

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER
ITA No. 5431/MUM/2025 (AY: 2009-2010)**

(Physical hearing)

Vaibhav Dwarkanath Warekar 1 Midland CHS, Sector-9A Vashi, Navi Mumbai 400703, Maharashtra, Mumbai- 400703. [PAN: AALPW3682P]	Vs	Income Tax Officer Tower No. 6, Vashi Station Complex, Vashi, Mumbai- 400703.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Lakshman Suthar, C.A.
Revenue by	Shri Sunil Mathews- Sr. DR
Date of hearing	19.01.2026
Date of pronouncement	08.04.2026

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 Ld. CIT(A) / NFAC dated 30.06.2025 for A.Y. 2009-10. The assessee has raised following grounds of appeal;

- i. In the facts and in the circumstances of the case and in law, the learned assessing officer erred in reopening the assessment under section 148 read with section 147 of the Income Tax Act, 1961.*
- ii. The learned CIT(A) erred by not following the rule of consistency*
- iii. The learned CIT(A) erred in not following the binding precedent in appellant's own case for earlier reassessment proceedings where the CIT(A) had restricted profit estimation to 0.25% of turnover.*
- iv. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) [CIT(A)] erred in upholding the reopening of the assessment u/s 147 r.w.s. 148 of the Act.*

v. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the addition of Rs. 56,97,405/- made by the AO by estimating 0.5% profit on an alleged turnover of Rs. 126,55,34,376/-.

vi. The reliance placed by the CIT(A) on decisions such as ACIT vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. and Raymond Woollen Mills Ltd. v. ITO was misplaced, as the facts of the present case are distinguishable and do not justify reopening on mere suspicion or borrowed material.

vii. The Appellant craves leave to add, amend or alter any of the grounds herein.

viii. For these and other grounds that may be urged at or before the time of hearing, the Appellant prays for appropriate relief.

2. Rival submissions of both the parties have been heard and record perused. The Ld. Authorised Representative (in short 'Ld.AR') of the assessee submits that the assessee filed his return of income for AY 2009-10, on 29.09.2009 declaring income of Rs. 5,62,780/-. Initially return was processed under Section 143(3). Thereafter, case was reopened under section 147. Notice under Section 148 dated 17.03.2014 was issued. The case was reopened on the basis of information of Sales Tax Department about issuance of bogus bills. The name of assessee was in the list of beneficiary, who availed the bogus bills. The assessee was engaged in the business of trading of forged steel material. The assessing officer (AO) while passing the assessment order estimated income of assessee at the rate of 0.50% of sales/turnover of the assessee thereby made addition of Rs. 18,95,029/- On further appeal before Tribunal, the disallowances was directed to estimates @ 0.25% of total turnover, instead of sales

turnover, thereby the assessee was allowed partial relief vide order dated 25.03.2025 in CIT (A)-26/Mumbai/10072/2014-15. On further appeal before Tribunal by revenue, appeal of revenue was dismissed in ITA No. 7295/M/2019 dated 31.03.2022.

3. The case of assessee was again reopened on the basis of information that the assessee is beneficiary of accommodation entry. The notice under Section 148 was issued. The assessment was again completed on 26.12.2016. In the second reassessment order, the AO made addition of 0.5% of sales/turnover of assessee. The turnover of assessee was Rs. 126.5 Crore thereby the AO made addition of Rs. 56,97,405/- and added to the total income of assessee after allowing the set of net profit declared in return of income. On further appeal, before CIT(A), the action of AO was upheld. The Ld.AR of the assessee submits that on the addition in first reassessment order was made by rejecting books result and estimated income on total turnover by Id CIT(A). No further reopening or further estimation of income was justified. The estimation initially estimated by AO in assessment order dated 16.03.2015 was subject matter of appeal before Tribunal, wherein the addition at the rate of 0.25% was upheld. Thus, reopening as well as addition on merit is liable to be deleted. The Ld.AR of the assessee further submits that he has good case on merit as well as against the validity of reopening under Section 147. In the reasons recorded, in the second round ground, there is no reference about omission on the part of assessee in not fully and truly disclosing all material necessary for assessment. Reopening on the same

issue in second time is based on difference of opinion as all the material was already available at the time of reassessment.

4. In the alternative and without prejudice submission, the Ld. AR submits that when AO received information from investigation wing that the assessee received documentation entries on purchase to the extent of Rs. 1.52 Crore from Bliss GVS Pharma Ltd., then income which escape assessment, could be at the @ 0.5% of the purchases, which would only be Rs. 74,631/- as such income was estimated by AO himself. If this being so, the income escaping was not exceeding Rs. 1.00 Lakhs, thus, notice under Section 148 is bad in law and consequent reassessment order is *void ab initio*. To support his submission, the Ld. AR of the assessee relied upon decision of Madras High Court in S.P. Mani & Mohan Dairy v. Assistant Commissioner of Income-Tax [2019] 111 taxmann.com 68(Madras), decision of Hon'ble Apex Court in ACIT vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. [2007] 291 ITR 500 (SC).
5. On the other hand, the learned senior departmental representative (Ld. Sr. DR) for the revenue supported the order of lower authorities. On the validity of reopening, the Ld. Sr. DR submit that subsequent information was related to other parties which was not the subject matter of first reassessment of order. The AO formed his opinion on the basis of fresh tangible material. On merit, the Ld. Sr. DR submit that the AO has made a very reasonable disallowance qua the accommodation entry which was subject matter in second reassessment proceeding.

6. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that initially the case of assessee was reopened on 17.03.2014. The AO while passing the assessment order made estimation of 0.50 % of sales turnover thereby made an addition of Rs. 18,95,029/-. On further appeal before Ld. CIT(A) in his order dated 04.09.2019, restricted such disallowance to 0.25% on total turnover of Rs. 56,75,80,060/- and also allowed credit of declared profit of Rs. 5,23,525/-. The order of CIT(A) dated 04.09.2019 was upheld by Tribunal in ITA No. 7295/Mum/2019. The case of assessee was again reopened under Section 147 vide notice dated 31.03.2016. The second reopening was on the basis of information that assessee purchased goods from Bliss GVS Pharma Ltd., (earlier known as Bliss Life Sciences Ltd.) of Rs. 1.55 Crore. The AO while passing the reassessment order estimated 0.5% of turnover of Rs. 126.5 Crore thereby made addition of Rs. 56,97,405/- after allowing the set of return of income. Surprisingly, the assessment was completed by same AO i.e. Income Tax Officer 28(34) Mumbai. While passing such assessment order, the AO has not given credit /set off of addition made in assessment order dated 16.03.2015. The AO further not made any reference in the assessment order that his earlier assessment order is subject matter to CIT(A). In the assessment order, the AO has nowhere recorded that there was any failure on the part of assessee in not disclosing all material fully and truly necessary for assessment. We further find that in the first reassessment order, the same AO once estimated income of sales turnover, cannot

estimate income of assessee on total turnover. Thus, reopening is nothing but a change of opinion which is not permissible under law. Moreover, once the AO made addition on the basis of estimation of sales turnover, cannot revisit his own order for taxing the assessee on sales turnover. Hence, the second reopening is held invalid and consequential reassessment order is *void ab initio*. In the result, the grounds of appeal raised by the assessee is allowed.

7. In the result, the appeal filed by the assessee is allowed.

Order was pronounced on 08/04/2026 in open Court.

Sd/-

ARUN KHODPIA
ACCOUNTANT MEMBER

Sd/-

PAWAN SINGH
JUDICIAL MEMBER

MUMBAI, Dated: 08/04/2026
Zu, P.S

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