



**15IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'E': NEW DELHI**

BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

AND

SHRI AMITABH SHUKLA, ACCOUNTNAT MEMBER

**ITA No.2938/DEL/2022
[Assessment Year: 2011-12]**

M/s NYK Enterprises Pvt. Ltd. LF-1, 66/2253, Sarvpriya, Gurudwara Road, Karol Bagh, Delhi-110005	Vs	ITO, Ward-18(4), C.R. Building, I.P. Estate, Delhi-110002
PAN-AADCN1643C		
Assessee		Revenue

Assessee by	Shri Praveen Kumar Bansal, Adv. Shri Ruchesh Sinha, Adv. Ms. Monalisa Maity, Adv.
Revenue by	Ms. Ankush Kalra, Sr. DR

Date of Hearing	26.02.2026
Date of Pronouncement	15.05.2026

ORDER

PER AMITABH SHUKLA, AM,

This appeal filed by the assessee is against order dated 19.10.2022 of National Faceless Appeal Centre/learned Commissioner of Income Tax(Appeals), New Delhi, [hereinafter referred to as 'ld. CIT(A)] arising out of assessment order dated 10.12.2018 passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 pertaining to Assessment Year 2011-12. The word 'Act' herein this order would mean Income Tax Act, 1961.

2. The assessee has raised following grounds of appeal:-

1. That the order of the CIT (A) is a completely perverse order as the same has been passed without giving an opportunity of hearing to the appellant, despite being asking for it, in gross violation of the Faceless Appeal Scheme and also against the principles of natural justice.

2 That the CIT (A) has erred in confirming the initiating of the reassessment proceedings U/s 147/148, without considering the same in the given facts is completely bad in law and is void ab initio.

3. That the CIT (A) has erred in law in confirming the addition of Rs.26,50,000/- on account of alleged un-explained share application money U/s 68 of the Income Tax Act, 1961

4. That the CIT (A) has erred in law in confirming the addition of Rs.58,93,600/- on account of alleged un-explained shares application money U/s 68 of the Income Tax Act, 1961.

5. That the CIT (A) has erred in law in confirming the addition of Rs.58,93,600/- on account of alleged un-explained shares application money U/s 68 of the Income Tax Act, 1961, without giving a separate notice U/s 148 for the A.Y. 2011-12 and hence the same is bad in law.

6 That the CIT (A) has erred in law in confirming the addition of Rs.1,06,000/- in terms of section 69(C) on account of the alleged commission paid by the appellant.

7 The appellant crave leave to add/alter/ modify/delete any of the aforesaid grounds of appeal.

3. The assessee has also raised additional grounds of appeal, which are as under:-

8. That the Ld. AO has erred in law in invoking the provisions of section 147/148 of the Income Tax Act, 1961 as in the given facts and circumstances of the case, the provisions of section 153C ought to have been invoked, as the triggering point of the search proceedings in the case of the appellant is the search proceedings and the documents has also been found in pursuance to the said proceedings.

9. That the entire reassessment order is a nullity in the eyes of law, as the same is passed U/s 143(3) r.w.s 147 of the Income Tax Act, 1961 via-a-vis U/s 143(3) r.w.s 153C of the Income Tax Act, 1961.

4. At the outset, the Id. Counsel for the assessee submitted that it would like to press only grounds of appeal no.3, 4 and 5 above and that consequently all the other grounds including additional ground be deemed to have not been pressed. Accordingly, other than grounds of appeal no.3, 4 and 5 above, all the other grounds including additional ground are being dismissed as infructuous.

5. Grounds of appeal no. 3, 4 and 5 above are regarding an addition of Rs.26,50,083/- and Rs.58,53,600/- made by the Id. AO u/s 68 of the Act on account of unexplained share application money. As per brief factual matrix of the case returned declaring income of Rs.10,950/- was filed by the assessee on 30.09.2011. Subsequently, information was received by the assessing authority that Investing Wing had conducted a search and seizure operation in respect of Shri Naresh Kumar Jain and Anand Kumar Jain jointly referred as Jain Brothers. It was noted that the Jain Brothers were engaged in the business of providing accommodation entries. Thus, accommodation entries were provided to desirous entities through a web of shell companies owned and operated by Jain Brothers. Amounts of monies were transacted and routed through the shell companies with a view to add credence to the same being genuine bona fide entries. According to the information available with the Ld. AO, the assessee was a recipient of bogus share application money of Rs.58,53,600/- during

Financial Year 2010-11 relevant to Assessment Year 2011-12. The ld. AO also noted that from the tally data and bank statement of few shell companies that the assessee had received certain amounts of monies in the form of accommodation entries amounting to Rs.26,50,083/-. The Ld. AO queried the assessee for justification of the said transactions. Considering inadequate compliance from the assessee, he made additions of Rs.26,50,083/- and Rs.58,53,600/- u/s 68 of the Act. While doing so the Ld. AO placed reliance upon a plethora of judicial precedents. The Ld. CIT(A) confirmed the addition made by the Ld. AO by relying upon the AO's hypothesis and on the basis of preponderance of human probability.

6. The Ld. Counsel for the assessee vehemently argued that against the order of the lower authorities. It was argued that the Ld. AO has made the addition only by relying upon the Investigation Wing report in the case of Jain Brothers and without conducting any independent enquiries in its case. The Ld. Counsel submitted that the Ld. AO was asked to provide the documents upon which the Ld. Assessing Officer had based his assumptions but the same were not provided. No cross-examination was given to the assessee even though specific request was made for the same. The Ld. Counsel submitted that no addition of this kind was made in the subsequent years. It was argued that the assessee had requested for issuance of summon u/s 131 to the delinquent parties which was also not done by the Ld. AO. The ld. Counsel repeatedly stressed

that the entire addition made by the Ld. AO and its confirmation by the Id. CIT(A) is based upon Investigation Wing Report concerning delinquent affairs of Jain Brothers, the psychology of accommodation entry providers, shell companies, etc. The Ld. Counsel argued that these are all general presumption and cannot be construed as a justified ground to make any addition of undisclosed income in assessee's hand. In support of his contentions, the Id. Counsel placed reliance upon hefty paper book and judicial precedents covering the matter.

7. Ms. Ankush Kalra, Ld. Sr. DR from Revenue vehemently opposed the arguments of the assessee. It was submitted that the assessee was a recipient of accommodation entries and that the Id. AO has abundantly indicated the same in the assessment order.

8. We have heard the rival submissions in the light of material placed on record. The assessment order has been extensively scrutinized. It has been noted that the prime focus of the AO has been upon the contents of enquiries conducted and report of the Investigation Wing. The Ld. AO has dealt at length the entire factum of accommodation entries, their unscrupulous providers, creation of web of shell companies to route an unaccounted transaction, judicial precedents on the subject. There is no mention however of any independent enquiry conducted by the Ld. AO so as to prove his point as to how the appellant assessee was a recipient of said benefit of accommodation entries.

There is not even an iota of evidence to suggest that any independent enquiries were conducted by the Ld. AO. The suggestions and observations made in the reports of Investigation Wing have been taken as sufficient evidence to warrant an addition in appellant's case. Nothing has been brought on record to establish any delinquent connections between the assessee and the entry providers. The Ld. AO did not conduct any enquiries with said alleged bogus share application money providers. The Ld. CIT(A) on his part also merely followed the order of the Ld. AO by elaborating more on the issue of human probability theory qua accommodation entry providers and the ecology of shell companies.

9. We have noted that Hon'ble Supreme Court in the case of CIT vs Orissa Corpn (P) Ltd. [1986] 25 Taxman 80F (SC)/[1986] 159 ITR 78 (SC) have observed that if the Revenue fails to conduct necessary enquiry at the its ends, the assessee can't be held guilty of any wrong doing. Thus, Hon'ble Apex Court has laid down following ratio.

13. In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were the income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or

perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises.”

10. Accordingly, we are of the considered view that there is no case for making any addition on account of share application money of Rs.58,93,600/- and of Rs.26,50,083/- in assessee’s hand. We have noted that the order of Ld. CIT(A) is not based upon correct interpretation and appreciation of the facts of the case. We therefore set-aside the order of the Ld. CIT(A) and direct the Ld. AO to delete the addition on account of share application money of Rs.58,93,600/- and of Rs.26,50,083/- made in assessee’s hand. The grounds of appeal nos.3, 4 and 5 raised and pressed by the assessee are allowed.

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

Order pronounced in the open court on 15th May, 2026.

Sd/-
[YOGESH KUMAR U.S.]
JUDICIAL MEMBER

Dated: 15.05.2026

Shekhar

Copy forwarded to:

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

Sd/-
[AMITABH SHUKLA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi,