

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH AT KOLKATA**

Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.: 134/KOL/2025
Assessment Year: 2015-16**

ITO, Ward-12(1), Kolkata	Vs.	Kalawati Investments & Trading P. Ltd.
(Appellant)		(Respondent)
PAN: AABCK1559L		

Appearances:

Assessee represented by : Amit Kr. Shah, Adv.

Department represented by : Pradip Dungdung, JCIT, Sr. DR.

Date of concluding the hearing : 12-February-2026

Date of pronouncing the order : 20-February-2026

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2015-16 dated 18.11.2024.

2. The Revenue is in appeal before the Tribunal raising the following grounds of appeal:

"1. The CIT(A) has erred on facts and in law in deleting the addition of Rs.79,04,700/-.

2.The CIT(A) has erred on facts and in law in deciding the case in favour of the assessee ignoring the findings/observation of the AO in respect of derivative/currency transactions made by the assessee.

3. The CIT(A) has erred on facts and in law in not taking any cognizance of the report of the Investigation Wing 'Project Falcon' based on thorough investigation.



4. The CIT(A) has erred on facts and in law in not considering the surrounding circumstance to find out the real nature of transactions made by the assessee.

5. The CIT(A) has erred on facts and in law in accepting the paper documents without any verification or in the absence of any remand report.

6. That the appellant craves leave to add any new ground or alter any of the grounds and to put forward necessary arguments in support of the grounds of appeal. The Ld. CIT(A) has erred in facts and in law in not appreciating the judicial principles laid down in the matter of Pr. CIT Vs. Swati Bajaj reported in 2022 SCC Online 1572 (Cal) wherein the Hon'ble High Court at Calcutta laid down guidelines on the manner in which the allegation against the assessee has to be considered.

7. Whether on the facts and circumstances of the case, the Hon'ble High Court has committed substantial error in law in not following the judicial Principles laid down in the matter of Pr. CIT2, Kolkata(C)-2, Kolkata Vs M/s BST Infratech Ltd.in 161 taxmann.com 668 (Cal) dated 23.04.2024, which is an earlier decision of Hon'ble High Court having a Precedence value?

8. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) has failed to appreciate the principle which has been laid down by the Hon'ble Supreme Court in the case of Pr. CIT(Central)-1, Kolkata vs NRA Iron & Steel Pvt. Ltd. (412 ITR 161) [2020] 117 taxmann.com 752 (SC).

9. The Ld. CIT(A) has erred in facts and in law in ignoring the judicial principles laid down in the matter of Sumati Dayal v. CIT [1995] 214 ITR 801 (SC).

10. The Ld. CIT(A) has erred in facts and in law in not taking cognizance of the judicial principles laid down in CIT Vs. Durga Prasad More 1973 CTR (SC) 500: [1971] 82 ITR 540 (SC).

11. Whether on the facts and in the circumstances of the case that the assessee is a beneficiary of booking fictitious loss as well as ingenuine profit in pre-arranged accommodation entry and falls under exceptional clause 3.1(h) of the CBDT's Circular No.5 of 2024.

12. That the appellant craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or at the time of hearing of this appeal.”

3. Brief facts of the case are that the assessee is a company and the return of income was filed for the AY 2015-16 declaring 'NIL' income. As per information available with the Assessing Officer (hereinafter referred to as Ld. 'AO'), the assessee had entered into equity & currency



derivative transaction thereby allegedly generating fictitious loss as well as ingenuine profit totalling to ₹79,04,700/- through Concord Vinimay Pvt. Ltd. & Bahubali Forex Pvt. Ltd., the share brokers, under the platform of BSE & USE. On the basis of this information, the case was reopened u/s 147 of the Act and a notice was issued to the assessee u/s 148 of the Act. In response to notice u/s 148 of the Act, the assessee once again filed the return of income showing 'NIL' income. Subsequently, an assessment order u/s 144 read with section 147 of the Act was passed by the Ld. AO thereby making an addition of ₹79,04,700/- on account of unexplained investment u/s 69 of the Act. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who partly allowed the appeal of the assessee by deleting the addition of ₹79,04,700/- made by the Ld. AO on account of unexplained investment u/s 69 of the Act and held as under:

“5.1. Ground No. 2 & 3 pertains to the issue of initiation of 148 proceedings wherein the assessee claimed that the initiation of action u/s 148 was illegal & invalid and order passed based on such illegal notice deserves to be quashed. On perusal of the assessment order, the information was received that the appellant entered into equity & currency derivative transaction thereby generating fictitious loss as well as in genuine profit totalling to Rs.79,04,700/- through Concord Vinimay Pvt. Ltd. & Bahubali Forex Pvt. Ltd, the share brokers, under the platform of BSE & USE. The nature & source of such transactions remained unexplained and hence the AO had reason to believe that there was escapement of income. After recording reasons in writing & obtaining prior approval of the competent authority, the AO initiated action u/s 148 of the Act and subsequently passed the assessment order after providing sufficient opportunities to the assessee. Therefore I do not find any illegality or invalidity in the action of the initiation of notice u/s 148 of the Act and consequent assessment order passed by the AO. Accordingly, Grounds No. 2 & 3 are dismissed.

5.2. Ground No. 4 pertains to the issue of addition of fictitious transactions amounting to Rs.79,04,700/- as unexplained investment u/s 69 of the Act and the same is adjudicated as under:

Information was received under Project Falcon from DGIT (Investigation), Mumbai on 06/03/2020 through the Income Tax Business Application regarding coordinated & premeditated trading on the Bombay Stock Exchange by engaging in reversal trades in illiquid stock options resulting in non-genuine business loss/gains to the beneficiaries and the assessee was one of such beneficiary. From the data made available on Project Falcon on the ITBA, it was noted that the assessee entered into equity & currency derivative transaction thereby generating fictitious loss as well as in genuine profit totalling to Rs.79,04,700/- through Concord Vinimay Pvt. Ltd. & Bahubali Forex Pvt. Ltd, the share brokers, under the platform of BSE & USE. The nature & source of such transactions remained unexplained and hence the AO had reason to believe that there was escapement of income. Accordingly, the case was re-opened u/s 147 of the Act and notice u/s 148 of the Act was issued to the appellant company. In response thereto the appellant company filed the return of income declaring total income at Rs.Nil.

During the assessment proceedings, the AO called for documents in relation with equity & currency derivative transaction entered into by the assessee during the year under consideration. The assessee submitted the written submissions along with explanation. The assessee submitted before the AO that why it would generate in genuine profit which is taxable in nature. Further it was claimed that as it was generating both profit as well as loss from trading activity, it depicted a picture of actual trader & there was no premeditated intention behind it. The assessee also submitted that vide its broker M/s Bahubali Forex Private Limited, it had transacted in the Reliance Capital Limited, Reliance Infrastructure & UCO Bank. As these scrips fall under the category of blue chip stocks, the question of fictitious transactions did not arise at all as per the opinion of the assessee company. However the AO rejected the contention of the assessee company and made addition of Rs.79,04,700/- being unexplained investment u/s 69 of the Act.

5.3. During the appellate proceedings, the appellant claimed that it had traded in F & O transactions during the said period & duly recorded the transactions in books of accounts. The appellant further submitted that the transactions were carried out on registered stock exchanges & through banking channel. In support of its contention, the appellant company furnished the copy of bank account statement through which the impugned transactions took place. In view of these contentions, the appellant company claimed that since the transactions were duly recorded in the books of accounts and explained to the AO during the assessment proceedings, there was no need of addition on account of unexplained investment u/s 69 of the Act.



5.4. The AO made addition under section 69 of the Act amounting to Rs.79,04,700/- on account of unexplained investment under section 69 of the Act being fictitious transactions.

The assessee during the FY 2014-15 relevant to the FY 2015-16 had earned profit of Rs.44,32,321/- & incurred loss of Rs.34,76,063/-. Thus net profit of the assessee was only Rs.9,56,258/-. However the AO made addition of entire profit & loss amounting to Rs.79,04,700/-. Copies of relevant bank statements showing the amount credited are enclosed in paper Book submitted by the assessee. During the course of assessment proceedings, the AO required the assessee to prove the genuineness of F&O transactions & Currency derivatives transactions. The assessee filed various details in support of its claim like bank account statements, trading summary, contract notes & ledger etc. But the AO rejected relying on report of investigation wing and treated these transactions as unexplained investment under section 69 of the Act.

5.5. The assessee referred to the order of the AO and stated that the AO did not accept the evidences filed by the assessee in support of its claim and by relying on the general study report of the investigating wing rejected the claim and held that the entire transactions undertaken by the assessee were fictitious transactions entered for the purpose of evasion of tax and consequently assessed the impugned transactions as an unexplained investment under section 69 of the Act. The AO has referred to the findings in the general study report of the Investigation Wing of Mumbai, wherein it laid down the purported modus operandi of converting unaccounted cash of the beneficiary by routing it through few layers of paper companies by the operator and providing accommodation entry to the beneficiaries in the form of bogus gain/loss etc. as per the requirement of the beneficiary.

The appellant argued that the findings of the Investigation Wing are general in nature and it is basically a study report and not known which cases are investigated. As understood from the assessment order the assessee's name or its transactions were not referred in such reports and the AO has not established any link between that report and assessee's transactions. This is also fatal as reliance on such investigation report, without confronting the assessee with the same, renders the assessment bad in law. The Investigation in assessee's case arch did not reveal any connection with the findings or evidences as referred to in such reports.

The assessee stated that the statements of Shri. Prakash Kumar relied upon by the AO does not establish that the assessee has paid any unaccounted money to M/s Concord Vinimay Pvt Limited & M/s Bahubali Forex Private Limited. None of the replies to the question posed indicate that they received any unaccounted money from the assessee or that they received or utilized the unaccounted money received from the assessee with reference to the impugned



transactions. It is also not established that they had any arrangement or dealings or relation with the assessee leave apart the alleged accommodation or exit provided who has not stated any dealing with them against the principles of natural justice. The assessee argued that it had neither taken exit nor accommodation entries from any party for such transactions, nor has any evidence provided by AO nor statements of such persons revealed any dealing with the assessee. All transactions done by the assessee are performed on registered stock exchange through banking channel in the normal course. It was contended further that there is no evidence that implicate the assessee to have entered into any arrangement with any operators/exit providers or involvement of unaccounted money. The assessee took strong objections to AO linking it or its transactions with so called alleged exit providers and accommodation entry providers without any evidence or involvement mentioned in such investigation reports and statements of such persons.

To prove the genuineness of the transactions, the assessee provided all the supporting evidences like, ITR, contract notes, bank statement highlighting the transactions, etc. However, the AO made addition under section 69 of the Act by ignoring all the facts and evidences and without providing any proof of assessee's involvement in the accommodation entry with the help of entry providers.

The provision of section 69 of the Act is reproduced below for the ease of reference:

“Where in the financial year immediately preceding the assessment year the assessee has made investments WHICH ARE NOT RECORDED IN THE BOOKS OF ACCOUNT, if any, maintained by him for any source of income, AND the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.”

The above section indicates that in order to be an income, there must be fulfillment of two conditions since the word “and” has been used in the section. The investments made in the current year must not be recorded in the books of accounts AND the explanation not offered or not satisfactorily offered. The word ‘explanation’ indicates that the opportunity of being heard must be given to the assessee to prove the nature and source of investments. The use of word ‘may’ and absence of the word ‘shall’ in the section indicates that the Assessing Officer has discretion to treat the particular investment as the income of the investor-assessee depending of the facts and circumstances of each case at a particular situation of time. Section 69 is introduced to cover the instances where the assessee has made investments in the financial year immediately preceding the assessment year and such investments are not recorded in the



books of account, if any, which are maintained by him for any source of income, and also the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is, in the opinion of the Assessing Officer is not satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year. Thus, for applying the provisions of section 69 of the Act, the Assessing Officer should first come to a finding that the assessee has made investments and the same are not recorded in the books of account and thereafter, AO can call the assessee for an explanation from about the nature and source of the investments and in case he finds that the assessee is unable to furnish the explanation or the explanation offered by him is not satisfactory, the assessing officer can treat the value of the investments to be the income of the assessee of the financial year in which he has made the investments.

To prove the entry of investment in books of accounts & source of such investment, the assessee submitted supporting documentary evidences. This adds to the bonafide of the assessee's transactions. In view of the above facts and circumstances of the case, I have to go through the expression of "nature and source" and have to understand the requirement of identification of the source and its genuineness. Sec. 69 of the Act places the burden of proof on the assessee, to explain the nature & source of any investment recorded in books of accounts. Hence when an assessee gives evidences of the transactions to prove the genuineness, the assessee is said to have discharged his initial burden. In view of the above, I am of the view that the assessee has explained and submitted evidences to prove nature and source of the investment made and also furnished all evidences in support of the genuineness of the transactions. The AO has not pointed out any deficiency in the documents or inherent weakness in the explanation or doubted genuineness of the transactions for want of any evidence. The AO did not produce any evidence whatsoever to prove the allegation that unaccounted money changed hands between the assessee and/or any other person including the alleged entry provider nor proved that the assessee has taken any type of accommodation entry from any person or so called entry providers to introduce unaccounted money into books by way of the impugned transactions. As the transactions were proved genuine by third party evidences like bank account statement, and in the absence of any material to prove cash changing hands in the transaction, the addition made by the AO under section 69 of the Act, by treating both profit as well as loss from the transactions as unexplained, fictitious, non-genuine is baseless. The addition under section 69 of the Act was made merely on the basis of suspicion, presumptions and probability of preponderance without any direct evidence to prove the transactions as non-genuine or fictitious or demonstrating appellant's involvement in any kind of accommodation entries. The findings of investigation & modus operandi in other cases narrated by the AO nowhere prove any connection with the assessee nor the assessee's

involvement or connection or collusion with the entry providers, accommodation providers etc. For making the addition, it is necessary to bring on record evidence to establish ingenuity in transactions or any connection of the assessee or its transaction with any of the alleged parties. The assessee has discharged its onus by establishing the nature & source of investment and genuineness of the transactions.

5.6. *It is noted that the AO rejected all the evidences filed by the assessee by referring to 'Modus Operandi' of persons for earning accommodation entries. All these observations are general in nature and are applied across the board to all including the assessee. Specific evidences produced by the assessee were not controverted by the AO. The addition is made based on a general report from the investigation wing.*

The issue for consideration is whether in such cases, the legal evidence produced by the assessee has to guide decision in the matter or the general observations based on statements, probabilities, human behavior and discovery of the modus operandi adopted in earning accommodation entries, that have surfaced during investigations, should guide the AO in arriving at a conclusion as to whether the claim is genuine or not. An alleged scam might have taken place in the form of accommodation entries. But it has to be established in each case, by the party alleging so, that this assessee in question was part of this scam. The chain of events and the live link of the assessee's action giving his involvement in the scam should be established. The allegation implies that cash was paid by the assessee and in return the assessee received accommodation entry, by way of transfer through banking channels. This allegation that cash had changed hands has to be proved with evidence, by the AO. Evidence gathered by the Director Investigation's office by way of statements recorded etc. has to also be brought on recording each case, when such a statement, evidence etc. is relied upon by the AO to make any additions. If any material or evidence is sought to be relied upon by the AO, he has to confront the assessee with such material. The claim of the assessee cannot be rejected based on mere conjectures unverified by evidence under the pretentious garb of preponderance of human probabilities and theory of human behavior by the AO.

In view of this, just the modus operandi, generalization, preponderance of human probabilities cannot be the only basis for rejecting the claim of the assessee. Unless specific evidence is brought on record to controvert the validity and correctness of the documentary evidences produced, the same cannot be rejected by the assessee. The Hon'ble Supreme Court in the case of Omar Salay Mohamed Sait v. CIT [1959] 37 ITR 151 had held that no addition can be made on the basis of surmises, suspicion and conjectures. In the case of CIT v. Daulat Ram Rawatmull [1973] 87 ITR 349 (SC) the Hon'ble Supreme Court held that, the onus to prove that the apparent is not real is on the party who claims it to be so. The burden of proving a transaction to be bogus has to be strictly



discharged by adducing legal evidences, which would directly prove the fact of bogusness or establish circumstance unerringly and reasonably raising interference to that effect. The Hon'ble Supreme Court in the case of Umacharan Shaw & Bros. v. CIT [1959] 37 ITR 271 held that suspicion however strong, cannot take the place of evidence. In this connection I refer to the general view on the topic of conveyance of immovable properties. The rates/sale prices are at variance with the circle rates fixed by the Registration authorities of the Government in most cases and the general impression is that cash would have changed hands. The courts have laid down that judicial notice of such notorious facts cannot be taken based on generalization. Courts of law are bound to go by evidence.

But in the present case, I noted that the assessing officer has been guided by the report of the investigation wing prepared with respect to accommodation entries. The AO has not brought out any part of the investigation wing report in which the assessee has been investigated and/or found to be a part of any arrangement for the purpose of generating accommodation entries. Nothing has been brought on record to show that the persons investigated, including entry providers, have named that the assessee was in collusion with them. In absence of such findings it is not possible to link their wrong doings with the assessee. In fact, the investigation wing is a separate department which has not been assigned assessment work and has been delegated the work of only making Investigation. The Act has vested widest powers on this wing. It is the duty of the investigation wing to conduct proper and detailed inquiry in any matter where there is allegation of tax evasion and after making proper inquiry and collecting proper evidences the matter would be sent to the assessment wing to assess the income as per law. I find no such action executed by investigation wing against the assessee. In absence of any findings specifically against the assessee in the investigation wing report, the assessee cannot be held to be guilty or linked to the wrong acts of the persons investigated. In this case, the AO at best could have considered the investigation report as a starting point of Investigation. The report only informed the AO that some persons may have entered into accommodation entries. The AO was duty bound to make inquiry from all concerned parties relating to the transactions and then to collect evidences that the transaction entered into by the assessee was also a collusive transaction. However, the AO has not brought on record any evidence to prove that the transactions entered by the assessee which are otherwise supported by proper third party documents are collusive transactions.

The Hon'ble Supreme Court in the case of Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 held that assessment could not be based on background of suspicion and in absence of any evidence to support the same. The Hon'ble Court held:

"Adverting to the various probabilities which weighed with the ITO might be observed that the notoriety for smuggling food grains and other commodities to Bengal by country boats acquired by 'S' and the notoriety achieved by 'D' as a great receiving centre for such commodities were merely a background of suspicion and the appellant could not be tarred with the same brush as every arhatdar and grain merchant who might have been indulging in smuggling operations, without an iota of evidence in that behalf. The mere possibility of the appellant earning considerable amounts in the year under consideration was a pure conjecture on the part of the ITO and the fact that the appellant indulged in speculation (in Kalai account) could not legitimately lead to the inference that the profit in a single transaction or in a chain of transactions could exceed the amounts, involved in the high denomination notes,—this also was a pure conjecture or surmise on the part of the ITO. As regards the disclosed volume of business in the year under consideration in the head office and in branches the ITO indulged in speculation when he talked of the possibility of the earning a considerable sum as against which it showed a net loss of about Rs. 45,000. The ITO indicated the probable source or sources from which the appellant could have earned a large amount in the sum of Rs. 2,91,000 but the conclusion which he arrived at in regard to the appellant having earned this large amount during the year and which according to him represented the secreted profits of the appellant in its business was the result of pure conjectures and surmises on his part and had no foundation in fact and was not proved against the appellant on the record of the proceedings. If the conclusion of the ITO was thus either perverse or vitiated by suspicions, conjectures or surmises, the finding of the Tribunal was equally perverse or vitiated if the Tribunal took count of all these probabilities and without any rhyme or reason and merely by a rule of thumb, as it were, came to the conclusion that the possession of 150 high denomination notes of Rs. 1,000 each was satisfactorily explained by the appellant but not that of the balance of 141 high denomination notes of Rs. 1,000 each."

5.7. The observations of the Hon'ble Apex Court are equally applicable to the case of the assessee. The AO having failed to bring on record any material to prove that the transactions of the assessee were fictitious transactions could not have rejected the evidences submitted by the assessee. In fact, in this case nothing has been found against the assessee with aid of any direct evidences or material against the assessee despite the matter being investigated by various wings of the Income-tax Department and hence under these circumstances nothing can be implicated against the assessee. In view of the above, the findings/allegations of the AO are baseless, without any evidence, contrary to the facts and circumstances of the case and provisions of the Act. Hence, the contention of the assessee is accepted and the AO is directed to



delete the addition of Rs.79,04,700/- made on account of unexplained investment u/s 69 of the Act. Accordingly, Ground No. 4 is allowed.”

4. Aggrieved with the order of the Ld. CIT(A), the Revenue has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made have been examined.

6. We have considered the facts of the case, the submissions made and the documents filed. The Ld. CIT(A) has analysed the facts of the case, the law and has arrived at the finding based upon the record. Since the Ld. AO failed to bring on record any material to prove that the transactions of the assessee were fictitious transactions and therefore, the same could not have been rejected on the basis of the evidence filed by the assessee. Even in the appeal before us, no further evidences have been brought in support of the fact that the transactions were fictitious or bogus. Since no fresh evidence has been filed by the Ld. DR, therefore, we do not find any infirmity in the order of the Ld. CIT(A) whose order is confirmed and the grounds of appeal raised by the Revenue are dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 20th February, 2026 under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

[George Mathan]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 20.02.2026

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Income Tax Officer, Ward-12(1), Kolkata.**
2. **Kalawati Investments & Trading P. Ltd., 8th Floor, Room No.8E
Land Mark, 228A, A.J.C Bose Road, Minto Park, Kolkata, West
Bengal, 700020.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata