

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH,  
MUMBAI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 7772/Mum/2025  
Assessment Year: 2014-15**

<b>Kamilu Aboobacker Kalathingal</b>  403/404, B-12, Ankur CHS Ltd, Kalpak Estate, Kane Nagar, Mumbai-400037  <b>PAN: AAEPK5562H</b> (Appellant)	Vs .	<b>Income Tax Officer, Ward- 26(2)(1), Mumbai</b>  Kautilya Bhavan, Bandra Kurla Complex, Mumbai- 400051  (Respondent)
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Assessee by	Shri Rohan Despande, Adv.
Department by	Shri Hemanshu Joshi, SR DR

Date of Hearing	23.02.2026
Date of Pronouncement	06.04.2026

**ORDER**

**PER AMIT SHUKLA, J.M.**

The aforesaid appeal has been filed by the assessee against the appellate order dated 28.08.2025 passed by the Ld. CIT(A), NFAC, Delhi, arising out of the assessment framed under section 143(3) of the Income Tax Act, 1961 for the assessment year 2014-15.

2. In this appeal, the assessee has challenged the confirmation of three additions/disallowances made by the Assessing Officer, namely, first, addition of Rs. 75,48,839 under section 2(22)(e) on account of deemed dividend; second, addition of Rs. 23,07,410 under section 68 on account of alleged unexplained cash deposits; and third,

disallowance of deduction claimed under section 57 amounting to Rs. 1,37,753.

3. Briefly stated, the facts borne out from the record are that the assessee is an individual and was one of the Directors of M/s Shukriya Travels Pvt. Ltd. and admittedly holding 25% shareholding therein. For the impugned assessment year, the assessee filed return of income declaring total income of Rs. 11,51,177. The case was selected for scrutiny and an assessment order came to be passed under section 143(3), wherein the Assessing Officer made aggregate additions of Rs. 99,94,002, comprising the aforesaid three items. The Ld. CIT(A), NFAC, in the impugned order, has confirmed all the additions, against which the assessee is now in further appeal before the Tribunal.

4. At the outset, it has also been brought on record that during the course of hearing before the Tribunal, the assessee has filed an application under Rule 29 of the ITAT Rules seeking admission of additional evidences. The additional evidences, inter alia, consist of sanction letter dated 16.08.2013 issued by Axis Bank sanctioning overdraft facility, Board Resolution of M/s Shukriya Travels Pvt. Ltd. dated 18.01.2014 authorising the assessee to furnish security to Axis Bank for securing the overdraft facility, loan account statement of the company and balance sheets of the assessee for financial years 2013-14 till 2019-20 showing full repayment/adjustment of the loan against remuneration receivable from the company, and No Dues Certificate dated 26.05.2023 issued by Axis Bank releasing the title deeds upon full repayment of the overdraft facility. The assessee has pleaded that these evidences go to the root of the controversy, particularly qua the nature and character of the loan transaction and its nexus with the

business requirement of the company, and therefore deserve to be admitted and considered.

5. Before advertng to the rival contentions and our findings, it would be apposite to encapsulate, in a proper perspective, the reasoning given by the Assessing Officer while making the additions. In so far as the first addition under section 2(22)(e) is concerned, the Assessing Officer, after noticing the statutory ingredients of the deeming provision, observed that there was no dispute that M/s Shukriya Travels Pvt. Ltd. was a private limited company and not a company in which the public are substantially interested. He further noted that the assessee was a Director in the said company and, on being questioned, had admitted to holding 25% shares therein, and was thus a beneficial owner of shares carrying not less than 10% of the voting power. The Assessing Officer then examined the returns and financial statements of the said company for A.Ys. 2013-14 and 2014-15 and found that the reserves and surplus stood at Rs. 51,34,968 and Rs. 75,48,839 respectively, and accordingly concluded that the company possessed accumulated profits at the time when the loan was advanced. He also referred to the assessee's own financial position as on 31.03.2014 and observed that the assessee had not tallied his source and application of funds and that the amount borrowed from the company was not properly reflected in the sources. The assessee had explained that a sum of Rs. 1,06,50,000 was received by way of loan from M/s Shukriya Travels Pvt. Ltd., apart from certain other loans and own funds, and utilised, inter alia, for property investment. The Assessing Officer, however, rejected the stand of the assessee that the transaction was beneficial to the company, holding that it was not in the nature of a trading advance; that the company was admittedly not in the business of financing or

money lending; and therefore the advance could not be regarded as one given in the ordinary course of business. He observed that the provisions of section 2(22)(e) do not exempt such transaction merely by reason of the assessee's stated intention or utilisation of funds. Proceeding on this reasoning, he concluded that all the conditions specified under section 2(22)(e) stood fulfilled, and therefore the amount of loan received, to the extent of accumulated profits of the company, was taxable in the hands of the assessee as deemed dividend. He accordingly added Rs. 75,48,839.

6. The Assessing Officer then dealt with the second issue concerning cash deposits reflected in the AIR information amounting to Rs. 23,07,410. In response to the query, the assessee stated that the source of such cash deposits was sale of land in his native place and his savings for the last five to six years, and had also submitted land sale agreements showing that the sale had been made in the year 2011. The Assessing Officer rejected the explanation holding that even if the sale of land were to be accepted as a source, the sale had taken place in 2011 whereas the cash had been deposited in financial year 2013-14, and it was impractical to accept that such substantial cash would have been retained for so long before depositing in the bank. On that premise, he held that the source of the cash deposits remained unexplained and consequently treated the amount of Rs. 23,07,410 as unexplained cash credits under section 68, to be taxed in accordance with section 115BBE.

7. On the third issue, namely deduction claimed under section 57, the Assessing Officer noticed that the assessee had claimed deduction of Rs. 1,37,753, comprising professional fees of Rs. 8,309 and interest of Rs. 1,29,444, stated to be paid on loan from his father. The claim

was rejected on the ground that only such expenditure as is incurred for earning income under the head "Income from Other Sources" is allowable under section 57, and according to him, it was not so in the present case. He therefore disallowed the entire claim of Rs. 1,37,753.

8. The Ld. CIT(A), while affirming the assessment order, has given a separate reasoning on all three issues. In so far as the addition under section 2(22)(e) is concerned, the appellate authority recorded that the principal contention of the assessee was that the loan received from M/s Shukriya Travels Pvt. Ltd. was a commercial transaction benefiting the company and therefore did not partake the character of deemed dividend. The assessee had relied heavily upon CBDT Circular No. 19/2017 dated 12.06.2017 and various judicial precedents including Pradip Kumar Malhotra and other decisions to contend that trade advances in the nature of commercial transactions do not fall within the sweep of section 2(22)(e). The Ld. CIT(A), however, held that such reliance was misplaced and the facts of the present case were clearly distinguishable. He observed that the circular contemplates only genuine commercial advances such as those made against business dues, job work, supply of machinery, or security deposits in a business context. According to him, in the present case, the assessee, being a director and substantial shareholder holding 25% shares, had received Rs. 1,06,50,000 from the company ostensibly for purchase of a flat in his personal name, and the fact that such property was later mortgaged for benefit of the company did not alter the basic and fundamental character of the transaction. He further held that in the cited cases the advances were for specific business purposes directly related to the company's operations, whereas here the company's funds were used to enable the shareholder to purchase a personal property, and the subsequent mortgaging of the property

was merely a separate and later arrangement which could not retrospectively legitimise a transaction that was essentially of personal benefit to the shareholder. The Ld. CIT(A) also observed that the language of section 2(22)(e) is plain and that all the statutory conditions stood satisfied, namely, the company was a closely held company, the assessee was a beneficial shareholder holding 25% voting power, the company had accumulated profits of Rs. 75,48,839, and its business activity was not money lending or financing. He thus concluded that the assessee's plea of "mutual benefit" does not detract from the primary fact that the immediate benefit was to the assessee who acquired a personal asset, and the company's subsequent benefit through mortgage arrangement was only contingent and derivative. On this reasoning, the addition under section 2(22)(e) was confirmed.

9. In so far as the addition under section 68 in respect of cash deposits is concerned, the Ld. CIT(A) examined the assessee's plea that the amount of Rs. 23,07,410 represented cash from sale of land in Kerala of Rs. 18,70,000 and wedding gifts of Rs. 4,37,410 received during marriage. The Ld. CIT(A) accepted that sale agreements for land had been furnished, but concurred with the Assessing Officer that the time gap of approximately two to three years between the receipt of the sale proceeds in 2011 and their deposit in financial year 2013-14 rendered the explanation inherently improbable on the touchstone of human probabilities, especially considering the profile of the assessee as a director of a company and the normal banking environment. As regards the claim of wedding gifts, the Ld. CIT(A) held that mere assertion that gifts were received at the time of marriage does not discharge the burden under section 68 unless the identity, capacity and genuineness of the gift-givers is demonstrated by cogent material. He further held that even if the capital gains on land sale

had been offered to tax in earlier years, that by itself would not establish the genuineness and timing of the cash deposits made in the year under appeal. Proceeding on this reasoning, the Ld. CIT(A) held that the assessee had failed to discharge the onus cast under section 68 and accordingly sustained the addition.

10. As regards the disallowance under section 57, the Ld. CIT(A) held that the assessee had claimed deduction of Rs. 1,37,753 comprising professional fees of Rs. 8,309 and interest to father of Rs. 1,29,444. The assessee's explanation was that he had borrowed money from his father to make fixed deposit with Syndicate Bank and paid interest to his father equivalent to interest earned from the bank. The Ld. CIT(A) observed that though this may appear to be a circular transaction, the more fundamental issue was the absence of nexus between the borrowing and the income earned. According to him, section 57 allows deduction only of expenditure incurred wholly and exclusively for the purpose of earning income from other sources, and in the present case the assessee had not demonstrated any commercial rationale for borrowing money from his father at interest to make bank deposits yielding similar interest. He further observed that the transaction appeared contrived and lacking real commercial substance, and that the professional fees component was also not adequately explained in terms of its connection with earning income from other sources. On this reasoning, the Ld. CIT(A) upheld the disallowance and dismissed the ground.

11. Before us, the Ld. Counsel for the assessee submitted that the entire edifice of the addition under section 2(22)(e), as sustained by the lower authorities, suffers from a fundamental infirmity inasmuch as the crucial evidences which demonstrate the true character of the

transaction as a commercial arrangement undertaken for benefit of the company could not be brought on record before the lower authorities, and have now been filed before the Tribunal by way of application for admission of additional evidence. It was submitted that in financial year 2013-14, a flat was purchased by the assessee for an overall consideration of Rs. 1,40,00,000, and for the purpose of such purchase, the company had granted a loan of Rs. 1,06,50,000 on the condition that the said property would subsequently be mortgaged for availing overdraft facility in favour of the company for an amount of Rs. 1,75,00,000. It was submitted that the necessity for the company to avail such overdraft facility had arisen because of the changes made by IATA in its policy of flight ticket bookings requiring payments to be settled on weekly basis, and considering the prevalent lending policies of banks which emphasised better credit facility and loan to value ratio if the property stood in the name of an individual as opposed to a company, the assessee had purchased the flat in his own name and thereafter offered the same as collateral security for securing overdraft facility of the company. It was thus submitted that the loan was not a gratuitous benefit or benefit flowing merely because of shareholding, but was a commercial transaction under compelling circumstances for benefit of the company.

12. In support of this plea, reliance has been placed on CBDT Circular No. 19/2017 dated 12.06.2017 and on judicial precedents including Pradip Kumar Malhotra v. CIT, CIT v. N.S. Narendra, ACIT v. Shri Mahesh K. Shah, and Archana Sharma v. DCIT. It has been vehemently submitted that section 2(22)(e) is intended to cover only those gratuitous loans and advances which are not in the nature of commercial transactions and which confer benefit on the shareholder without corresponding business advantage to the company. It was

further submitted that the additional evidences now filed, namely sanction letter of Axis Bank, Board Resolution authorising furnishing of security, loan account statements, balance sheets and No Dues Certificate, clearly establish the commercial relationship and business rationale of the transaction and go to the root of the controversy. On this basis, it was pleaded that the additional evidences deserve to be admitted and the matter, at least on this issue, be restored to the file of the Assessing Officer for fresh adjudication in light of the said evidences.

13. On the issue of addition under section 68, the Ld. Counsel submitted that during the assessment proceedings itself, the assessee had furnished copies of sale agreements for land parcels sold in Kerala in 2011 and had explained the cash proceeds amounting to Rs. 18,70,000. It was also submitted that such amounts were duly offered to tax as capital gains in the relevant years and therefore the source, identity and genuineness of the transaction stood duly explained. As regards the remainder amount of Rs. 4,37,410, it was submitted that the same was received as marriage gifts. The grievance raised was that the Assessing Officer had made the addition solely on the basis of lapse of time between receipt and deposit of cash, without rebutting the evidences brought on record and without conducting any proper enquiry. Reliance has also been placed on the decision in DCIT v. Sri Nikhil Nanda. On the third issue, it was submitted that the deduction under section 57 pertained to professional fees and interest paid to father on amounts borrowed from him for making fixed deposit, and such expenditure having been incurred for earning income from other sources ought not to have been disallowed.

14. Per contra, the Ld. Departmental Representative strongly relied upon the orders of the Assessing Officer and the Ld. CIT(A) and submitted that the lower authorities have correctly appreciated the facts and applied the law. However, on the aspect of additional evidences, it was submitted that the matter may be considered in accordance with law.

15. We have heard the rival submissions, perused the orders of the authorities below, the material brought on record, and the additional evidences sought to be adduced by the assessee. We have also given our thoughtful consideration to the entire factual and legal matrix. At the very outset, we find that the central controversy in this appeal, particularly qua the addition under section 2(22)(e), turns upon the true nature and character of the advance received by the assessee from M/s Shukriya Travels Pvt. Ltd., namely, whether it was a gratuitous loan advanced to a substantial shareholder attracting the deeming fiction of section 2(22)(e), or whether it was a commercial arrangement undertaken under business compulsion and for the benefit of the company, thereby taking it outside the mischief of the said provision. This aspect, in our considered view, cannot be properly adjudicated in absence of the additional evidences now sought to be relied upon by the assessee, because those documents are not merely supplementary or collateral in nature but strike at the very root of the controversy. The sanction letter from Axis Bank sanctioning overdraft facility, the Board Resolution of the company authorising the assessee to furnish security, the subsequent loan account statements and balance sheets reflecting adjustment and repayment, and the No Dues Certificate releasing title deeds after closure of the overdraft facility, all prima facie appear to have direct bearing on the plea raised by the assessee that the property was acquired and later mortgaged to

facilitate the company's credit line and business operations. If these documents are genuine and duly proved, they may have a material bearing on determining whether the advance was in truth a commercial transaction or a shareholder benefit simpliciter.

16. It is trite law that while the Tribunal, being the final fact-finding authority, has ample power to admit additional evidence where the ends of justice so require, yet where such evidence necessitates factual verification and detailed examination at the threshold level, especially when the same had not been tested before the lower authorities, the more appropriate and judicial course is to restore the matter to the file of the Assessing Officer for proper examination. Here, the lower authorities have proceeded on the basis that the property was purchased by the assessee in his personal name and the subsequent mortgage did not alter the essential personal character of the transaction. That reasoning may or may not ultimately sustain, but once foundational documents are now placed before us to show that the very grant of loan and acquisition of property were linked to an arranged banking and overdraft structure for the company's business requirements, then in all fairness such evidences deserve full factual verification and proper consideration by the Assessing Officer. The assessee cannot be non suited without examination of such documents merely because they were not before the lower authorities, particularly when the assessee has sought to explain their relevance and has invoked Rule 29. Accordingly, in the interest of substantial justice, we deem it fit to admit the additional evidences for the limited purpose of remanding the matter for fresh examination.

17. Once that be so, then, in our considered opinion, the first issue relating to addition under section 2(22)(e) requires to be restored to

the file of the Assessing Officer for de novo adjudication after considering the additional evidences, after granting proper opportunity to the assessee to substantiate the commercial rationale of the transaction, and after examining the applicability of CBDT Circular No. 19/2017 and the judicial precedents relied upon by the assessee in the light of the facts as emerge upon such verification. The Assessing Officer shall independently examine whether the advance was merely a shareholder loan or whether it bore the character of a commercial advance given under business exigency for benefit of the company, and thereafter decide the issue strictly in accordance with law.

18. In so far as the addition under section 68 on account of cash deposits is concerned, though the lower authorities have rejected the assessee's explanation primarily on the reasoning of time gap and lack of supporting evidence regarding wedding gifts, we find that this issue also deserves reconsideration in the larger interest of justice. The assessee's stand is that sale agreements of land sold in Kerala had been furnished and the receipts had also been offered to tax in earlier years, and that a part of the deposits represented gifts received on the occasion of marriage. The lower authorities have largely proceeded on presumptive improbability and insufficiency of proof. Since we are already restoring the matter for fresh adjudication, and because all the issues are part of one composite assessment arising from the same order, we are of the view that this issue also can appropriately be remanded so that the assessee may place complete supporting evidences, if any, regarding source, timing, custody and deposit of sale proceeds as well as nature and source of marriage gifts, and the Assessing Officer may examine the same afresh in accordance with the

parameters of section 68 and settled principles governing burden of proof.

19. Likewise, the issue of disallowance under section 57 also, in our opinion, deserves to be restored for fresh consideration. The lower authorities have proceeded on the premise that the borrowing from father for making fixed deposit was circular, contrived and lacking real nexus with earning of income from other sources. However, if the assessee has any further material to demonstrate the nexus between the expenditure and income or to substantiate the claim of professional fees and interest payment, then such material deserves consideration. Since the assessment itself is being restored for fresh adjudication on the principal issue and in order to avoid piecemeal and fragmented adjudication, we restore this issue also to the file of the Assessing Officer to be examined afresh on its own merits after giving adequate opportunity to the assessee.

20. We may clarify that we have not expressed any final opinion on the merits of any of the three additions. The elaborate reasoning given by the Assessing Officer and the Ld. CIT(A) has been noted by us in extenso only to appreciate the background and the manner in which the issues were decided by the lower authorities. Equally, the contentions of the assessee and the additional evidences now filed have also been taken note of only for determining whether the matter deserves to be restored. Since the additional evidences go to the root of the matter and the issues require proper factual verification and legal examination at the level of the Assessing Officer, we deem it just and proper to set aside the impugned order and restore the entire matter back to the file of the Assessing Officer for de novo adjudication.

21. Accordingly, the impugned order of the Ld. CIT(A) and the assessment on the issues under challenge are set aside, and the entire matter is restored to the file of the Assessing Officer, who shall consider the additional evidences filed by the assessee, permit the assessee to file such further evidences and explanations as may be necessary, conduct such enquiry as may be warranted, and thereafter decide all the issues afresh in accordance with law by way of a speaking order after affording reasonable and effective opportunity of being heard to the assessee. The assessee is also directed to cooperate fully and furnish all requisite documents and details as may be called for by the Assessing Officer.

**22. In the result, the appeal of the assessee is treated as allowed for statistical purposes.**

Order pronounced in the open court on 06.04.2026.

**Sd/-**

**(Girish Agrawal)**

**Accountant Member**

**Sd/-**

**(Amit Shukla)**

**Judicial Member**

Mumbai,

Dated: 06/04/2026

Ankit, Sr.PS

**Copy of the order forwarded to:**

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

By order  
(Assistant Registrar)  
ITAT, Mumbai