

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SMT. RENU JAUHRI, ACCOUNTANT MEMBER
ITA No. 5420/MUM/2025 (AY: 2017-2018)
(Physical hearing)**

Avance Technologies Limited 209, Kapadia Chambers, 599 JSS Road, Marine Lines, Mumbai – 400002. [PAN: AAECA5763B]	Vs	ACIT, Central Circle – 2(2), Mumbai 8 th Floor, Pratishtha Bhavan, M.K. Road, Mumbai – 400020.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Neeraj Mangla, CA
Revenue by	Shri Surendra Mohan, Sr. DR
Date of Institution	29.08.2025
Date of hearing	29.10.2025
Date of pronouncement	02.01.2026

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Id. CIT(A) dated 12.08.2025 for A.Y. 2017-18. The assessee has raised following grounds of appeal:

"1. That the orders passed by Ld. AO u/s 143(3) of the Act as well as appellate order passed by Ld. CIT(A) are bad in law and are passed in contravention of prevailing law as well as facts of the case, therefore liable to be annulled.

2. That the notice issued u/s 143(2) of the Act on 09/08/2018 being issued without complying to the CBDT Instruction F. No. 225/157/2017/ITA-11 dated 23.06.2017 and without mentioning type of scrutiny under which the case of the assessee has been selected is not valid as per Provisions of Act.

3. That the Ld. AO grossly erred in law and in facts of the case in making estimated additions for commission of Rs. 8,30,153/- on sales made by assessee company to another group company.

4. That the Ld. AO grossly erred in law and in facts of the case in making estimated additions for commission of Rs. 8,30,153/- on sales to group

companies and of Rs. 20,07,556/-on new investments made by assessee company without allowing telescoping of gross profit/ returned income during the year under consideration.

5. That the Ld. AO grossly erred in law and in facts of the case in assessing cash deposits of Rs. 47,51,250/- during demonetization period as unexplained money u/s 69A of the Act despite the fact that said cash was deposited out of cash in hand as per books of account.

6. That the Ld. CIT(A) grossly erred in law and in facts of the case in rejecting the alternate plea of assessee that in case commission of Rs. 28,37,709/- is deemed to be earned in cash, telescoping of the same against the additions of Rs. 47,51,250/-being cash deposited during demonetization period shall be allowed.

7. That the Ld. AO grossly erred in law and in facts of the case in levying taxes as per enhanced rates of taxes specified u/s 115BBE of the Act by Taxation Laws (Second Amendment) Act, 2016.

8. That Ld. AO grossly erred in law and in facts of the case in arbitrarily holding the sales made by assessee company to be fictitious and circular transactions and assessing commission of said sales without rejecting books of account of assessee company.

9. That Ld. AO grossly erred in law and in facts of the case in arbitrarily holding the investments made by assessee company during the year under consideration to be fictitious and assessing commission income on the same.

10 That the appellant craves leave to add, alter or delete the above grounds of appeal at the time of hearing.

2. Brief facts of the case are that the assessee company filed its return of income for A.Y. 2017-18 on 30.10.2017 declaring income of Rs.17,43,210/-. The case was selected for complete scrutiny. During assessment, the assessing officer noted that assessee-company is a part of Shirish C. Shah group on which a search action under section 132 was carried out in 2013. This group including Assessee Company was a part of conduit operated and controlled by Shri Shirish C. Shah for providing accommodation entries

in the form of bogus turnover, loans and share capital. The assessing officer in para 5 of assessment order has recorded that assessee has shown sale of IT products from three companies namely, IRIS Mediaworks Ltd., Mobile Telecommunication Ltd. and Tejora Telecommunication Ltd aggregating of Rs. 89.91 Crore. The assessee has shown sale to Milap Trading Pvt Ltd and Mobile Telecommunication Ltd aggregating of Rs. 90.80 Crore. Similarly, IRIS Mediaworks Ltd. has also shown certain sale and purchase. Similarly, Empower India Limited also had shown sale and purchase among group companies. The assessing officer accordingly prepared such summary and was of the view that assessee was not engaged in any actual business but providing accommodation entries. The assessing officer also identified sales to non-group entity i.e. Mobile Telecommunication Ltd. aggregating of Rs. 8.30 crore and new investment made during the year of Rs. 20.07 crore. The assessing officer treated investment as well as sales of non-group entity has total turnover of assessee and estimated commission income @ 1.00% thereby added Rs. 28,37,709/- as commission income.

3. The assessing officer further noted that assessee has made cash deposit of Rs. 47,51,250/- during demonetization period. On show cause notice to substantiate the source of cash deposit, the assessee submitted that cash was deposited out of withdrawal from bank and to safeguard his disputed liabilities. The submission of assessee was not accepted by assessing officer. The assessing officer held that assessee has not submitted any co-

relation between the cash withdrawal of cash deposit. The entire cash deposit was treated as unexplained money and added under section 69A.

4. Aggrieved by the additions in the assessment order, the assessee filed appeal before Id. CIT(A). Before Id. CIT(A), the assessee filed detailed written submission in the form of statement of fact as well as written submission in response to notice under section 250 of the Income Tax Act. On the addition of commission income, the assessee submitted that pursuant to search action on assessee, group assessment was completed under section 153C for A.Y. 2008-09 to 2014-15. In such assessment orders, the assessee company was treated as conduit operated and maintained by Shri Shirish C. Shah and Devang Master for providing accommodation entries. On the basis of such view, the assessing officer in said assessment proceedings held turnover of assessee as bogus and a window dressing. The investment of assessee was also held to be bogus. The additions of commission income @ 1.00% of amount of turnover as per books of account and amount of increase in investment made during the year. However, on further appeal before Id. CIT(A) it was held that no commission should be assessed on intra group transaction. The Id. CIT(A) treated Empower India Limited, Jump Networks Limited (formerly known as M/s. IRIS Mediaworks Ltd., Tejora Technologies Limited and Mobile Telecommunication Ltd as group company. Copy of such order of Id. CIT(A) was furnished. On the basis of such submission, the assessee submitted that during the year under consideration, the assessing officer also treated

the turnover of assessee at Rs. 89.91 crore to be bogus. The Id. AO erroneously treated Mobile Telecommunication Ltd. to be non-group company and added commission income of Rs. 8.30 crore being 1.00% of total turnover. Though, Mobile Telecommunication Ltd. is Group Company.

On the investment of Rs. 20.07 crore, the commission income @ 1.00% that is Rs. 20,07,556/- was also added. Before assessing officer, the assessee furnished various submissions and explained that no such commission income is accessible. Such submission was made vide submission dated 19.12.2019. No cognisance of such submission was taken by assessee.

On the addition of cash deposit, the assessee submitted that their submission dated 19.12.2019 was not considered by assessing officer and treated entire such money as unexplained money. The cash deposit during the demonetization was out of cash withdrawal. The assessee furnished detail of cash withdrawal from IDBI Bank from 13.05.2016 to 08.11.2016 as under:

<i>"13.05.2016 IDBI Bank</i>	<i>6,00,000</i>
<i>17.05.2016 IDBI Bank</i>	<i>4,00,000</i>
<i>20.05.2016 IDBI Bank</i>	<i>7,00,000</i>
<i>27.05.2016 IDBI Bank</i>	<i>5,50,000</i>
<i>30.05.2016 IDBI Bank</i>	<i>5,00,000</i>
<i>27.06.2016 IDBI Bank</i>	<i>7,00,000</i>
<i>22.08.2016 IDBI Bank</i>	<i>5,00,000</i>
<i>08.11.2016 IDBI Bank</i>	<i>9,00,000</i>
<i>Total</i>	<i>Rs. 48,50,000/-"</i>

5. The assessee specifically contended that withdrawal of Rs. 9,00,000/- from IDBI Bank on 08.11.2016 itself was not accepted. The assessee has

declared profit of more than Rs. 40,00,000/- in its books of account which is in far excess of cash balance deposited during demonetization period. The assessee further contended that assessee derived commission income for providing accommodation entries and such amount received in cash must have been deposited in the bank account. Thus, the source of cash deposit to that extent is duly explained, which is separately assessed as income of assessee company. There cannot be any reasons for making addition of utilization of said amount as the same will lead to double taxation of same amount. Once as a commission income is added and again added utilization of said commission income. The assessee claimed telescoping of commission income against gross profit and submitted that Tribunal in earlier years in group cases allowed such benefit.

6. The Id. CIT(A) on considering the submission of assessee upheld the addition of commission income on both the counts. The Id. CIT(A) held that during assessment, the assessing officer had brought on record that assessee failed to furnish any evidence to substantiate the genuineness of business such as stock register, delivery challan and movement of goods. The transactions were found to be circular among closed group of entities. Where the assessee is found to be Paper Company providing accommodation entries, the method of estimating income by way of commission on quantum of such entry is well accepted and logical course of action to tax the real income. The estimation of 1.00% applied by AO is reasonable, which is not specifically challenged. On a specific objection

that Mobile Telecommunication Ltd. is a group company, on which the assessee relied upon finding in A.Y. 2014-15, the Id. CIT(A) held that the onus was on assessee to prove that in current assessment year, the facts of earlier year are squarely applicable, on which the assessee failed to do. Merely quoting earlier year order is not a sufficient measure. The fact that a different view has been taken in case of other group company is not a binding precedent unless the assessee demonstrate show. On quantum of commission income, the contention of assessee that Id. AO accepted gross profit and could not treat the sale as bogus, was also held to be misplaced. The Id. CIT(A) held that assessing officer clearly held that entire activities of assessee's sale being a circular entry and do not reflected any real business activities. Thus, the Id. AO rightly disregarded this entry to tax the real income. The Id. CIT(A) upheld the addition of commission income on investment as well as on sales. On the claim of telescoping that assessee has declared gross profit of Rs. 40,30,158/- in its books relying upon certain decision of bank, the Id. CIT(A) held that for benefit of telescoping the assessee must establish a clear nexus between income declared in the books and the source of addition being made, which the assessee failed. The gross profit is a figure derived from profit and loss account which is clearly held by Id. AO as sale. Thus, the assessee cannot seek the benefit from figure in the account that is admittedly work of fiction. In absence of any establish link, the claim for telescoping was also rejected.

7. On the addition of cash deposit, the Id. CIT(A) held that assessee has raised two fold submission; firstly, cash was available from earlier withdrawal and secondly it represents the commission income. The Id. CIT(A) held that AO rightly held that cash withdrawal in the past is not sufficient to explain the source direct nexus and co-relation must be established. The assessee has not provided in evidence. The withdrawals were spread over several months and it is not plausible that a large amount of cash was kept idle without any reason, unless it is demonstrated with convincing evidence. On second alternative submission of assessee that cash represent commission income was also held as afterthought and without basis. It was held that if there was a commission income, it should have been offered to tax. The argument of assessee that addition of cash deposit is a double taxation was also rejected by holding that addition of commission income is an estimate on the quantum of bogus transaction provided. The addition under section 69A is for a specific credit entry in the bank account which is not been satisfactory explained. The Id. CIT(A) held that assessee failed to discharge the onus upon it upheld the addition on Rs. 47,51,250/-. The Id. CIT(A) also held that action of assessing officer in taxing the addition at an enhance rate of tax under section 115BBE. Further, aggrieved the assessee has filed present appeal before Tribunal.
8. We have heard the submissions of learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative

(Id. Sr. DR) for the Revenue. No submission was made on ground no. 1 & 2 of the appeal, hence, such grounds of appeal are dismissed.

9. Ground No. 2 & 3 relates to the addition of commission income of sale transaction and investment. The Id. AR of the assessee submits that pursuant to the search action, assessment for A.Y. 2009-10 to 2014-15 was completed under section 153C r.w.s. 143(3) by Central Circle. The assessing officer estimated 1.00% commissions on entries provided by assessee. The assessing officer also added 1.00% on new investment. However, on appeal before Id. CIT(A), it was contended that commission should have been restricted only to the transaction with outside companies and not to the transaction with group companies controlled by Shri Shirish C. Shah, on the logic that no one earn profit from its own. The such contention of assessee was accepted by Id. CIT(A) and held that addition of commission income should be restricted only to investment and sales to outside company. On appeal before Tribunal, the action of Id. CIT(A) was upholding the estimation of commission @ 1.00 % and sales to outside company / parties without disturbing set off of returned income. The Id. AR of the assessee submitted the copy of decision of Tribunal in ITA No. 3556, 3640 to 3645/M/2019 for A.Y. 2009-10 to 2014-15 dated 05.01.2021. The Id. AR of the assessee submits that in fact the ground of appeal raised by assessee is covered to the extent of addition of commission income from intra group entry.

10. On the other hand the Id. DR for the revenue supported the order of lower authorities.
11. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that during assessment, the assessing officer estimated the commission income as well as new investment during the year. The assessing officer made addition of Rs. 8.30 lacs on account of sales to Mobile Telecommunication Ltd. and 1.00% of new investment of Rs. 2007 crore thereby made addition of Rs. 20.07 lacs thereby assessing officer made addition of Rs. 28,37,709/-. We find that assessing officer treated the transaction with Mobile Telecommunication Ltd. as non-intra group entities. We find that same assessing officer in case of Empower India Limited treated Mobile Telecommunication Ltd. as intra Group Company. We further find that in assessee's own case for A.Y. 2008-09 to 2015-16, similar commission income was added however on appeal before Id. CIT(A) it was held that no commission can be earned from circular transaction with a group. The finding of Id. CIT(A) was upheld by Tribunal in order dated 05.08.2011 for A.Y. 2008-09 to 2014-15 in ITA No 3556, 3640 to 3645/Mum/2029. The Mobile Telecommunication Ltd. was accepted in case of Empower India Ltd. as group entity. Thus, respectfully following the decision of Tribunal in assessee's own case the addition of commissions income on account of sale of Rs. 8,30,153/- is deleted. Thus, Ground No. 2 is allowed. However, the addition on account of commission income on investment of Rs.

20,07,555/- is upheld. In the result, ground no. 2 is allowed and ground no. 3 is dismissed.

12. Ground No. 4 relates to allowing telescoping benefits. The Id AR of the assessee submits that this ground of appeal is also covered in favour of the assessee by the decision of Tribunal in assessee's own case for earlier years, wherein the order of Tribunal in Empower India Limited in ITA No. 3646 to 3651/Mum/2019 was followed, which is quoted in para 4.8 of order of Tribunal order dated 05.08.2021.

13. On the other hand, the Id Sr DR for the revenue supported the order of Id CIT(A), wherein it is clearly held that benefit of telescoping the assessee must establish a clear nexus between income declared in the books and the source of addition being made, which the assessee failed.

14. We have considered the rival submissions of both the parties and have seen the order of Tribunal for earlier in assessee's own case, wherein on similar ground of appeal the following order is passed;

"4.8. Against the said order of the Id. CIT(A), the revenue is not in appeal before us. Since, this Tribunal does not have power of enhancement of income; we are not inclined to disturb the wrong set off of loss as per the return of income (already granted by the Id. AO in the assessment) with the estimated commission income for A.Yrs. 2012-13 and 2013-14. We find with regard to the issue of telescoping of positive income as per the return with the estimated commission income, the issue is already covered in favour of the assessee in the following cases:-

ITA No	AY	Assessee	Date of the order
3646/Mum/2019	2008-09	M/s. Empower India Limited	18/12/2020
3647/Mum/2019	2009-10	M/s. Empower India Limited	18/12/2020

3648/Mum/2019	2010-11	M/s. Empower India Limited	18/12/2020
3649/Mum/2019	2012-13	M/s. Empower India Limited	18/12/2020
3650/Mum/2019	2013-14	M/s. Empower India Limited	18/12/2020
3651/Mum/2019	2014-15	M/s. Empower India Limited	18/12/2020

4.9. In view of the aforesaid observations and respectfully following the aforesaid decision of this Tribunal, we hold that (a) in the A.Y.2008-09 to 2011-12, only estimated commission @1% on investments and sales to outside companies / parties should be considered and the same should be telescoped with the income returned by the assessee for the respective assessment years. (b) in the A.Yrs.2012-13, 2013-14 & 2014-15 only estimated commission @1% and investments and sales to outside companies / parties should be considered without disturbing the set off of returned loss already given by the Id. AO in his assessment order as this Tribunal does not have power of enhancement. The ground Nos. 5 & 6 are disposed of in the above mentioned terms."

15. Considering the consistent decision of Tribunal in assessee's own case on similar issue, the AO is directed to allow similar benefit to the assessee as allowed in AY 2008-09 to 2014-15. In the result, this ground of appeal is allowed.

16. Ground no. 5 relates to cash deposit during demonetization period. The Id. AR of the assessee submits that during assessment as well as Id. CIT(A) stage, the assessee furnished complete source of cash deposit which is from the earlier withdrawals. The assessing officer as well as Id. CIT(A) confirmed the addition on the basis that it is not plausible to keep the large amount as idle. The lower authorities have not allowed the withdrawal of Rs. 9,00,000/- on the day of declaration of demonetization and specified bank notes on 08.11.2016 of Rs. 9,00,000/-

17. On the other hand, the Id. Id. Sr. DR for the Revenue supported the order of lower authorities.
18. We have considered the submissions of both the parties and have gone through the orders of lower authorities carefully. We find that assessing officer made the addition of entire cash deposit during demonetization period. We find that Rs. 9,00,000/- was withdrawn on 08.11.2016 which is the day of declaration of demonetization. Even no set off such amount is allowed by lower authorities. In our view the assessee is eligible for relief of Rs. 9,00,000/- is allowed without any further discussion. So far as remaining cash deposit of Rs. 38,51,250/- (47,51,250 - 9,00,000) is concerned, we find that assessee has claimed it out of earlier withdrawal. No doubt, there is withdrawal on earlier occasion. However, considering the nature and modus operandi of assessee, it cannot be accepted that entire cash withdrawal was kept idle. Similarly, there is possibility that the same cash amount may have been utilised for providing layered entry transaction, therefore, in order to avoid the possibility of revenue leakage, 10% of Rs. 3,85,125/- is upheld and remaining amount of Rs. 34,66,125/- + Rs. 9,00,000/- are deleted. In the result, ground no. 5 of the appeal is partly allowed.
19. Ground No 6 is same as of Ground No. 3& 4, which is already adjudicated above.
20. Ground No. 7 relates to taxing the addition under section 115BBE. We find that Hon'ble Madras High Court in SMILE Microfinance Limited vs ACIT in

W.P.(MD) No. 2078 of 2020 held that enhanced rate of tax @ 60% of tax is applicable from 01.04.2017. Therefore, assessing officer is directed to tax the addition @ normal tax rate applicable to that assessment year.

21. In the result, appeal of the assessee is partly allowed.

Order was pronounced in the open Court on 02/01/2026.

Sd/-

RENU JAUHRI
ACCOUNTANT MEMBER

Sd/-

PAWAN SINGH
JUDICIAL MEMBER

MUMBAI, Dated: 02/01/2026
Biswajit

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai