आयकर अपीलीय अधिकरण, दिल्ली पीठें, नई दिल्ली
INCOME TAX APPELLATE TRIBUNAL
DELHI "E" BENCHES, NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA 5068/DEL/2025 निर्धारण वर्ष/Assessment Year: **2012-13**)		
M/S KAANE VISIONARY PROJECTS PRIVATE LIMITED 16-A, 5TH FLOOR, NEW B.K. MARKET SHAKESPARE SARANI, KOLKATA-700071, WEST BENGAL	**Vs.**	**ACIT** ACIT, CENTRAL CIRCLE-06 DELHI-, DELHI
अपीलार्थी **Appellant**		प्रत्यर्थी **Respondent**
Permanent Account Number of Assessee:		**AAECK4908J**

अपीलार्थी द्वारा/Appellant represented by:	**Sh. Mayank Patawari, Adv.**
प्रत्यर्थी द्वारा/Respondent represented by:	**Ms. Amisha S Gupta, CIT DR.**

सुनवाई की तारीख / Date of conclusion of hearing:	**22-Apr-2026**
घोषणा की तारीख / Date of pronouncement:	**08-July-2026**

आदेश / ORDER

PER MANISH AGARWAL, A.M.:

The present appeal is filed by assessee against the order dated 30.06.2025 passed by Ld. Commissioner of Income Tax (A)-24, New Delhi ["Ld. CIT(A)"] in Appeal No. CIT(A), Delhi-35/10047/2019-20 u/s 250 of the Income Tax Act, 1961 ["the Act"] arising out of assessment order dated 31.12.2017 passed u/s 153C r.w.s. 153A of the Act pertaining to Assessment Year 2012-13.

2. Brief facts of the case are that the assessee is a Private Limited Company, filed its return of income u/s 139(1) of the Act, declaring total income at NIL. Thereafter, the proceedings u/s 153C were initiated in the case of the assessee

based on the search carried out in the case of Kuber Group of cases on 09.10.2014 u/s 132 of the Act. Based on the information found as a result of search, the AO observed that during the year under appeal, the assessee received INR 19,00,47,596/- as share application money from 02 entities and immediately the said funds were transferred to M/s. Enso Infrastructure Ltd. The AO further observed that once Shri Ashish Begwani who was found to be the Entry Operator was Director in M/s. Enso Infrastructure Ltd. and M/s. Visionary Infrastructure Projects Pvt. Ltd. from where share application money of INR 5.02 crores was received by the assessee. Accordingly, AO alleged that the assessee company was a mere paper company and used as a conduit for transfer of funds to M/s. Enso Infrastructure Ltd. and accordingly, the addition of INR 24,02,47,598/- was made on protective basis in the hands of assessee company and substantive addition was to be made in the hands of M/s. Enso Infrastructure Ltd.

3. Against the said order, assessee filed an appeal before Ld. CIT(A) who vide impugned order dated 30.06.2025 has deleted the addition made on protective basis by observing that the additions in the hands of M/s. Enso Infrastructure Ltd. have already been deleted. However, the Ld.CIT(A) has enhanced the income of the assessee by making addition of INR 24,02,475.98/- being 1% of the commission alleged as received by the assessee to facilitate the credit of INR 24,02,47,598/-.

4. Aggrieved by the order of Ld. CIT(A), assessee is in appeal before the Tribunal by taking various grounds of appeal mentioned in the appeal memo.

5. In support of all Grounds of appeal raised by the assessee, Ld.AR for the assessee submits that additions made on protective basis by the AO on account of accommodation entries were deleted by Ld. CIT(A) however, Ld.CIT(A) has

enhanced the income by applying commission rate @ 1% by introducing the new source of income which was never be the subject matter of consideration and such source was never assessed by the AO. Ld. AR submits that the power of Ld. CIT(A) for enhancement in terms of section 251(2) is limited to the source of income already identified and determined by the AO and Ld. CIT(A) as no power to introduce any new source of income. For this, reliance is placed on the judgement of Hon'ble Supreme Court int eh case of ***CIT vs Rai Bahadur Hardutroy Motilal Chamaria*** reported in ***[1967] 66 ITR 443 (SC)***. Ld. AR thus prayed that the enhancement made by Ld. CIT(A) by introducing a new source of income deserves to be held as bad in law and the additions so made /enhancement of income be deleted.

6. On the other hand, Ld. Sr. DR for the Revenue has vehemently supported the order of the ld. CIT(A) and submits that in the case of the assessee, addition was originally made for alleged accommodation entry of INR 24,02,47,598/- by the AO after holding that the assessee is being used as a conduit to transfer the funds to M/s. Enso Infrastructure Ltd. It is submitted by Ld. Sr. DR that AO though has made the addition for such alleged accommodation entry as a conduit on protective basis however, the commission earned by the assessee on such facility provided has escaped the attention and therefore, Ld. CIT(A) has rightly invoked the posers conferred u/s 251(2) of the Act and enhanced the income by making addition for such commission which deserves to be confirmed. He prayed accordingly.

7. Heard the contentions of both the parties at length and perused the material available on record. In the instant case, originally return was made in the hands of the assessee company on protective basis on accounts of funds invested by it in M/s. Enso Infrastructure Ltd. of INR 24,02,47,598/- by holding the same as

accommodation entry routed through the assessee company by one Shri Ashish Begwani who was the Entry Operator. Ld.CIT(A) accordingly, held that the assessee must have received commission for providing such facility and thus, enhanced the income of the assessee by making addition of alleged commission @ 1.00 % on the gross value of such entry. The claim of the assessee was that Ld. CIT(A) has discovered new source of income which was never been brought to tax by the AO. It is observed that the issue raised by ld. CIT(A) while making for enhancement was never emerged from the assessment order and facts on record and it was ostensible that AO has not looked into the same. As per section 251(2) of the Act though Ld.CIT(A) has power to enhance the income of the assessee however, it has not given power to Ld.CIT(A) for assuming the jurisdiction for enhancement of income at an issue or new source of income which was not dealt with or considered by the AO during the course of assessment proceedings. Any such action could only be raised by taking recourse to the provisions of sections 263 or section 147 or section 154 of the Act in accordance with law.

8. The Hon'ble Supreme Court in the case of ***CIT vs Shapoorji Pallonji Mistry*** reported in ***[1962] 44 ITR 891 (SC)*** confirming the order of Bombay High Court has held as under:-

> *"The learned Chief Justice in the judgment under appeal considers that this Court has thus given approval to his view and also the view of the Patna High court in the earlier case.*
>
> *In our opinion, this Court must be held not to have expressed its final opinion on the point "arising here, in view of what was stated at pp. 709 and 710 of the Report. This Court, however, gave approval to the opinion of the learned Chief Justice of the Bombay High Court that s. 31 of the Income-tax Act confers not only appellate powers upon the Appellate Assistant Commissioner in so far as he is moved by an assessee but also a revisional jurisdiction to revise the assessment with power to enhance the assessment. So much, of course, follows from the language of the section itself. The only question is whether in enhancing the assessment for any year he can travel outside the record, that is to say, the return made by the assessee and the assessment order passed by the Income-tax Officer with a view to finding out new sources of income, not disclosed in either. It is contended by the Commissioner of Income-tax that the word "'assessment" here means the ultimate amount which an*

assessee must pay, regard being had to the charging section and his total income. In this view, it is said that the words "enhance the assessments are not confined to the assessment reached through a particular process but the amount which ought to have been computed if the true total income had been found. There is no doubt that this view is also possible. On the other hand, it must not be overlooked that there are other provisions like s. 34 and 33B which enable escaped income from new sources to be brought to tax after following a special procedure. The assessee contends that the powers of the Appellate Assistant Commissioner extend to matters considered by the Income-tax Officer, and if a new source is to be considered, then the power of remand should be exercised. By the exercise of the power to assess fresh sources of income, the assessee is deprived of a finding by two tribunals and one right of appeal.

The question is whether we should accept the interpretation suggested by the Commissioner. in preference to the one, which has held the field for nearly 37 years. In view of the provisions of ss. 34 and 33B by which escaped income can be brought to tax, there is reason to think that the view expressed uniformly about the limits of the powers of the Appellate Assistant Commissioner to enhance the assessment has been accepted by the legislature as the true exposition of the words of the section. If it were not, one would expect that the legislature would have amended s. 31 and specified the other intention in express words. The Income- tax Act was amended several times in the last 37 years, but no amendment of s. 31(3) was undertaken to nullify the rulings, to which we have referred. In view of this, we do not think that we should interpret, s. 31 differently from what has been accepted in India as its true import, particularly as that view is also reasonably possible. The appeal is, therefore, dismissed; but in the circumstances of the case, we make no order about costs. Appeal dismissed."

9. Further, the Hon'ble Supreme Court in the case of CIT vs Rai Bahadur Hardutroy Motilala Chamaria (supra) has held as under:-

> *"Section 251 of the Income-tax Act, 1961 [Corresponding to section 31(3) of the Indian Income-tax Act, 19221 Commissioner (Appeals) Power of-Assessment year 1952-53-Whether power of enhancement of AAC under section 31(3) of 1922 Act is restricted to subject matter of assessment or source of income which have been considered expressly or by clear implication by ITO from point of view of taxability of assessee Held, yes W AAC had no jurisdiction under section 31(3) of 1922 Act, to assess a source of income which had not been processed Held, yes Whether, therefore, by ITO and which was not disclosed either in return filed by assessee or in assessment order - Held, yes."*

10. Following the afore-mentioned judgement, the Co-ordinate Bench of ITAT, Mumbai in the case of ***Edelweiss Asset Management Ltd. vs. ACIT*** reported in ***(2024) 1 TMI-650*** in para 11 to 13 of the order has made following observations:-

11. "When we consider the provisions of section 251 and the above judicial pronouncements, certain principles emerge as to that the power to enhance is restricted to the subject matter of assessment or the source of income which have been considered expressly or by clear implications by the AO from the point of view of the taxability of the assessee. In other words the CIT(A) can exercise the power to enhance under section 251(1) in a case where the AO has considered a particular issue of disallowance or addition and while doing so has under assessed the income of the assessee. In cases where the AO has not dealt with the issue at and has not applied his mind on the taxability or non-taxability of a certain matter then the CIT(A) has no jurisdiction to enhance under section 251(1) but should resort to alternate course of action either under section 263 or 147 or 154 as the case may be. The Hon'ble Supreme Court in the case of Rai Bahadur Hardutroy Motilal Chamaria (supra) held that powers of enhancement conferred on the appellate authority extends only to matters considered by the Income-tax Officer. Therefore it becomes important to analyse whether the AO has considered the issue but has determined" in the course of assessment by deciding not to make any addition/disallowance on that account thereby empowering the CIT(A) to invoke the provisions in respect of enhancement under section 251 of the Act.

12. In the given case, from the perusal of the assessment order we notice that the AO has not recorded the fact that the assessee has filed a revised return anywhere in the assessment order. In body of the assessment order where the AO has determined the assessed income, it is the loss as per the original return of income that has been considered by the AO and not the loss as per revised return. It is not the case where the revised return is filed beyond the time limit under section 139(5) for the AO to ignore the revised return since the assessee has filed the revised return on 17.03.2019 which is well within the time limit. The AO considering the loss as per revised return in the computation, in our view cannot be a reason to argue that the AO has under assessed the income after considering the issue of allowability of ESOP expenses. Given this, in assessee's case the CIT(A) has decided the issue of allowability of ESOP expenses which has not earlier been considered by the AO. In this regard we notice that the Hon'ble High Court of Delhi in the case of CIT v. Sardari Lal & Co. [2002] 120 Taxman 595/[2001] 251 ITR 864 has considered a similar issue wherein it is held that –

> *"the inevitable conclusion is that whenever the question of taxability of income from a new source of income is concerned, which had not been considered by the Assessee Officer, the jurisdiction to deal with the same in appropriate cases may be dealt with under section 147/148 and section 263, if requisite conditions are fulfilled. It is inconceivable that in the presence of such specific provisions, a similar power is available to the first appellate authority."*

13. Taking into consideration the ratio laid down by the above judicial pronouncements and the facts of the present case we are of the view that the CIT(A) has acted beyond his jurisdiction enhancing the income of the assessee by disallowing the ESOP expenses for the reason that the AO while completing the assessment has not taken into consideration the revised return of income and *has not examined the taxability of ESOP expenses which the assessee has claimed in the revised return of income. While holding so we would like to add that the decision is based on the facts unique to the assessee's case. This ground of the assessee is allowed accordingly."*

11. It is observed that the Co-ordinate Bench of Tribunal in aforesaid case in Edelwise Asset Management Ltd. (supra) has followed the judgment of Hon'ble High Court in the case of ***CIT vs. Sardari Lal & Co.*** reported in ***(2002) 120 taxmann.com 595 (Del).***

12. In view of the overall discussions made herein above and considering the facts and circumstances of the case and by respectfully following the aforesaid judgements of hon'ble Supreme court and of the coordinate bench of Tribunal, in our considered view, enhancement made by the ld. CIT(A) by introducing a new source of income which was not emerged from the assessment order nor from the return of income field by the assessee and thus, Ld. CIT(A) has no power to assume the jurisdiction for enhancement of income on a new source of income. Therefore, the enhancement made by Ld. CIT(A) is hereby, deleted. Accordingly, all the Grounds of appeal raised by the assessee are allowed.

13. In the result, appeal filed by the Assessee is allowed.

Order pronounced in the open court on 08.07.2026.

Sd/-	***Sd/-***
MAHAVIR SINGH	**MANISH AGARWAL**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Dated: 08.07.2026
Amit Kumar, Sr. P.S

Copy to:

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