

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHARY, JM &
MS PADMAVATHY S, AM**

I.T.A. No.5376/Mum/2024
(Assessment Year: 2009-10)

I.T.A. No.5375/Mum/2024
(Assessment Year: 2011-12)

I.T.A. No.5374/Mum/2024
(Assessment Year: 2012-13)

I.T.A. No.5373/Mum/2024
(Assessment Year: 2015-16)

M.K. Shelters, 701/702/707/708, Golden Chambers Premises CHSL, 7 th Floor, Opp. Tanishq Showroom, Near Citi Mall, Link Road, Andheri (West), Mumbai-400053. PAN: AAJFM1339H	Vs.	ITO Ward-22(2)(3), Piramal Chamber, Lalbaugh, Parel, Mumbai-400012.
Appellant)	:	Respondent)

Appellant /Assessee by : Shri K. Shivram / Shri Shashi
Bekal, AR

Revenue / Respondent by : Shri Ram Krishn Kedia- Sr. DR

Date of Hearing : 04.04.2025
Date of Pronouncement : 23.05.2025

ORDER**Per Padmavathy S, AM:**

These appeals by the assessee are against the separate orders of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi all dated 20.08.2024 for AYs 2009-10, 2011-12, 2012-13 & 2015-16.

2. The assessee is a partnership firm having PAN Number AAJFM1339H and is dormant having no transaction since 2003. The Assessing Officer (AO) received information from Investigation Wing based on a search & seizure action conducted on M/s. Ekta & Bhoomi Group on 05.10.2015 wherein statement under section 131 of the Income Tax Act, 1961 (the Act) was recorded from Mr. Akshay Doshi with regard to the digital data seized during the course of search. The AO further received information that as per the data found and seized Mr. Mehfus Bhai partner of M.K. Shelters had sold Transferable Development Rights (TDR) to Mr. Akshay Doshi and received payment in cash to the tune of Rs. 3,24,55,000/- for FY 2008-09, Rs.1,98,43,000 for FY 2010-11, Rs.38,15,000 for FY 2011-12 & Rs.37,29,700 for FY 2014-15. The AO based on the above information reopened the assessment of the assessee under section 147 of the Act. The assessee in response filed a return on 23.09.2016 declaring Nil Income for the reason that the assessee has been dormant from inception. The AO was of the view that though the assessee did not do any business, it is in existence to receive unaccounted cash on sale of TDR owned by M.K.Shelters-JV having PAN AAMFM2671H. The AO based on the statement recorded came to the conclusion that the assessee has received cash from Bhoomi Group through Mr. Mehfus Bhai who is a partner in assessee firm and accordingly treated the amount of Rs. 3,24,55,000/- as business income in the hands of the assessee. The AO made similar additions of Rs.1,98,43,000 for AY 2011-12,

Rs.38,15,000 for AY 2012-13 & Rs.37,29,700 for AY 2015-16 on protective basis in the hands of the assessee stating that the substantive addition is made in the hands of M/s.M K Shelters-JV having PAN AAMFM2671H.

3. Aggrieved, the assessee filed further appeals before the CIT(A). The assessee submitted before the CIT(A) that the assessee does not own any TDR and the the assessee has been dormant since 2003 without even having a bank account. The assessee further submitted that Mr. Mehfus Bhai is having a joint-venture (JV) called M/s. M.K. Shelters-JV having a PAN- AAMFM2671H and it is the JV which sold the TDR to Bhoomi Group. The assessee further submitted that no cash transaction was done by the JV or the assessee relating to the sale of TDR. The assessee also made a without prejudice contention that the addition could not have been made in the name of the assessee since the assessee is not part of the sale transaction and the assessee does not own any TDR. The assessee raised other legal contentions with regard to the validity of reopening before the CIT(A). The CIT(A) after considering the various submissions of the assessee held that the AO has carried out a thorough verification of digital date and the statement recorded and accordingly the addition is to be confirmed. The CIT(A) did not give any specific findings with regard to the legal contentions raised by the assessee stating that they are general in nature. The assessee is in appeal before the Tribunal against the order of CIT(A) for AY 2009-10, 2011-12, 2012-13 & 2015-16.

AY 2009-10

4. The assessee raised the following grounds of appeal for AY 2009-10

“Reopening is bad in law

1) The Learned CIT(A)/NFAC failed to appreciate that reopening of assessment u/s 147 in the facts and circumstances of the case is bad in law.

2) *The Learned CIT(A)/NFAC failed to appreciate that reopening of assessment u/s 147 is bad in law as same is done beyond four years and there is no new tangible material and reopening is done on the basis of information received from Dy. DIT, Mumbai and there is no independent satisfaction of AO that income has escaped assessment and hence reopening is bad in law and liable to be quashed.*

3) *The Learned CIT(A)/NFAC failed to appreciate that reopening of assessment u/s 147 is bad in law as same is done on the basis of third party statement not supported by any corroborative evidence and thus there existed reason to suspect and not reason to believe that income has escaped assessment and hence reopening is bad in law and liable to be quashed.*

4) *The Learned CIT(A)/NFAC failed to appreciate that reopening of assessment u/s 147 is bad in law as reopening is without jurisdiction as in the present case assessment is sought to be made on the basis of information received w.r.to Assessee from third party search and as such Assessment can be made u/s 153A r.w. 153C and hence reopening u/s 147 is bad in law and liable to be quashed.*

5) *The Learned CIT(A)/NFAC failed to appreciate that reopening of assessment u/s 147 is bad in law as AO failed to issue notice u/s 148 dated 30/3/2016 for reopening assessment and as no notice u/s 148 is issued, reopening is bad in law and liable to be quashed.*

Violation of principles of natural Justice

6) *The Learned CTT(A)/NFAC erred in confirming addition of Rs.3,24,55,000/- as business income being alleged cash received by Assessee from Bhoomi group on sale of TDR without appreciating that such addition is made on the basis of statement of Mr Akshay Doshi and Assessee is not provided opportunity of cross-examination thereby resulting in violation of principles of natural justice and hence the addition of Rs 3,24,55,000/- may be deleted.*

Merits

7) *The Learned CIT(A)/NFAC erred in confirming addition of Rs 3,24,55,000/- as business income being alleged cash received by Assessee from Bhoomi group on sale of TDR without appreciating that Assessee has not sold any TDR as alleged and the information received from investigation wing and Central circle and also the statement of third party do not state that Assessee has received any cash for sale of TDR and hence the addition of Rs 3,24,55,000/- may be deleted.*

8) The Learned CIT(A)/NFAC erred in confirming addition of Rs 3,24,55,000/- as business income being alleged cash received by Assessee from Bhoomi group on sale of TDR without appreciating that no addition can be made on the basis of third party statements and documents without any corroborative evidence and hence the addition of Rs 3,24,55,000/- may be deleted.”

5. The primary contention of the ld AR is that the addition made in the hands of the assessee is merely based on the information received by the AO from the investigation wing and that the AO has not carried out any independent enquiry or applied his mind. The ld AR raised another legal contention that the assessment based on a seized material should be done under section 153C and not under section 147 as has been done in assessee's case. The ld AR also raised the legal contention that there is a violation of natural justice in assessee's case since the statement relied on by the AO to make the addition is not made available to the assessee. The ld. AR submitted that the entire addition is made based on the statement recorded under section 131 of Mr. Akshay Doshi and that in the said statement assessee's name is not mentioned. The ld. AR further submitted that the seized document based on which the addition is made also does not contain assessee's name. The ld. AR also submitted that Mr. Mehfus Bhai who is alleged to be the conduit for the receipt of cash is only a partner in the JV & the assessee and that even if the addition is to be made it cannot be made in the name of the assessee but in the individual name only. The ld AR argued that the AO has accepted the fact that the TDR is owned by the JV but has alleged that the assessee is in existence to route cash without any concrete evidence on record. The ld. AR further argued that other than statements recorded the revenue did not bring any evidence with regard to receipt of cash on the sale of TDR. The ld AR also argued that the digital records in the form of excel sheet relied on by the AO do not contain any evidence that the assessee has received the cash. Therefore, the ld AR submitted that the entire addition is based on surmises, conjecture and presumptions.

6. The ld. DR on the other hand relied on the order of the lower authorities.

7. We heard the parties and perused the material on record. There was a search and seizure operation in the case of M/s. Ekta & Bhoomi Group wherein statement is recorded from one Mr. Akshay Doshi. The AO of the assessee issued a show-cause notice based on the statement recorded in assessee's case stating that why a sum of Rs. 3,24,55,000/- received in cash by Mr. Mehfus Bhai in the capacity as partner of the assessee cannot be added as undisclosed income. The main contention of the assessee is that the seized material does not mentioned the name of the assessee and that the ledger account seized is named "Mehfus Bhai TDR A/c". It is also submitted by the assessee that neither in the statement recorded and nor in the ledger account assessee's name is mentioned. It is further argued that the assessee is not in operation since 2003 and the alleged cash transaction on the sale of TDR is not owned by the assessee. In this regard we notice on perusal of the statement recorded from Mr. Akshay Doshi that though he has submitted of transactions being executed in cash not recorded in the books of account, he has not mentioned the name of the assessee specifically the relevant question and the reply are extracted as below:

“Q.4 I am showing you the soft copy of the extract taken from the Laptop. It contains a folder called "ERLIER DATA HOT EDITABLE which further opens into a folder called "1) NOT EDITABLE" which finally opens into three excel sheet folders called "1-JOURNAL ACCOUNT.XLS", "2-LEDGERACCOUNT.XLS" & "BLOCKWISE XLS.". Please explain the contents of these excel sheet folders.

Ans. The excel sheet folder called "1-JOURNAL ACCOUNT.XLS" contains two sheets named as sheet 1 Broker account. Sheet I contains all the data related to transactions executed by Bhoomi group for the period 10-12-05 to 31-07-2011. These transactions have been executed in cash and have not been recorded in regular books of accounts. Each figure has to be multiplied by 100 to arrive at correct value of transaction. However there might be few figures which might be recorded at correct value. However we are not able to exactly identify the transactions reflected in our regular books of accounts.”

8. We notice from the perusal of the materials received from the Investigation wing with regard to the seized material such as the statement recorded, ledger copy etc., (page 34 to 39 of PB), there is no clear indication that the impugned cash transaction is entered into with the assessee and there is no mention of assessee's name in any of the materials relied on. We further notice from the details of TDR Purchase (page 36) containing the Ledger A/c also does not contain the assessee's name. We also notice that the primary reliance placed by the AO on the seized material a noting named "Mehfus Bhai TDR A/c" also does not contain the assessee's name. It is also an accepted position by the revenue that the TDR sold is not in the name of the assessee but in the name of M/s. M.K. Shelters-JV having a PAN- AAMFM2671H. From the perusal of the details relied as mentioned herein above, it is not coming out clearly as to how the AO has come to the conclusion that the assessee firm which is not in operation from 2003, without even a bank account is being used for routing the cash. The letters received from the investigation wing as well the Central Circle mentions that the Mr.Mehfusbhai has allegedly received cash but no evidence is brought on record to evidence that the cash is received in his capacity as partner in the assessee firm and that the cash is routed through assessee. The AO in the order of assessment has merely relied on the statement of Shri Akshay Doshi director of M/s.Bhoomi group, and the seized documents received. The AO in our considered view has not carried out any independent enquiry or has not brought any material on record in support of the addition made in the hands of the assessee. The finding of the AO that the assessee firm is in existence for routing the cash transaction on sale of TDR is not substantiated by any evidence. It is relevant to note that the Memorandum of Understanding for the sale of TDR is entered into with M K Shelters-JV. It is a settled position that an addition made merely based on a third party statement under section 131 of the Act without

bringing any corroborative evidence cannot be sustained. Considering the merits of the case, we are of the view that the addition made by the AO merely by relying on the statement recorded under section 131, without conducting or recording any independent findings or evidences is not sustainable. Hence we hold that the addition made in the hands of the assessee alleging that the cash transactions are routed through the assessee without any material evidence on record is liable to deleted. Ground No. 7 & 8 raised by the assessee is allowed. Since we have allowed the appeal on merits, the legal contentions raised in Ground No.1 to 4 & 6 have become academic and left open accordingly. During the course of hearing the Id AR did not press for adjudication of Ground No.5 and hence the same is dismissed as not pressed.

AY 2011-12, AY 2012-13 & AY 2015-16

9. We notice that for the years under consideration the AO made the protective assessment in the hands of the assessee for the reason that the substantive addition is made in the hands of M/s. M.K. Shelters-JV having a PAN- AAMFM2671H. We further notice that the AO while making the protective addition has placed reliance on the same statement recorded from Shri.Akshay Joshi and the ledger account copies. We have while deciding the issue for AY 2009-10 on merits, have held that the AO for the purpose of making the addition did not bring any evidence on record in support of the contention that the assessee firm has been used to route the cash transaction. We further held that the addition merely based on the statement recorded without recording any independent finding is not sustainable. We notice that there is no change to the facts or the basis of making the addition for the years under consideration except that the addition is made on protective basis. Therefore in our considered view our decision on merits for AY 2009-10 is mutatis mutandis applicable for AY 2011-12, AY 2012-13 & AY 2015-16 also.

10. For the years under consideration the ld AR raised one more legal contention that the AO has passed the assessment order without disposing of the objections raised by the assessee though additional ground on 25.02.2025. The additional grounds raised are pure legal issue, which does not require investigation of new facts. Hence, placing reliance on the judgment of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC), we admit the additional grounds.

11. The ld. AR with regard to the additional ground relied on the decision of the Hon'ble Supreme Court in the case of GKN Driveshaft (India) Ltd. vs. ITO [2003] 259 ITR 19 (SC) and the decisions of various High Courts where the above decision of the Hon'ble Supreme Court have been followed. The ld. AR also brought to our attention that the Co-ordinate Bench in the following cases have held that the assessment order passed without disposing of the objections by a separate order is void *ab-initio*:

- (i) General Electric Company vs. ADIT (ITA No. 82/Mum/2011 dated 23.12.2022).
- (ii) Soham Estates vs. DCIT (ITA No. 690-692/Mum/2023 dated 20.09.2023)

12. We heard the parties and perused the material on record. From the perusal of records we notice that the assessee has raised objections dated 04.12.2018 for reopening the assessment and that the AO in the order has not stated anything with regard to the objections disposing the said objections. In this regard we notice that the Hon'ble Bmbay High Court in the case of M/s.Kesar Terminal & Infrastructure Ltd vs DCIT (WP No.3248 of 2022 dated 27.01.2025) has considered similar issue of AO passing an order of reassessment without disposing off the objections raised by the assessee where it has been held that –

“6. *The rival contentions now fall for our determination.*

7. *In this matter, vide assessment order dated 25 March 2016 made under Section 143(3) of the Income Tax Act, the returns filed by the Petitioner were assessed and accepted, and the claim under Section 80-IA was revised.*

8. *The petitioner was issued the impugned notice under Section 148 of the Income Tax Act on 30 March 2021, seeking to reopen the assessment. In compliance with the notice, the petitioner filed a return on 7 April 2021. On 12 May 2021, the Petitioner requested the reasons for reopening, which were furnished to the Petitioner on 6 July 2021.*

9. *On 4 August 2021, the Petitioner filed objections to the reopening of the assessment by raising several contentions. Without disposing of such objections, on 22 November 2021, the Petitioner was issued a notice under Section 142(1) directing it to justify its claim under Section 80-IA with supporting documents.*

10. *On 26 November 2021, the Petitioner requested the Respondents to dispose of the objections filed by the Petitioner before proceeding any further. The Petitioner made a specific reference to the Hon'ble Supreme Court's decision in the case of GKN Driveshaft (India) Limited Vs ITO. The Petitioner also referred to this Court's decision in the case of Asian Paints Ltd. vs Deputy Commissioner Of Income-Tax And Ors³, which had provided that an assessee must be given a reasonable period of about four weeks to take any remedial course of action should the assessee's objections to the reopening be rejected by the revenue.*

11. *The Petitioner's objections were never disposed of, but the impugned consolidated reassessment order dated 31 March 2022 was made, in which the Petitioner's objections were also purported to be disposed of.*

12. *Apart from the fact that the making of such consolidated or combined orders was not approved in some decided cases, which we propose to refer to, we think that such a procedure also involves breaching the principles of natural justice and fair play.*

13. *The assessing officer in Fomento Resorts & Hotels Ltd (supra) made a similar combined order. Neither were the assessee's objections disposed of by a separate order, nor was the assessee granted any reasonable opportunity of questioning the order disposing of the objections. In such circumstances, the Court, after analysing the decision of the Hon'ble Supreme Court in GKN Driveshaft (supra) and following its earlier precedents in KSS Petron Private Ltd Vs The Assistant Commissioner of Income Tax Circle 10 (2) and M/s Bayer Material Science (P.) Ltd Vs Deputy Commissioner of*

Income-tax-10(3) quashed the combined order on the ground of want of compliance with jurisdictional parameters.

14. Accordingly, we cannot accept Mr Suresh Kumar's contention about there being no infirmity in the impugned consolidated order dated 31 March 2022, given the above decisions referred to by us rendered in substantially similar facts."

13. Respectfully following the above decision of the Jurisdictional High Court, the ratio of which applicable to assessee's case, we hold that the addition made by the AO on protective basis for AY 2011-12, AY 2012-13 & AY 2015-16 does not survive on the said legal ground also. The other legal contentions with regard to the reopening being bad in law and violation of principles of natural justice have become academic and left open accordingly.

14. In result, the appeal of the assessee for AY 2009-10 is partly allowed and the appeals for AY 2011-12, AY 2012-13 & AY 2015-16 are allowed.

Order pronounced in the open court on 23-05-2025.

Sd/-

(NARENDER KUMAR CHOUDHARY)

Judicial Member

**SK, Sr. PS*

Sd/-

(PADMAVATHY S)

Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai