

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**I.T.A. No.5222/Mum/2024
A.Y: 2011-12**

Mystical Constructions Pvt Ltd A 603, A1 Akbar Bldg, PE Road, Momin Nagar, Jogeswari (W), Mumbai - 400102 PAN - AACCN5191N (Appellant)	Vs	DCIT, Circle 5(2)(1) Aayakar Bhawan, Mumbai. (Respondent)
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Assessee by	Ms. Simran Dhawan a/w Mr. Ravi Gantara
Revenue by	Shri Umashankar Prasad, CIT DR

Date of Hearing	04.11.2025
Date of Pronouncement	02.02.2026

ORDER

Per: SHRI. SANDEEP GOSAIN, J.M.:

The present appeal has been filed by the assessee challenging the impugned order dt. 06.08.2025 passed under section 250 of the Income Tax Act, 1961 ('the Act'), by the National Faceless Appeal Centre (NFAC) / CIT(A) for the assessment year 2011-12. The assessee has raised the following grounds of appeal:

1. On the facts and the circumstances of the appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the addition of Rs 16,00,00,000/- made by the Assessing Officer u/s 143(3) read with section 147 of the Income Tax Act, 1961 ("the Act") on 26.12.2018. This addition

was based on alleged cash transactions characterized as accommodation entries involving the appellant and various group concerns of the Bhoomi Group.

2. On the facts and the circumstances of the appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in not deleting the addition of Rs 16,00,00,000/- made by the Assessing Officer u/s 143(3) read with section 147 of the Income Tax Act, 1961 on 26.12.2018 regarding alleged unexplained cash credit pertaining to sale proceeds of Transferable Development Rights (TDR) amounting to Rs 1,50,00,000/-.

3. On the facts and the circumstances of the appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in ignoring the fact that the Ld. Assessing Officer erred in reopening the assessment u/s 147 of the Income Tax Act, 1961 by issue of notice dated 31.03.2018 u/s 148 of the Act which is illegal, bad in law or otherwise void for want of jurisdiction.

4. On the facts and the circumstances of the appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the initiation of re-assessment proceedings by the Assessing Officer through issuance of a notice u/s 148 of the Act dated 31.03.2018 and that the Assessing Officer ought to have dropped the proceedings under section 147 and mandatorily invoked section 153C instead of section 147 of the Act in view of express provisions. The appellant asserts that the appropriate procedure should have followed provisions outlined u/s section 153C of the Act as the basis of information for reopening the assessment relied solely on seized material unearthed at a premises owned by an individual during the course of search proceedings u/s 132 of the Act associated with the Bhoomi Group. The Ld. Hence, notice issued under section 148 of the Act and proceedings under section 147 of the Act by the AO are illegal and void ab initio. In view of the provisions of section 153C of the Act, section 147/148 stands ousted. This contention of the appellant has been upheld in the order passed by the Hon'ble ITAT B Bench, Bangalore in the case of M/s Ickon Projects Vs

ITO, Ward-4(3)/Ward 7(2)(3), Bangalore in ITA Nos. 771 & 772/Bang/2017.

5. On the facts and the circumstances of the appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in ignoring the fact that the Assessing Officer has not provided sufficient opportunity to the appellant to defend its case by not providing to the appellant the cross-examinations of the concerned persons(s) who have given such statement on oath and by not issuing notice to the appellant for appearance at the time of recording of statements on oath of the concerned persons(s).

6. On the facts and the circumstances of the appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the fact that the Assessing Officer has concluded that the cash entries/accommodation entries mentioned in the seized documents pertains to appellant.

7. On the facts and the circumstances of the appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the Assessing Officer's issuance of penalty noticeu/s 274 for action u/s 271(1) (c) of the Act which deserves to be quashed in view of the facts and circumstances of the case.

The appellant prays before the Hon'ble Tribunal to delete the additions made by the Assessing Officer and confirmed by the Ld. CIT (A) and/ or any other relief as the Hon'ble Tribunal may deem fit.

2. All the grounds raised by the assessee are interrelated and interconnected and relates to challenging the order of Ld. CIT(A) in upholding the additions made by AO while passing order u/s 143(3) r.w.s 147 of the Act on account of unexplained cash credit and on account of transferrable development rights (TDR). Therefore, we have decided to adjudicate these grounds through the present consolidated order.

3. 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 an information was received from Dy.CIT-CC-6(2), Mumbai to the effect that the assessee had taken accommodation entries of Rs. 16,00,00,000/- from the various concerns of Bhoomi Group as per incriminating data recovered in a search action u/s 132 of the Act, carried out in the case of Ekta&Bhoomi group on 05.10.2015. The Contents of the seized material in digital form as communicated by the AO in the notice u/s 142(1) dated 03.12.2018 during reassessment proceedings are as under:

CONWOOD (MAHUL TDR) A/C		
F.Y. 2010-11		
Received(sale)	Date	Amount
Cq in "Sagar Investment from Nihar Construction"	19.04.2010	30000000
ag cqfrmsagar to "Niharconst" dt 03/01/2011	30.12.2010	15000000
Note:		
Amt of 45000000/- RTGS from "NiharConst" to "Sashwat Foundation" details not recd from ajddt. 31/03/2010		
F.Y.2010-11		
ENTRY A/C		
Received (sale)	Date	Amt
Entry Reverse A/c		

"Viral Const" to NiharConst (RTGS)	27/04/2010	7000000
Viral Const ag cq in "NiharConst"	16/06/2010	3500000
Viral Const ag rtgs in "NiharConst"	23/08/2010	8400000
Viral Const ag cq in "NiharConst" (dynamix)	25/09/2010	1100000
Entry Reverse A/c		
ag this we have givncqfmSashwat foundation to "NiharConstPvt. Ltd."	15/12/2010	40000000
	16/12/2010	20000
	18/12/2010	20000
Entry Reverse A/c		
ag cqfrm V.R. to "Niharconst"	29/12/2010	40000000
ag cqfrmS/F to "Niharconst"	29/12/2010	10000000
Entry Reverse A/c		
ag cqfrm V.R. to "Niharconst" dt 03/01/2011	30.12.2010	5000000

4. Further, entries in the ledger account "ConwoodMahul TDR showed a purported payments made to M/s Nihar Construction (amalgamated with the appellant company) amounting to Rs. 1.50 crore for FY 2010-11 towards sale of TDR, which was adjudged as

'undisclosed income in the received information itself even as the assessee, while objecting to the reasons recorded claimed that it had carried out no transactions with M/s 'ConwoodMahul'.

5. Ld. DR had relied upon the statement of Shri Akshay J Doshi of Bhoomi Group in support of the additions. The relevant extract of the post search statement of Shri Akshay J Doshi of Bhoomi Group recorded by DDIT (INV)U-3(4), Mumbai u/s 131 of the IT Act, in room No 429, 4th Floor, Scindia House, Ballard Pier, Mumbai on 28/12/2015 in the case of M/s BhoomShashwat Estate Pvt Ltd. and other associated concerns, is as under:

Q.4 I am showing you the soft copy of the extract taken from the Laptop. It contains a folder called "ERLIER DATANOT EDITABLE which further opens a folder called" 1JNOT EDITABLE" which finally opens into three excel sheet folders called 1 JOURNAL ACCOUNTS.XLS", 2. "LEDGERACCOUNT.XLS" & "BLOCKWISE.XLS." Please explain the contents of these excel sheet folders.

Ans. The excel sheet folder called1-JOURNAL ACCOUNT XLS" contains two sheets named as sheet 1 & Broker account. Sheet 1 contain all the data related to transactions executed by Bhoomi group for the period 10-12-2005 to 31-07-2011. These transactions have been executed in cash and have not been recorded in regular books of accounts. Each figure has to be multiplied by 100 to arrive at correct value of transaction. However there might be few figures which might be recorded at correct value. However we are not able to exactly identify the transactions reflected in our regular books of accounts out of the above transactions at the moment. Theses entries have been posted in ledger account which are also part of the data stored in Laptop seized.

The sheet "Brokers account" contains transactions executed with various brokers during different financial years. Separate ledger has been maintained for every broker for the receipts & payments made to them. Each figure has to be multiplied by 100 to arrive at correct value of transaction. However there might be few figures which might be recorded at correct value.

The excel sheet folder called "LEDGER ACCOUNT.XLS contains three sheets called 'Ledger', 'Name list of ac' & 'temp'. The sheet ledger contains various ledger accounts.

6. Therefore, on the basis of the data found and seized and above statement recorded during the search in Bhoomi Group, it was concluded that assessee was one of the beneficiary of taking accommodation entries from various concern of Bhoomi group. It was also noted that the assessee company had taken and given cheques in lieu of cash to various concerns of Bhoomi Group.

7. We also found that during the course of assessment proceedings and for cross examination of the alleged transactions, summons u/s 131 dated 18.12.2018 was issued by the AO to Shri Asif Balwa, director of the appellant company as well as to the departmental witness Shri AkshayaDoshi of Bhoomi Group, whose statement has been relied upon by the department requiring attendance of both on 21.12.2018. As per record, this was the first and the only opportunity granted for cross-examination. Since the AR of the assessee company filed an adjournment letter, which was declined by the AO due to the reason that the assessment was

getting time barred on 31.12.2018. In our view, this cannot be a plausible reason to deny the opportunity, more particularly under the fact, as to why the cross examination was scheduled at the fag end of the assessment proceedings. However, it is brought on record by the AO that Shri AkshayaDoshi, Director of Group Company in Bhoomi Group, who was department's witness had also opted not to attend in compliance to the summons u/s 131 of the IT Act 1961 issued by the AO. The AO then proceeded to complete the assessment as per the reasons recorded at the time of initiation and treated the referred transactions as accommodation entries u/s 68 of the Act.

8. Ld. AR has challenged the order of Assessment on various legal grounds including that of wrong initiation of reassessment proceedings and also on merits and It was also argued that Ld. CIT(A) had also erred in confirming the assessment order. In this regard Ld. AR submitted that:

7.1 The AO was overwhelmed with the unfounded conclusions already made in the Appraisal Report as communicated by the DCIT CC 6(2), Mumbai without any independent enquiry or his own application of mind.

7.2 The allegations as regards entries by a third party being treated as accommodation entries ie. 'Cash transacted in lieu of Cheque were neither prima-facie written on the referred data nor were explained to mean so, as per the referred statements, as regards even a single transaction of the appellant and that too without

bringing results of enquiry, if any with corresponding specific concerns of the Bhoomi Group on the other side of the transaction.

7.3 No attempts were made after the search by the Investigation wing or the AO of Ekta and Bhoomi Group or by the AO of appellant company to examine or refer to the entries already made in the books of accounts of either party even as there was indication by Shri Akshay J Doshi, in the statement u/s 131 that some entries might be recorded in the regular books of accounts.

7.4 The statement too is reflecting realm of possibilities as regards the multiplication factor of 100 to be applied on some figures and some entries being at actual figures without identifying which entries are at actuals and which entries are to be multiplied by a factor of 100 Further, there is no stipulation in the statement as to whether and which of the entries are already made in the books of account and which are not made in the books of accounts. The seized data also does not contain any words like 'Cash' (much less the actual payer or recipients thereof and their signatures) and even the referred statement has vague and generic contents, which have not been tested on the anvil of any probe or examination of regular books of accounts of transacting parties or for that matter, confronting the appellant with the third party seized material or the third party statement. Therefore, a vague post statement u/s 131 of a third party on vague and cryptic seized material seized from a third party can not be used as incriminating material against the appellant to come to any conclusion that income has escaped the assessment for the relevant assessment year, which is a necessary prerequisite before assuming jurisdiction u/s 147 of the Act.

7.5 Therefore, according to the Ld. AR, there is no live link between the 'information received' and the 'reason to believe that the income of the appellant has escaped assessment and on the contrary, it is a clear case of borrowed satisfaction and non-application of own mind on pre-concluded text received and in the absence of any new/tangible material brought on record by the AO and that has

vitiating the initiation of reassessment proceedings based on settled legal position.

7.6 The Ld. AR also pointed that Assessing Officer has not provided sufficient opportunity to the appellant to defend its case by not providing to the appellant, the reasonable opportunity for cross-examinations of the concerned person(s), whose vague statements have been relied upon, either before the issue of notice u/s 148 or afterwards during reassessment proceedings.

9. The Ld. DR supported the orders of the Revenue authorities while referring to copies of seized material and letter from AO of Ekta and Bhoomi Group. 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 AO received information from the AO of Ekta and Bhoomi Group on the alleged transaction between the assessee and the said Group. However, the information merely refers to some seized material and one statement of Shri Akshay Doshi of said Group. There is no mention in the received information as to what enquiries were conducted by the AO of Ekta and Bhoomi Group as regards the alleged transactions that involved both sides and what action was taken by the said AO against the concerns of Bhoomi Group. Therefore, it appears from the records that the AO of Ekta and Bhoomi Group merely acted on the borrowed satisfaction from Investigation wing, without making any enquiries in the case of Bhoomi Group in the first place and thus AO of the assessee

company proceeded on the basis of same borrowed satisfaction without questioning the AO of Ekta and Bhoomi Group or without making any *independent enquiries* or *independent application of mind*. Hence, we find that action of the AO is vitiated in view of following judicial precedents:

9.1. In the case of Andaman Timber Industries v. CCE ((2015) 127 DTR 241 (SC), the Hon'ble Supreme Court has held that by not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected.

9.2. In the case of CIT Vs Odeon Builders P Limited (418 ITR 315 (SC)), the Hon'ble Supreme Court took note of the fact that the AO had disallowed certain portion of purchases made by assessee and the entire disallowance was based on third party information gathered by Investigation Wing of Department, which had not been independently subjected to further verification by Assessing Officer and he had not provided copy of such statements to assessee, thus, denying opportunity of cross examination to assessee, who on other hand, had prima facie discharged initial burden of substantiating purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and fact of payment through cheques, VAT Registration of sellers and their Income-tax Return. The Revenue appeal was dismissed, and the order of Hon'ble High Court was affirmed.

9.3. In the case of R.W. Promotions P Limited Vs ACIT, ITA No 1489 of 2015 dated 13.07.2015 (Bom) wherein the Hon'ble Jurisdictional High Court of Bombay noted as below:

"We find that there has been a breach of principles of natural justice in as much as the Assessing Officer has in his order placed reliance upon statements of the representatives of M/s Inorbit and M/s Nupur to come to the conclusion that claim for expenditure made by the appellant is not genuine. Thus, the appellant was entitled to cross examine them before any reliance could be placed upon them to the extent it is adverse to the appellant. This right to cross examine is a part of the audialtrempartem principle and the same can be denied only on strong reason to be recorded and communicated. The impugned order holding that it would have directed cross examination if it felt it was necessary, is hardly a reason in support of coming to the conclusion that no cross examination was called for in the present facts. This reason itself makes the impugned order vulnerable"

9.4. In the case of Nu Power Renewables (P.) Ltd. [2018] 94 taxmann. com 29, the Hon'ble Jurisdictional Bombay High Court held that where there has been no independent application of mind on part of Assessing Officer to information received from Deputy Director of Investigation, reopening of assessment on the basis of such information is without jurisdiction.

10. On perusal of the material that existed with the AO before the issue of the notice u/s 148, we are of the considered view that the same did not constitute the '*reason to believe*' that the income of the assessee had escaped assessment for the year under consideration, the AO failed to conduct any enquiry to create a necessary '*live link*' between the *information received* and the '*reason to believe*' [*CIT v. Kelvinator of India Ltd. (2010) 320 ITR 561 (SC)*]. In the light of the first proviso to the erstwhile section 147, there is greater burden cast

on the AO to prove the failure on the part of the assessee *to disclose fully and truly* all material facts necessary for his assessment, for that assessment year after an assessment order u/s 143(3) was already made in this case on 27.01.2014. We find no comments in this regard in the reasons recorded as to how the restrictions provided in the said proviso are satisfied. There is even no mention in the reasons recorded with regards to the prior order u/s 143(3) that was made and as to how there had been failure on the part of assessee to disclose material facts while filing his returns of income or during regular assessment. Moreover, we also note that the submissions made by the assessee vide its letter dated 26.11.2018, objecting to the reasons recorded have not been dealt with, in the letter disposing of the objections dated 03.12.2018 in any meaningful manner ie, without taking into account the submissions. e.g. the AO had not considered the reliance placed by the assessee in objection letter dated 26.11.2018 on the decision by the *ITAT Ahmedabad in the case of Prarthana Construction (P.) Ltd. [2001] 70 TTJ 122 (Ahmedabad ITAT)* that *the loose papers and documents seized from premises of third parties and statements recorded at back of assessee without it being afforded opportunity to interrogate said deponents and without bringing on record any supporting evidence, could not be made basis for adding undisclosed income in hands of assessee. This decision has been followed by Hon'ble Gujarat High Court in the case*

of Ganesh Plantation Ltd. [2022] 134 taxmann.com 149 (Gujarat) and by the Mumbai Tribunal in the case of S.P. Goyal [2002] 82 ITD 85 (Mumbai) and in the case of Straptex (India) (P.) Ltd. [2003] 84 ITD 320 (Mumbai).

11. We also find that reasonable opportunity for cross examination was not provided to the assessee to cross-examine Shri AkshayDoshi, whose statement was heavily relied upon by the Revenue. Therefore, considering the above observations, the reassessment proceedings initiated by way of the notice u/s 148 and consequent reassessment order are not sustainable in law and thus stand quashed On merits. Now, we proceed to decide on the merits of the additions. In this regard, we notice entries have been demonstrated by the Ld. AR as regular entries through banking channels duly recorded in the books of accounts, reflected in the bank statements and duly confirmed by the third parties as per page nos. 62-85 of the factual paper book as tabulated hereunder:

Party	Date (as per Assessment Order)	Amount (as per Assessment Order)	Documents relied upon in PB	Pg of Paper Book
Loan given to Sagar Investment	19.04.2010	3,00,00,000	Confirmation of accounts duly signed by the borrowing party for the previous year ended on 31st March, 2011 relevant to assessment year 2011-12.	62
			Copy of ledger account of the party in the books of the assessee.	63
Repayment of loan from Sagar Investment to assessee	30.12.2010	1,50,00,000	Copy of bank statement of assessee showing the loan transactions.	64-65
Repayment of Loan received from Viral Constructions	27.04.2010	70,00,000	Copy of ledger account of the party in the books of the assessee on various dates.	79-80
	16.06.2010	35,00,000		
	23.08.2010	84,00,000		
	25.09.2010	11,00,000	Copy of bank statement of assessee showing the loan transactions on various dates.	81-85
Repayment of Loan received from Shashwat Foundation	15.12.2010	4,00,00,000	Confirmation of accounts duly signed by the borrowing party for the previous year ended on 31st March, 2011	69

Party	Date (as per Assessment Order)	Amount (as per Assessment Order)	Documents relied upon in PB	Pg of Paper Book
			relevant to assessment year 2011-12.	
Repayment of Loan received from Shashwat Foundation	29.10.2010	1,00,00,000	Copy of ledger account of the party in the books of the assessee on various dates.	70
			Copy of bank statement of assessee showing the loan transactions on various dates.	71-78
Repayment of Loan received from V R Constructions P Limited	29.12.2010	4,00,00,000	Confirmation of accounts duly signed by the borrowing party for the previous year ended on 31st March, 2011 relevant to assessment year 2011-12.	66
	30.12.2010	50,00,000	Copy of ledger account of the party in the books of the assessee.	67
			Copy of bank statement of assessee showing the loan transactions.	68
		16,00,00,000		

12. Further, as regards a separate addition of Rs. 1,50,00,000/- made by the AO on account of Mahul TDR, the copy of corresponding seized material submitted by the Ld. DR, indicated the purported date as 05.09.2011, which falls in the A.Y. 2012-13 and not to the impugned assessment year. Additionally it is argued by the Ld. AR that the cryptic narration *per se* does not indicate any cash payment. There is one mention of same figure of Rs. 1,50,00,000/-, which is included in addition of Rs. 16,00,00,000/- already considered in above table and dealt hereinabove. The AO had also not indicated as to which entry, he is referring to and how the same represents

income escaping assessment for the relevant assessment year. Nevertheless, it is either duplication or falling in the subsequent year and in both the situations, as per law this addition of Rs. 1,50,00,000/- can not survive.

13. In view of above evidences indicating that amounts mentioned in the seized material/assessment order are in fact duly recorded in the books of accounts and in the absence of any evidence/cash trail proven by the revenue by way of evidence of payment, acceptance and identity of cash recipient or payer in person or even the lack of word 'cash' written anywhere in the seized material relied upon, we are of the considered view that there was no evidence to support the allegation that these are accommodation entries representing routing of any income that had escaped the assessment. It is settled legal principle that no addition can be made merely on the basis of conjectures or surmises. However we find that the Assessing Officer's addition was purely based on the conjectures without any concrete evidence on record or proper validation though independent enquiries. It is a trite law that suspicion however strong cannot partake the character of legal evidence. Reliance in this regard is placed upon the decision of *Hon'ble Supreme Court in the case of LalchandBhagatAmbica Ram vs. CIT (37 ITR 288) (SC)*. In the decision of *Hon'ble Supreme Court in the case of Ashish Batham V. State of MP, AIR 2002 SC*, it was held that mere suspicion, however

strong or probable it maybe, is no effective substitute for the legal proof required to substantiate a charge; there is a long mental distance between "may be true" and "must be true" and this basic and golden rule helps to maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of a dispassionate judicial enquiry based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of evidence brought on record. In this context, further reference is made to judgment of the Special Bench of Mumbai Tribunal in the case of GTC Industries Ltd. v. ACIT in [2017] 80 taxmann.com 284 (Mumbai) (SB), wherein the Hon'ble Tribunal observed as under:

"this presumption or suspicion how strong it may appear to be true but needs to be corroborated by some evidence to establish a link that GTC actually had some kind of share in such secret money. It is quite trite suspicion howsoever strong may be but cannot be the basis of addition except for some material evidence on record. The theory of preponderance of probability is applied to weigh the evidence of either side and draw a conclusion in favour of party which has more favorable factors in his side. The conclusion have to be drawn on the basis of certain admitted facts and material and not on the basis of presumption of facts that might go against the assessee. Once nothing has been proved against the assessee with the aid of any direct material especially when various round of investigation have been carried out then nothing can be implicated against the assessee"

14. Therefore, considering the totality of the facts and circumstances as discussed by us in detail and the legal precedents as discussed

above, we are of the view that the assessee succeeds on Ground No. 1,2,3,5 and 6 on legal grounds as well as on merits and thus, rest of the grounds do not require any adjudication.

In the result, the appeal is Allowed.

Order pronounced in the open court on 02/02/2026.

Sd/-

**GIRISH AGRAWAL
(ACCOUNTNAT MEMBER)**

Sd/-

**(SANDEEP GOSAIN)
(JUDICIAL MEMBER)**

Mumbai:

Dated: 02 /02/2026

KRK, Sr. PS.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai