'ble ITSC that out of the undisclosed additional income of Rs.1,75,00,000, the cash of Rs.1,63,92,000 was deposited in a bank account and the same has also been declared in the cash book for the financial year 2016-17. We are of the considered view that even though the application of the assessee before the Hon'ble ITSC was for the assessment years 2009-10 to 2016-17, the aforesaid submission is relevant when the assessee is making a declaration regarding its undisclosed income of the preceding years and claiming to have deposited the cash in the bank account from the said undisclosed income. Despite the above, the fact remains that the assessee could not establish the link/nexus between the cash deposited in its bank account and the additional income offered before the Hon'ble ITSC.

9. Further, after taking into consideration the fact that the additional income was not at all disclosed earlier by the assessee, the Coordinate Bench came to the conclusion that the onus cannot be cast on the AO to prove its utilisation by the assessee for any other purpose. It is pertinent to note that, since the assessee had knowledge of the additional undisclosed income, the onus is only on the assessee to prove that the said undisclosed income was not utilised for any other purpose.

10. From the perusal of the order passed by the Coordinate Bench, it is also evident that the decisions as relied upon by the learned AR during the appeal hearing were taken into consideration and were not found applicable to the present case by the Coordinate Bench in para-9 of the order.

11. Therefore, from the perusal of the record and the findings of the Coordinate Bench in its order dated 27/09/2023, it is evident that after considering all the evidence, the Coordinate Bench arrived at the conclusion that the assessee failed to satisfactorily explain the nature and source of the cash deposited in its bank account. Thus, all the submissions on behalf of the assessee before us are merely an attempt to seek a review of the order passed by the Coordinate Bench under section 254(1), which is completely impermissible under section 254(2) of the Act. Therefore, we do not find merit in the present miscellaneous application filed by the assessee, and the same is dismissed.

12. In the result, the miscellaneous application by the assessee is dismissed.

Order pronounced in the open Court on 17/02/2026

**Sd/-**  
**OM PRAKASH KANT**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 17/02/2026**

*Prabhat*

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai