

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No. 353/Mum/2026
(Assessment Year: 2016-17)**

Dove Buildcon Flat No. 302, Plot No. 14, Sector 17, Turbhe, Raigarh, Navi Mumbai- 400 703	Vs.	ITO Ward 28(1)(1) IT Office, Vasi Railway Station, Navi Mumbai-40 703
PAN/GIR No. AAKFD1610P		
(Applicant)		(Respondent)

Assessee by	Shri Suresh Gupta, Ld. AR
Revenue by	Shri AnnavaramKosuri, Ld. DR

Date of Hearing	21.04.2026
Date of Pronouncement	13.05.2026

आदेश / ORDER

PER MAKARAND VASANT MAHADEOKAR, AM:

The present appeal has been 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)”] under section 250 of the Income-tax Act, 1961[hereinafter referred to as "the Act"] dated 28.02.2025, arising out of the assessment order passed by the Assessing

Officer under section 147 read with sections 144 and 144B of the Act dated 26.03.2024 for the assessment year 2016–17.

Brief facts of the case

2. The assessee is a partnership firm. It is noted by the Assessing Officer that the assessee had not filed its return of income for the assessment year under consideration as required under section 139(1) of the Act. As per the information available with the Department, the assessee had entered into a substantial financial transaction during the financial year 2015–16 relevant to the assessment year 2016–17, being purchase of an immovable property for a consideration of Rs. 2,00,00,000/-.

3. On the basis of the said information, proceedings under section 148A were initiated and an order under section 148A(d) was passed on 26.03.2023. Thereafter, notice under section 148 was issued after obtaining approval under section 151 of the Act. The assessee did not respond to the said notice. Subsequently, notice under section 142(1) dated 10.10.2023 along with questionnaire was issued, followed by a reminder dated 09.11.2023. Since there was no compliance, show cause notices dated 13.12.2023 and 20.12.2023 were issued proposing to complete the assessment under section 144 and to make addition of Rs. 2,00,00,000/-.

4. In response to the show cause notice dated 20.12.2023, the assessee submitted reply on 24.01.2024 stating that it is engaged in the business of development of land and plots and that the

land in question was purchased during financial year 2014–15. It was stated that the source of funds for purchase of land was contribution from partners and unsecured loans. The assessee further submitted that no return of income was filed for that year as there was no taxable income. The assessee also furnished copy of bank book, details of partners' capital, partners' loans, unsecured loans and agreement for purchase of land.

5. The Assessing Officer observed that although the assessee claimed that the transaction pertained to financial year 2014–15, it failed to produce the registered purchase deed of the impugned property. It was held that in the absence of a registered deed, the actual year of transaction could not be verified and that an agreement to sell/purchase alone cannot be taken as evidence of a property transaction. The Assessing Officer further recorded that despite sufficient opportunities, the assessee failed to substantiate the source of investment with corroborative evidence. Accordingly, invoking the provisions of section 69, the Assessing Officer treated the purchase consideration of Rs. 2,00,00,000/- as unexplained investment and brought the same to tax under section 69 read with section 115BBE of the Act. The assessment was completed under section 147 read with section 144B determining total income at Rs. 2,00,00,000/-. Penalty proceedings under sections 271(1)(c), 271(1)(b) and 271F were also initiated.

6. Before the CIT(A), the assessee challenged both the jurisdiction of reassessment as well as the addition on merits. It

was contended that the reassessment order was “bad in law as well as on facts” and was based on “mere suspicion, surmises and conjectures.” It was further contended that the Assessing Officer had ignored the documentary evidences filed by the assessee and had made the addition without any enquiry. The assessee reiterated that the land transaction pertained to financial year 2014–15 relevant to assessment year 2015–16 and not to the year under consideration. In support, reliance was placed on the provisions of section 2(47) of the Act and judicial precedents to contend that transfer is to be determined with reference to the date of agreement and execution of documents. The assessee also challenged levy of interest under sections 234A and 234B and raised additional grounds regarding validity of notice issued under sections 148A(b) and 148 by a non-jurisdictional officer.

7. The CIT(A) observed that the assessment order was passed under section 144 due to non-compliance by the assessee and that several factual contentions were raised for the first time before the appellate authority. It was further observed that the Assessing Officer did not have the opportunity to examine such contentions and that the issues involved required factual verification. Accordingly, the CIT(A) held that it would be just and proper to restore the matter to the file of the Assessing Officer with a direction to frame the assessment afresh after giving due opportunity to the assessee and after carrying out necessary verification and enquiry on all factual and legal contentions. The

assessment was thus set aside and the appeal was allowed for statistical purposes.

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

1. *The reassessment is invalid and without jurisdiction as the appellant has declared returned income exceeding Rs.20,00,000/- and therefore, jurisdiction over appellant lies with Circle not with ITO, Ward as per CBDT Instruction No.1/2011 F.No.187/12/2010-IT(A-I) dt: 03.01.2011 and hence, the reassessment initiated vide notices u/s 148/148A by the AO i.e. ITO is invalid, illegal and without jurisdiction.*
2. *The reassessment is invalid and without jurisdiction as the notice u/s 148 dated 26.03.2023 has been issued by JAO in violation of provisions of sec 151A of IT Act notified by CBDT through notification dated 29.03.2022 and therefore, the reassessment proceedings need to be quashed.*
3. *The reassessment proceedings and consequent reassessment both are invalid and without jurisdiction as the said assessment has been initiated and completed without complying with legal requirements of the provisions of section 147/148/148A/151/149(1) of the Income Tax Act therefore such assessment is void ab initio and liable to be quashed.*
4. *The authorities below have erred both in law and in facts of the case in upholding the addition of Rs.2,00,00,000/- u/s 69 rws 115BBE of IT Act allegedly treating the source of investment in immovable property as unexplained investment ignoring the submission of appellant that no investment has been made by the appellant in immovable property during the year under consideration which fact has not been controverted by the authorities below. In view of above, the above addition is not tenable in law.*
5. *The appellant craves leave to add, DLEETE, modify / amend the above grounds of appeal with the permission of the Hon'ble appellate authority.*

9. The learned Authorised Representative (AR), at the outset, submitted that the addition of Rs. 2,00,00,000/- is unsustainable

both on facts and in law, as the transaction pertains to a different assessment year and is duly supported by documentary evidence. The AR submitted that from perusal of the assessment order, particularly para 3.3, it is evident that the entire addition of Rs. 2,00,00,000/- has been made on account of alleged unexplained investment in immovable property without proper appreciation of the material placed on record. It was pointed out that during the course of assessment proceedings, in response to the show cause notice dated 20.12.2023, the assessee had filed a detailed reply dated 24.01.2024 along with supporting documents including bank statements, bank book, details of partners' capital, partners' loans, unsecured loans and purchase agreement of land. The AR invited our attention to the copy of detailed reply along with enclosures placed in paper book on page No. 41.

10. The AR emphasised that the said reply, though partly reproduced in the assessment order, has not been properly appreciated by the Assessing Officer. It was specifically submitted that in the reply, the assessee had categorically clarified that no purchase of land was made during the financial year 2015–16 relevant to assessment year 2016–17, and that the transaction referred to by the Department pertained to financial year 2014–15 relevant to assessment year 2015–16. The AR drew attention to the relevant extract of the reply wherein it was stated that the assessee had not purchased any land in the assessment year under consideration and that no return of income was filed for the year due to absence of taxable income. The AR further

submitted that the Assessing Officer, in para 3.4 of the assessment order, has acknowledged the explanation of the assessee that the transaction pertained to financial year 2014–15 and was based on a registered purchase agreement dated 29.04.2014. However, the said explanation was rejected merely on the ground that a sale agreement cannot be taken as evidence of a property transaction and that agreement alone cannot legally effect transfer of property.

11. The AR contended that the aforesaid reasoning of the Assessing Officer is factually and legally erroneous. It was submitted that the document in question is not merely an unregistered agreement but a duly registered document under the Transfer of Property Act, executed after payment of stamp duty under the Indian Stamp Act amounting to Rs. 10,00,000/- on 03.04.2014 (placed in paper book on page No. 44-58). It was argued that the said document evidences a valid transfer of non-agricultural land, free from encumbrances, and therefore constitutes valid documentary evidence of transfer. The AR further submitted that the purchase consideration of Rs. 2,00,00,000/- was paid in two instalments of Rs. 1,00,00,000/- each on 28.03.2014 and 29.04.2014, which is duly corroborated by the purchase agreement and bank statements placed in the paper book. It was pointed out that both payments fall in financial year 2014–15 relevant to assessment year 2015–16 and not in the year under consideration. It was also submitted that the information relied upon by the Assessing Officer has been

received from the Sub-Registrar, Khalapur, who is the same authority that registered the impugned document, thereby lending credibility to the assessee's explanation.

12. On the basis of the above, the AR contended that once the assessee had discharged the initial onus by producing documentary evidence demonstrating that the transaction pertains to an earlier year, the burden shifted upon the Assessing Officer to establish that the transaction occurred during the year under consideration. It was submitted that the Assessing Officer failed to discharge this burden and has proceeded merely on the basis of information without independent verification. In support of this proposition, reliance was placed on the judgment of the Hon'ble Delhi High Court in the case of **CIT vs. Pradeep Kumar Gupta (303 ITR 95)**, wherein it was held that the Assessing Officer must first establish escapement of income before calling upon the assessee to explain the same. It was submitted that in the present case, the Assessing Officer has not brought any material on record to show that the investment was made during the relevant year.

13. The learned Departmental Representative submitted that in the present case, the Assessing Officer had duly followed the statutory procedure by first issuing notice under section 148A(b) of the Act, passing an order under section 148A(d), and thereafter issuing notice under section 148 of the Act.

14. In rebuttal, the learned AR submitted that in the present case, all notices under section 148A(b), the order under section 148A(d), and the notice under section 148 were issued on incorrect and obsolete email IDs which were not in use by the assessee during the relevant period. It was thus contended that there was no effective service of notice upon the assessee and consequently the assessee was deprived of a meaningful opportunity to respond at the stage of section 148A proceedings.

15. We have heard the rival submissions and perused the material available on record. The grievance of the assessee, inter alia, is that the learned CIT(A) has set aside the assessment without adjudicating the grounds raised before him, including the legal grounds, and the addition made by the Assessing Officer is otherwise unsustainable on merits.

16. At the outset, we find merit in the contention of the assessee that the learned CIT(A) has not discharged the appellate functions vested in him under section 250 of the Act. From the perusal of the impugned order, it is evident that the learned CIT(A) has merely reproduced the written submissions of the assessee at length, including detailed legal and factual contentions, but has not rendered any independent findings on the issues raised. The learned CIT(A), instead of adjudicating the grounds on merits, has simply observed that the issues are factual in nature and require verification and, accordingly, restored the matter to the file of the Assessing Officer.

17. In our considered view, such an approach is not in accordance with law. The learned CIT(A) being a quasi-judicial authority is duty bound to adjudicate the issues raised before him by passing a reasoned and speaking order. The power of the CIT(A) is co-terminus with that of the Assessing Officer and he is required to examine both facts and law and render findings thereon. The learned CIT(A) cannot abdicate his statutory duty by merely setting aside the matter without deciding the issues, especially when the material necessary for adjudication was already placed on record.

18. Be that as it may, since the entire material is available before us and both the parties have advanced arguments on merits, we proceed to examine the addition on merits.

19. The addition of Rs. 2,00,00,000/- has been made by the Assessing Officer under section 69 read with section 115BBE of the Act on account of alleged unexplained investment in immovable property. The basis of the addition is information that the assessee had purchased immovable property during the financial year 2015-16 relevant to the assessment year under consideration. However, from the record, it is evident that the assessee, in response to the show cause notice, had furnished a detailed reply dated 24.01.2024 along with documentary evidences including bank statements, details of partners' capital, unsecured loans and purchase agreement. The assessee had categorically contended that no purchase of property was made during the financial year 2015-16 and that the transaction

referred to by the Department pertained to financial year 2014–15 relevant to assessment year 2015–16.

20. We further note that the Assessing Officer himself has acknowledged this explanation in the assessment order but has rejected the same merely on the ground that an agreement to sell cannot be taken as conclusive evidence of transfer of property. The Assessing Officer has not brought any material on record to controvert the claim of the assessee that the transaction was executed in the earlier year. The evidences placed on record, including registered document and bank statements, demonstrate that the consideration of Rs. 2,00,00,000/- was paid during financial year 2014–15.

21. Once the assessee has discharged its primary onus by producing documentary evidence demonstrating that the transaction pertains to an earlier year, the burden shifts upon the Revenue to establish that the investment was made during the year under consideration. In the present case, the Assessing Officer has failed to discharge this burden and has proceeded merely on the basis of information without any independent verification.

22. It is a settled position of law that an addition under section 69 of the Act cannot be sustained merely on the basis of suspicion, conjectures or unverified third-party information, without the Assessing Officer discharging the primary burden cast upon him to establish that the assessee has in fact made an

investment during the year under consideration which remains unexplained. In this regard, we find support from the judgment of the Hon'ble Delhi High Court in the case of **CIT vs. Pradeep Kumar Gupta reported in 303 ITR 95**, wherein it has been held in clear terms that once the provisions of section 147/148 are invoked, the Assessing Officer must first discharge the burden of showing that income has escaped assessment, and it is only thereafter that the assessee is required to furnish explanation. The Hon'ble Court further observed that reliance solely on statements or information of third parties, without affording opportunity of rebuttal and without corroborative material, cannot form the sole basis of sustaining an addition.

23. The ratio laid down in the aforesaid decision clearly enunciates that the existence of information may justify initiation of proceedings, however, such information by itself is not sufficient to sustain an addition unless it is supported by cogent evidence and proper enquiry establishing the nexus of such information with the assessee in the relevant assessment year.

24. Applying the aforesaid principle to the facts of the present case, we find that the Assessing Officer has proceeded to make the addition merely on the basis of information received from the Departmental database, without carrying out any independent verification and without bringing any material on record to demonstrate that the alleged investment of Rs. 2,00,00,000/- was made during the year under consideration. The explanation

furnished by the assessee, supported by documentary evidences, has not been disproved.

25. In the absence of any cogent evidence establishing that the assessee has made unexplained investment in the relevant previous year, the addition made under section 69 of the Act cannot be sustained in law.

26. In view of the above, we hold that the addition of Rs. 2,00,00,000/- made under section 69 read with section 115BBE of the Act is unsustainable and deserves to be deleted. Accordingly, the orders of the lower authorities are set aside and the addition made by the Assessing Officer is deleted.

27. Since the issue has been decided on merits in favour of the assessee, the legal grounds challenging the validity of reassessment proceedings are kept open and are not adjudicated.

28. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 13.05.2026.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, Dated 13/05/2026
Dhananjay,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//

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