

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH MUMBAI**

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No. 5783/Mum/2025
(Assessment Year: 2010-11)**

Shri Deep Devendra Jain (L/H of Shri Devendra T. Jain) C/o- G. P. Mehta & Co. CAS, 807, Tulsiani Chambers, Nariman Point, Mumbai-400 021	Vs.	ITO Ward - 30(1)(3), Mumbai Kautilya Bhavan, BKC, Bandra, Mumbai – 400 051.
PAN/GIR No. BBAPJ0727M		
(Applicant)		(Respondent)

Assessee by	Shri G. P. Mehta, Ld. AR
Revenue by	Shri Annavaram Kosuri, Ld. DR

Date of Hearing	13.04.2026
Date of Pronouncement	17.04.2026

आदेश / ORDER

PER MAKARAND VASANT MAHADEOKAR, AM:

This appeal is filed by the assessee against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as “the CIT(A)”] dated 19.08.2025 for Assessment Year 2010–11, arising out of the

assessment order passed by the Assessing Officer under section 144 r.w.s. 147 of the Income Tax Act, 1961 dated 29.12.2017.

Facts of the Case

2. The assessment in the present case was framed by the Assessing Officer, ITO Ward-30(1)(3), Mumbai, under section 144 r.w.s. 147 of the Act vide order dated 29.12.2017.

3. The facts, in brief, as emanating from the assessment order are that the assessee had not filed return of income for the year under consideration. Based on information available on record, it was noticed that during the relevant previous year the assessee had deposited cash amounting to Rs. 1,59,22,400/- in bank accounts and had also undertaken transactions in Multi Commodity Exchange amounting to Rs.96,67,85,080/-.

4. The assessment was reopened by issuance of notice under section 148 dated 31.03.2017 on the ground that income chargeable to tax had escaped assessment. The said notice was initially issued at the last known address and was served by way of affixture. Subsequently, the proceedings were continued in the name of legal heirs of Late Shri Devendra Tejpal Jain, who had expired on 19.04.2010.

5. During the course of assessment proceedings, the Assessing Officer issued notices under section 142(1) and also conducted enquiries under section 133(6). However, no compliance was made by the assessee. The Assessing Officer further obtained

information from a broker, namely Bonanza Commodity Pvt. Ltd., and observed that the assessee had earned profit of Rs. 9,10,431/- in commodity exchange and Rs. 3,98,157/- in derivative segment, aggregating to Rs. 13,08,588/-. In absence of any explanation, the Assessing Officer made the following additions:

- i. Addition of Rs. 1,59,22,400/- under section 68 on account of unexplained cash deposits
- ii. Addition of Rs. 13,08,588/- on account of income from commodity transactions

The total income was determined at Rs. 1,73,90,990/- vide order passed under section 144 r.w.s. 147 of the Act.

6. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) dismissed the appeal. From the perusal of the appellate order, it is noted that the CIT(A) issued multiple notices of hearing from time to time. However, the assessee either sought adjournments or failed to make effective compliance. The CIT(A) observed that no written submissions or evidences were furnished to rebut the findings of the Assessing Officer.

7. The CIT(A) further held that the assessee failed to discharge the onus of explaining cash deposits and commodity transactions and in absence of rebuttal, the additions made by the Assessing Officer were justified. Accordingly, the CIT(A) confirmed the additions and dismissed the appeal.

8. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising following grounds of appeal:

1. *The orders passed by the learned lower authorities are bad in law and bad in facts.*
2. *The learned CIT (A) has grossly erred in passing ex-parte order without affording an adequate & reasonable opportunity of being heard.*
3. *The learned Assessing Officer has grossly erred in issuing notice u/s 148 of the I. T. Act, 1961 in the name of deceased person and has further erred in passing ex-parte assessment order.*
4. *The learned Assessing Officer has grossly erred in serving notice u/s 148 by way of affixture without following due process of law.*
5. *The notice issued u/s 148 of the I. T. Act, 1961, is ab-initio void inasmuch as, sanction to issue impugned notice was received by the Assessing Officer after expiry of limitation period on 31.03.2017. Assessment order passed in consequence of impugned notice is also, void-ab initio.*
6. *The assessment order passed making an addition of Rs. 1,73,90,988/- is ab-initio void inasmuch as, an adequate and reasonable opportunity of being heard was not provided to the appellant.*
7. *Having regards to the facts of the case, provisions of law & judicial propositions, impugned addition of Rs. 1,73,90,988/- is neither tenable in facts nor sustainable in law.*
8. *The appellant may please be permitted to raise any additional or alternative ground on or before hearing of the appeal.*

9. During the course of hearing before us, the learned Authorised Representative (AR) submitted that though the notice and assessment order were passed in the name of legal heirs, the assessee was not afforded adequate opportunity, particularly before the CIT(A). It was submitted that the legal heirs were in the process of gathering relevant information and evidences, and therefore adjournments were sought before the CIT(A). However, without granting a final effective opportunity, the CIT(A)

proceeded to pass an ex parte order confirming the additions. The learned AR therefore prayed that the matter may be restored to the file of the CIT(A) for fresh adjudication after providing adequate opportunity.

10. The learned Departmental Representative fairly submitted that he has no objection if the matter is restored to the file of the CIT(A) for fresh adjudication.

11. We have carefully considered the rival submissions and perused the material available on record. It is an undisputed fact that the assessment in the present case has been framed under section 144 r.w.s. 147 of the Act on account of non-compliance by the assessee. It is further observed that the appellate proceedings before the CIT(A) have also culminated in an ex parte order, wherein the additions made by the Assessing Officer have been confirmed without any detailed adjudication on merits.

12. From the record, it is evident that the assessee is a legal heir of Late Shri Devendra Tejpal Jain, who had expired prior to the initiation of reassessment proceedings. In such circumstances, the legal heirs may not be readily in possession of complete financial details and supporting evidences, and therefore require reasonable opportunity to gather and present the same. Though the CIT(A) has recorded that several opportunities were granted, it is equally evident that the assessee had been seeking adjournments on the ground of collecting relevant material. The impugned order does not reflect that a final

effective opportunity was granted before proceeding to decide the appeal ex parte.

13. Considering the totality of facts and in the interest of substantial justice, we are of the considered view that one more opportunity deserves to be granted to the assessee to substantiate its case on merits. We also take note of the fact that the learned Departmental Representative has not objected to the restoration of the matter.

14. Accordingly, without expressing any opinion on the merits of the additions, we deem it fit to set aside the impugned order passed by the CIT(A) and restore the matter to his file for fresh adjudication. The assessee is directed to cooperate and furnish necessary details and evidences without seeking undue adjournments. The CIT(A) shall decide the appeal afresh in accordance with law after affording reasonable opportunity of being heard.

15. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 17.04.2026.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, Dated 17/04/2026
Dhananjay, Sr.PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai