

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI

BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 2769/DEL/2022 [A.Y. 2017-18]

M/s Shalimar Corp Ltd 11 th Floor, Shalimar Tatanium, Vibhuti Khand, Gomti Nagar, Lucknow, U.P. PAN - AAIP1 6073 R	Vs.	The Dy. C.I.T Central Circle-30 New Delhi
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ITA No. 3068/DEL/2022 [A.Y. 2017-18]

The Dy. C.I.T Central Circle-30 New Delhi	Vs.	Shalimar Corp 11 th Floor, Shalimar Tatanium, Vibhuti Khand, Gomti Nagar, Lucknow, U.P. PAN - AADCS 9234 L
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(Applicant)

(Respondent)

Assessee By : Shri Subhash Aggarwal, Adv
Department By : Shri Mahesh Rajani, CIT-DR

Date of Hearing : 20.01.2026
Date of Pronouncement : 09.04.2026

ORDER

PER BENCH:

The above captioned two cross appeals by the assessee and the Revenue are preferred against the order of the Id. CIT(A) - 31, New Delhi dated 26.09.2022 pertaining to A.Y. 2017-18 respectively.

2. Since the underlying appeals were heard together and the facts in issues are identical, both these appeals are being disposed off by this common order for the sake of convenience and brevity.

ITA No. 2769/DEL/2022(Assessee's appeal)

3. The assessee has raised the following grounds of appeal:

"1. For that the Ld. CIT(A) ought to have quashed the entire assessment proceedings passed u/s. 143(3) since the same was based on surmises and conjectures and against principles of natural justice.

2. For that on the facts and in the circumstances of the case, the Ld. CIT(A) grossly erred in confirming the addition of Rs.49,30,00,000/- made by the A.O. on account of cash deposits by invoking the provisions of sec. 68 of the Act.

3. For that on the facts and in the circumstances of the case, the Ld. CIT(A) grossly erred in confirming the addition to the extent of Rs. 1,37,29,000/- out of the total addition of Rs.2,78,00,000/- made by the A.O. on account of alleged receipt of cash by invoking the provisions of sec. 68 of the Act.

4. For that on the facts and in the circumstances of the case, the Ld. CIT(A) grossly erred in confirming the addition of Rs.3,34,11,525/- made by the A.O. on account of loan received from Saket Niketan (P) Ltd. by wrongly treating the same as unexplained u/s 68.

5. The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.

4. Brief facts of the case are that the assessee company is engaged in the real estate development business. There was search and seizure action on the assessee group by the Income tax department on 18.06.2015 during which various documents/evidence were found

regarding receipts of on-money payments in their real estate business.

The Assessing Officer passed order u/s 153A of the Act for the preceding six years from the year of search and u/s 143(3) of the Act in regard to the year of search that is A.Y 2016-2017 making additions on account of computation of on-money on the basis of the special auditors' report of Rs 197.82 crore plus Rs 101.02 crore as declared during the search; on account of loans taken, share capital raised and some miscellaneous issues.

5. The proceedings for preceding years has culminated into the passing of a consolidated order in ITA 2360;2764-2768/Del/2022 dated 31.07.2025 by the Delhi Tribunal wherein the Tribunal directed the Assessing Officer to take gross receipt of on-money on the basis of the quantification done by the special auditor of Rs 197.82 crore only and compute the net income/GP thereon at the rate of 20% or that already declared in the assessee's books, whichever is higher, in place of adoption of GP rate at the rate of 37.72% by the authorities below.

6. In so far as the additions related to addition u/s 68 of the Act on account of share Capital and loans which were confirmed by the ld

CIT(A), the same were directed to be treated as regular business turnover assessable @ 20%.

7. The assessee, for the year under consideration of AY 2017-18, filed a return declaring an income of Rs 27,49,24,290/- on 30.10.2017. In the course of assessment proceedings, the AO found that the assessee had deposited an amount of Rs 65,79,60,000/-, in cash, in its bank account, during the FY 2016-17. From the explanation for the source of such deposit furnished by the assessee, the AO found that the assessee has shown a cash in hand of Rs 12,41,64,872/- as opening balance in its books as on 01.04.2016. The assessee further introduced a cash receipt of Rs 41,38,11,426/- in the cash book in the month of April 2016. The assessee carried the opening balance of Rs 12,41,64,872/- alongwith with the cash receipts Rs 41,38,11,426/- as cash-in-hand and other receipts/withdrawal in its book as on 08.11.2016, totaling to Rs 56,49,10,000/-, just before demonetization was declared. The AO found that just after the demonetization was declared, the assessee deposited the entire cash-in-hand of Rs 64,49,10,000/- in its bank account during the period 9th November 2016 to December 2016 as follows: Rs 56,49,10,000/- between 09.11.2016 to 30.11.2016 and Rs 8.0 crore in December 2016.

8. The AO, during the course of assessment proceedings, questioned the source of these cash deposits of Rs 64.49 crore. The AO accepted the assessee's explanation for cash deposit of Rs 12.41 crore in April 2016, being opening balance from previous year. The AO however, rejected the assessee's explanation for balance cash deposit that the said deposits represent 'On money' received in the year prior to FY 2016-17. The AO finally, held that the source of cash deposit of Rs 41.38 crore in April 2016 in cash book and cash deposit of Rs 8 crore in bank in the month of December 2016 totaling to Rs 49.30 crore, are unexplained and added them as unexplained cash deposits u/s 68 of the Act.

9. The AO further added the following amount u/s 68 of the Act:

Sr No	Description	Amount
1	Advance from customers	2,78,00,000
2	Loan from Saket Niketan Pvt Ltd	3,34,11,525
3	Loan from Prominence Impex Pvt Ltd	1,50,00,000
4	Advance from Nihon Impex Pvt Ltd	40,00,00,000

10. On appeal, the Id CIT (A) confirmed the addition of Rs 49.30 crore of cash deposit. The CIT(A) also confirmed the addition on account of Advance from Customer of Rs 2.78 crore and Loan from Saket Niketan of Rs 3.34 crore. The CIT(A), however, deleted the balance addition. Both

the assessee and the Revenue are in appeal against their respective addition/deletion.

11. We take up the assessee appeal first. Ground No. 1 is general in nature. Ground No. 2 relates to addition of Rs. 49.30 crore in respect of cash deposits in the bank accounts. The ld counsel of the assessee vehemently submitted that the CIT(A) accepted that the assessee earned unaccounted income from on-money receipts in preceding years. However, the CIT(A) denied the benefit of telescoping of cash generated prior to the period of search, for cash deposits of Rs 49.30 crore made in the F.Y. 2016-17 relevant to A.Y 2017-18, misconstruing the apex court decision in the case of *Anantharam Veerasinghaiah & Co. versus CIT* 123 ITR 457 (SC). The ld AR stated that in the said case, the Supreme Court has held that any availability of fund out of intangible additions in the preceding years cannot, in all cases, imply that the assessee has not earned further secret profits during the relevant assessment year and there should be overall consideration of peculiar facts and circumstances of the case.

12. The ld. counsel for the assessee further distinguished the facts in the case at hand with the facts of *Anantharam Veerasinghaiah & Co*

submitting that there is no intangible addition in its case to the total income in preceding years but there was concrete evidence on record that the assessee has earned real income in the form of on money.

13. It is the further say of the ld. counsel for the assessee that in the present case, the overall facts and circumstances indicate that the assessee's prayer for telescoping benefit to be granted is based on sound basis. The ld. counsel for the assessee pointed out to the chart of turnover submitted at serial number E of the book, where it can be seen that in the instant year, the sale turnover of the assessee has seen a quantum leap from the preceding year and compared to other years which were subject matter of search proceedings. In fact, the turnover as per the books in the instant year has doubled from the preceding year. Thus, it is apparent that after the search the entire turnover is being recorded in the books. This is a logical inference that can be drawn from the factum of quantum leap in turnover.

14. Further, in the case before the Hon'ble Supreme Court [supra], the fact was that cash deficit was unearthed by the Assessing Officer in the cash book in the course of assessment proceedings. As can be seen from para 1 of the Supreme Court decision that the assessee offered various

alternative pleas to explain the cash deficit in the cash book, which were all rejected by the Assessing Officer and the plea of telescoping benefit was taken for the first time before the ITAT. In the instant case, the assessee is taking the plea of telescoping of cash received on account of on- money in earlier years against the cash deposits in banks, which are recorded in the regular books, since the stage of assessment. In fact, the assessee has claimed the said adjustments in the books.

15. The ld. counsel for the assessee concluded by saying that the CIT(A)'s contention that the cash was not found in the course of search is also not a reasonable one inasmuch as, it is not necessary that every item/asset will come to the notice of the first party at the time of search. The assessee also relied on the following decisions:

- i) *CIT vs. Nabadwip Chandra Dey, High Court of Gauhati, 190 ITR 133*
- ii) *ACIT vs. Dharam Das Agarwal, High Court of Madhya Pradesh, 144 ITR 143*
- iii) *CIT vs. Tyaryamal Balchand, High Court of Rajasthan, 165 ITR 453*
- iv) *Vinod Bhandari vs. PCIT, Indore, ITAT Indore Bench, 116 taxmann.com 264*

16. On the other hand, the ld. DR stated that the cash deposits of Rs. 49.50 crore were made during the demonetization period and there was

no evidence found during search with regard to any physical cash in the case of the assessee and its group. The ld. DR pointed out that the ITAT in assessee's own case (supra), while holding 20% of the on-money calculated by the Special Auditor, as income of the assessee, had also included various unexplained loans taken by the assessee. It is the say of the ld. DR that after search, there is no evidence of unaccounted cash left with the assessee and therefore, benefit of telescoping the cash deposits in the instant year may not be granted on account of declaration made for the period of search.

17. We have heard the rival submissions and have perused the relevant material on record. We find that it is an admitted fact that the assessee company, engaged in the real estate development business, has earned undisclosed income from on-money which the Special Auditor calculated at Rs 197.82 crore during the preceding period of six years from the date of search and the year of search. The ITAT (supra) accepted the said calculation and considered 20% of the gross receipt of on-money as undisclosed income as against the rate of 37.72% adopted by the authorities below.

18. The issue of substantive contention of the assessee is with regard to claim of benefit of telescoping of undisclosed income earned as on-money prior to AY 2017-18, as explanation for deposit of cash of Rs 49.50 crore during AY 2017-18. We find that the CIT(A) denied the benefit of telescoping of cash generated during the period of search, for cash deposits of Rs 49.30 crore made in the F.Y. 2016-17 relevant to A.Y 2017-18, by relying on the apex court decision in the case of **Anantharam Veerasinghaiah & Co. versus CIT** 123 ITR 457 (SC).

19. We find that in the said case of **Anantharam Veerasinghaiah & Co. versus CIT**, the Supreme Court has held that any availability of fund out of intangible additions in the preceding years cannot, in all cases, imply that the assessee has not earned further secret profits during the relevant assessment year and there should be overall consideration of peculiar facts and circumstances of the case. In the instant case, the ITAT (supra) has accepted the factum of generation of income in the form of on-money in real estate business in the years prior to AY 2017-18, and has held the same as taxable as unaccounted income at the rate of 20% of total on-money received. In such a peculiar facts and circumstances, we are of the considered view that the claim of the assessee for telescoping

benefit has some merit. It is also an uncontroverted fact that the assessee has shown a substantial increase in its sale turnover in the instant year compared to other years which were subject matter of search proceedings which do give some indication that after the search substantial turnover is being recorded in the books. Further, we find that as against the facts of the *Anantharam Veerasinghaiah* case where the assessee raised the issue of telescoping for the first time before the ITAT, in the instant case the assessee had claimed telescoping of cash received on account of on-money in earlier years, against the cash deposits in banks, since the stage of assessment itself.

20. We nevertheless also find that the assessee failed to give a convincing reply to the Revenue's argument that no such physical cash was found during the course of search proceedings, available with the assessee, in its premises or elsewhere. In such a factual matrix of the instant case and considering the fact that there is no dispute that the assessee has earned undisclosed on-money from its real estate business, we are of the considered view that telescoping benefit of the on-money earned prior to the instant year under consideration, as an explanation to the extent of 50% of cash deposit in AY 2017-18, may be granted to the

assessee. The assessee gets relief of Rs 24.65 crore. Accordingly, the AO is directed to delete the 50% addition of Rs 24.65 crore. The ground 2 of the appeal is partly allowed in the aforesaid terms.

21. In so far as assessee's levy of tax at a higher rate under section 115BBE of the Act is concerned, we find that the Madras High Court in the Writ petition in the case of *S.M.I.L.E. Microfinance Ltd. Vs. ACIT*, W.P. (MD) No.2078 of 2020 & 1742 of 2020, dated 19.11.2024 (Madras) has held that the impugned statutory provision would come into effect *on the transaction done on or after 01.04.2017 only*. Accordingly, we direct the AO to tax the addition under normal provisions of tax and not under the provisions of 115BBE.

22. Ground No.2 of assessee's appeal and Ground No. 6 of the Revenue's appeal relate to the restriction of addition of Rs. 2,78,00,000/- to Rs 1,37,29,000/- made by the Assessing Officer on account of alleged receipt of cash from customers and other receipts by invoking provisions of section 68 of the Act r.w.s. 115BBE of the Act. The CIT(A), granted relief of Rs. 1,56,41,000/- being cash withdrawals from bank accounts of the assessee. Ground 3 of the assessee relates to addition u/s 68 of Rs 3,34,11,525/- received as loan from Saket Niketan P Ltd.

23. We find that that the ITAT in ITA Nos.2360/Del/2023; 2764 to 2768/Del/2022; ITA Nos.2502/Del/2023; 2853 & 2854/Del/2022 in assessee's own case, has held that no separate additions on account of section 68 of the Act is called for and the same be treated as on-money component only liable to be assessed at the rate of 20% since forming part of the business turnover going by *Indwell Construction Vs. CIT* (1998) 232 ITR 776 (AP). Following the same logic, we hold that the receipts as advance from customer and loan from Saket Niketan are part of the estimated 50% of cash deposit explained by way of the benefit of telescoping of the on-money component. Ground 2 and 3 of assessee's appeal is allowed and ground 6 of the Revenue is dismissed in the aforesaid terms.

ITA No. 3068/DEL/2022 (Revenue Appeal)

24. The Revenue has filed an application for condonation of delay of 20 days on the ground that the authorization to file appeal before the ITAT was received late. Having perused the application for condonation of delay, we find that there is sufficient cause for filing the appeal belatedly. We, therefore, condone the delay.

25. The Revenue has taken the following Grounds of Appeal:

1. Whether on the facts and circumstances of the case and in law that the Ld. CIT(A) erred in deleting the addition of Rs. 40 Crores without appreciating the fact that the property advance given by the Nihon Impex Pvt. Ltd. to Gallantt Ispat Limited of Rs. 40 Crores was still outstanding as on 31.03.2017 as per Note 9 of the Balance sheet of Gallantt Ispat Limited and was hence not available to the Nihon Impex Pvt. Ltd. to advance to the Assessee.

2. Whether on the facts and circumstances of the case and in the law the Ld. CIT(A) erred in deleting the addition of Rs. 40 Crores without considering the observation of the Assessing Officer at para 11.12 of the assessment order wherein the AO proved that whole transaction is not a property transaction but colorable arrangement to bring unaccounted money into the books of the assessee company.

3. Whether in the facts and circumstances of the case and in the provisions of the law, the Ld. CIT(A) erred in deleting the addition of amount of Rs. 40 crore on the basis of assessee's contention without asking for remand report from the AO, despite the fact neither the Nihon Impex Pvt. Ltd. nor the appellant provided Financial of the company i.e Nihon Impex Pvt. Ltd during the proceeding before assessing officer.

4. Whether on the facts and circumstances of the case and in law that the Ld. CIT(A) erred in deciding the issue on the basis of assessment proceeding of M/s Nihon Impex Pvt Ltd, failing to appreciate that any findings in that assessment cannot be used to ignore facts on record.

5. Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in holding that the notice u/s 133(6) was issued to the lender i.e M/s Nihon Impex Pvt Ltd at the Fag end is factually wrong as the notice was sent on 31.10.2019 i.e before 2 months of assessment order passed.

6. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the part addition of Rs. 1,37,29,000/- out of Rs. 2,78,00,000/- totally relying on the submission of the assessee which was not supported with any documentary evidences.

26. Grounds Nos. 1 to 5 relate to common issue of deletion of addition of Rs. 40 crore made by the Assessing Officer u/s 68 on account of property advance received from Nihon Impex Pvt Ltd. The assessee explained before the AO the amount of Rs. 40 crore related to advance received from the said party against property and was classified in its books as advance from customers. Accordingly, TDS as per the provision of section 194IA of the Act was also deducted by them. The Assessing Officer, however, held non-compliance of notice u/s 133(6) of the Act by

Nihon Impex Pvt Ltd against the assessee, and held Nihon Impex as a shell company from whom the assessee had taken accommodation entry, and added the same u/s 68.

27. When the assessee went in appeal before the ld. CIT(A), the ld. CIT(A) took cognizance of the documents submitted before the Assessing Officer which, inter alia, included agreement dated 01.09.2017 submitted before the Assessing Officer alongwith form 26AS, (copies of which are placed in the paper book at Sl. No. 'B). The ld. CIT(A) came to a conclusion that the source of advance of Rs. 40 crore made by M/s Nihon Impex (P) Ltd was the refund of earlier advance it had made to M/s Gallant Udyog Ltd and thereafter deleted the addition. Aggrieved, the revenue is in appeal before us.

28. The ld. DR relied upon the orders of the Assessing Officer.

29. Per contra, the ld. counsel for the assessee vehemently stated that the CIT(A), from the finding of the Investigation Wing which had summoned a director of Nihon Impex and recorded his statement, drew positive conclusion regarding establishment of identity and genuineness of transaction. It is the say of the Ld AR that with respect to creditworthiness, the CIT(A) has further noted that the assessment of the

said creditor for A.Y. 2017-2018 was completed u/s 143(3) vide order dated 23.10.2019, copy placed at Sl. No. 'B (d)' of paper book, wherein at para 4, the factum of giving of advance of Rs. 40 crore to the assessee company during the year for purchasing a land at Lucknow has been recorded and cognizance of agreement for sale and confirmation letter was taken and finally no adverse comment/inference was drawn in their assessment.

30. The ld AR stated that the ld. CIT(A) held that the Assessing Officer held Nihon Impex as shell company, without marshalling evidences whereas the assessee has furnished all necessary documents to discharge the initial onus. It is submitted that Hon'ble Delhi High Court's decision in the case of *Dwarkashish Investment Pvt Ltd* (supra) squarely applies.

31. We have heard the rival submissions and have perused the relevant material on record. We find that the Investigation Wing had investigated M/s Nihon Impex Pvt Ltd; summoned its director and recorded his statement and did not give any adverse findings. The assessee furnished to the AO, all the requisite documents explaining the said advance, discharging its initial onus. Again, the AO did not give any adverse findings in the explanation furnished by the assessee except that M/s

Nihon Impex Pvt Ltd did not comply with the notice u/s 133(6). The CIT(A) further examined the assessment order u/s 143(3) of the said M/s Nihon Impex Pvt Ltd wherein the issue of advance of Rs 40 crore, given to the assessee for purchase of land at Lucknow, was examined by its AO, without giving any adverse findings. Upon cumulative consideration of the facts, the CIT(A) deleted the said addition made u/s 68. In such factual matrix, we are of the considered view that there is no reason to interfere with the decision of the CIT(A) on this issue. The grounds are accordingly dismissed in the said terms.

32. In the result, the appeal of the assessee in ITA No. 2769/DEL/2022 is partly allowed whereas appeal of the Revenue in ITA No. 3068/DEL/2022 is dismissed.

The order is pronounced in the open court on 09.04.2026.

Sd/-
[MADHUMITA ROY]
JUDICIAL MEMBER

Sd/-
[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Dated: 09th April, 2026.

VL/

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi