

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

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER

**ITA No.8303/Del/2025
Assessment Year 2020-21**

Anuradha Singh I-309, BEETA-2, Greater Noida, Gautam Budh Nagar, Uttar Pradesh PAN No.ERMPS8992E	Vs	Circle 5 (1)(1) Gautam Budh Nagar
Assessee		Respondent

Assessee	Sh. Shafiq Khan, Advocate Ms. Anjani Suri, Advocate
Respondent	Sh. Manoj Kumar, Sr. DR

Date of Hearing	12.01.2026
Date of Pronouncement	25.02.2026

ORDER

PER C.N. PRASAD, JM,

This appeal is filed by the assessee against the order of the CIT(A)/NFAC dated 10.11.2025 for the A.Y. 2020-21 in sustaining the addition of Rs.32,13,800/- made u/s.69 of the Act. The assessee in its appeal has raised following grounds of appeal :-

1. BECAUSE the Assessment in bad in law because whimsical and arbitrary additions has been by the Ld. Assessing Officer Circle-5(1)(1) Gutam Budh Nagar, NOIDA while framing impugned Assessment Order dated 20.03.2025 U/s. 147 of the Income-tax Act and

which were erringly upheld by Ld. CIT(Appeal) while passing impugned Order dated 10.11.2025.

2. BECAUSE Ld. Assessing Officer while passing impugned Assessment Order dated 20.03.2025 erred/misconstrued and made huge addition of Rs. 32,13,800/- (Thirty Two Lakhs Thirteen Thousand Eight Hundred Only) U/s 69 r.w.s. 115BBE of IT Act, 1961 by considering information retrieved/extracted from Investigation DDIT (Inv.)-2, Chandigarh that the Appellant has made unexplained Cash Payments of Rs. 32,13,800/- (Thirty Two Lakhs Thirteen Thousand Eight Hundred Only) during Financial Year 2019-20 to M/s. Omaxe Limited against purchase of one Commercial Unit at Omaxe Connaught Place-IV, Greater Noida, UP and which was erringly upheld by Ld. CIT(Appeal) vide impugned Order dated 10.11.2025.

3. BECAUSE Ld. Assessing Officer while passing impugned Assessment Order dated 20.03.2025 did not adhere to Principal of Natural Justice as the Appellant was not permitted to cross-examine witnesses by Adjudicating Authority though statements of those witnesses were made as basis of impugned order and which amounted to serious flaw and which made impugned order nullity as it amounted to violation of principles of natural justice. Reliance is placed on case of Andaman Timber Industries vs. CICE (2015) 281 CTR 0241(SC).

4. BECAUSE the Ld. Assessing Officer while passing impugned Assessment Order dated 20.03.2025 erred in Charging interest U/s 234A, 234B & 234C and in fact in initiating penalty proceedings U/s 271AAC of the Income Tax Act, 1961.

That the appellant reserves the right to raise any other ground of Appeal in addition to the grounds of appeal as mentioned above.

2. The Ld. Counsel for the assessee at the outset submitted that the addition in the case of the assessee was made on the

ground that the assessee made cash payment of Rs.32,13,800/- while purchasing the commercial unit at OMAXE, Connaught Place-4, Greater Noida U.P. The Ld. Counsel for the assessee submitted that based on the statement recorded in the course of search action on M/s. Omaxe Group and consequential seizure of voluminous evidences and one of such evidences is Excel file named main report in which it was recorded that the assessee paid the amount to M/s. Omaxe Group for purchase of commercial unit. The Ld. Counsel for the assessee submitted that the witnesses were never put to the assessee nor given any opportunity to cross examine and therefore, there is violation of principle of natural justice.

3. The assessee also made further written submissions which are as under :-

DETAILED SUBMISSION/REPLY TO THE GROUND OF APPEAL ALONGWITH SUPPORTING ANNEXURES:

1. BECAUSE the Assessment is bad in law because whimsical and arbitrary additions has been by the Ld. Assessing Officer Circle-5(1)(1) Gutam Budh Nagar, NOIDA while framing impugned Assessment Order dated 20.03.2025 U/s. 147 of the Income-tax Act and which were erringly upheld by Ld. CIT(Appeal) while passing impugned Order dated 10.11.2025,

OUR DETAILED SUBMISSION/REPLY TO THE ABOVE GROUND OF APPEAL:-

Impugned Assessment Order dated 20.03.2025 passed by Ld. Assessing Officer and the impugned Appellate Order dated 10.11.2025 passed by Ld. CIT(Appeal) are unfounded and perverse and deserves to be set aside/quashed or suitably modified in view of the facts that whimsical and arbitrary additions of Rs.32,13,800/- (Thirty

Two Lakhs Thirteen Thousands Eight Hundreds Only) has been made by Ld. Assessing Officer while framing impugned Assessment Order dated 20.03.2025 U/s. 147 r.w.s.143(3) of the Income-tax Act which were erringly upheld by Ld. CIT(Appeal) while passing impugned Order dated 10.11.2025. Humbly submitted that the Ld. Assessing Officer while framing impugned Assessment Order **relied solely upon the information provided by Investigation Wings that the Appellant has made cash amount of Rs.32,13,800/- (Thirty Two Lakhs Thirteen Thousands Eight Hundreds Only)** to the Omaxe Limited against purchase of one Commercial Unit at Greater Noida and such information was never corroborated/2 confronted before making huge additions of Rs.32,13,800/- (Thirty Two Lakhs Thirteen Thousands Eight Hundreds Only) and hence without authenticating/ examining any information fairly and judiciously, it cannot be alleged or presumed that the Appellant has contravened any provision of law and which attracts ingredients of Section 147 r.w.s. 148 of The Income Tax Act, 1961. **This is humbly submitted that the alleged amount/information as reflecting in Excel Sheet/CD seized during search operation does not pertain to Appellant and that the alleged amount has not been paid by Appellant or his relatives to any employee/Officials/Agents of Omaxe Group/M/s. Omaxe Limited or any one authorized by Omaxe Group/M/s. Omaxe Limited to collect such amounts and therefore any inference/conclusion drawn from some incriminating documents/details and which has been relied upon and used for initiating proceedings against the Assessee deserves corroborated/examined and confronted with the Appellant following/adhering to the principle of natural justice and therefore under such circumstances even if Ld. Assessing Officer was opting to relying upon some information/documents/witnesses the same were required to**

be confronted with the Appellant before reaching to any logical conclusions and proceeding accordingly and which was not adhered to by Ld. Assessing Officer while concluding Assessment Proceedings. This is humbly submitted that the Appellant has paid the entire amount of consideration through Banking Channel and therefore any amount which is self-recorded/entered cannot be presumed to be pertaining to the Appellant and further such belief has to have a live nexus with the information in hand and should be based on principles of prudence and not whimsical belief and such information needs to be further

converted into more rationale/confirmed belief only after probing or reconciliation by confronting the same to the assessee. Ld. CIT (Appeal) while passing impugned Order dated 10.11.2025 erroneously upheld the finding of the Ld. Assessing Officer by observing that the submission made by the Appellant w.r.t Grounds of Appeal and case laws relied upon by the Appellant was examined but however the same are found to be devoid of merit. The Assessing Officer has duly recorded reasons based on credible and specific information received from the Investigation Wing which indicated that the Appellant was a beneficiary of cash-based transactions not recorded in the regular books of account and that the information received was not vague or general in nature but was accompanied by detailed transaction-wise data, forming a reasonable basis for the formation of a belief that income had escaped assessment. T Assessing Officer has examined the material available, formed an independent opinion based on the tangible information, and recorded detailed reasons for reopening and that the replies of the appellant were duly considered but found unsatisfactory. Hence the contention of the appellant that principles of natural justice were violated is baseless and not tenable. The Assessing Officer has considered the replies of the appellant and has duly discussed the same in the assessment order and the action of the AO is also credible as the report of the Investigation Wing was made through elaborate investigation and examination of such incriminating documents which were gathered during the course of search on in the case of M/s Omaxe Group therefore, the claim made by the appellant in this part of the ground of appeal does not hold any validity and hence dismissed. Ld. CIT(Appeal) while passing impugned Order erroneously also held that Ld. AO has after receiving the investigation report has collaborated the same with the return filed by the appellant alongwith other supporting details and came to the conclusion that the appellant was one the customers who had engaged in the cash transaction to the tune of Rs.32,13,800/- with the Omaxe Ltd. during the F.Y. 2019-20 relevant A.Y. 2020-21 and thus has reason to believe that such cash transaction of the appellant has escaped assessment. Ld. CIT (Appeal) while passing impugned Order dated 10.11.2025 and further erroneously held that Right to Cross-examination is not an absolute right and depends not only on the circumstances of the case but also on the statute concerned and relied upon various judgments and finally held that the Assessing Officer opinion based on the tangible information, and recorded detailed reasons for reopening and that the replies of the appellant were duly considered but found

unsatisfactory. Hence the contention of the appellant that principles of natural justice were violated is baseless and not tenable. The Assessing Officer has considered the replies of the appellant and has duly discussed the same in the assessment order and the action of the AO is also credible as the report of the Investigation Wing was made through elaborate investigation and examination of such incriminating documents which were gathered during the course of search on in the case of M/s Omaxe Group therefore, the claim made by the appellant in this part of the ground of appeal does not hold any validity and hence dismissed. Ld. CIT(Appeal) while passing impugned Order erroneously also held that Ld. AO has after receiving the investigation report has collaborated the same with the return filed by the appellant alongwith other supporting details and came to the conclusion that the appellant was one the customers who had engaged in the cash transaction to the tune of Rs.32,13,800/- with the Omaxe Ltd. during the F.Y. 2019-20 relevant A.Y. 2020-21 and thus has reason to believe that such cash transaction of the appellant has escaped assessment. Ld. CIT (Appeal) while passing impugned Order dated 10.11.2025 and further erroneously held that Right to Cross-examination is not an absolute right and depends not only on the circumstances of the case but also on the statute concerned an relied upon various judgments and finally held that the Assessing Officer has not relied solely upon third-party statements but has based the addition on documentary evidence, corroborated by seized material and bank records. The appellant was duly issued a show-cause notice and afforded opportunity to explain the transactions. No tangible prejudice has been shown to have been caused by the alleged absence of cross-examination and relied upon M. Pirai Choodi (SC) and authorities of the Bombay and Madras High Courts and accordingly held that the assessment is valid in law and the addition cannot be struck down on procedural grounds and upheld addition of Rs. 32,13,800/- made by Ld. AO as unexplained investment U/s. 69 r.w.s. 115BBE of the Act and the dismissed of the Appellant. Humbly submitted that the Ld. Assessing Officer while passing impugned Assessment Order relied upon the alleged incriminating evidence/material collected by Investigation Wings and which were co-related with the Statement of the Officials of the Omaxe Group and hence it cannot be presumed that that alleged incriminating evidence/material collected by Investigation Wings had some independent evidentiary value. Ld. Assessing Officer had corroborated evidence/material collected with the statement of the officials of Omaxe Group and which was indicating that the

was alleged escapement of income/Cash transactions involved qua quantu thereof and under such circumstances the opportunity to Cross Examina of such was imminent/essential to verify/ascertain as to whether Appellant also under alleged Cash Transactions or not. It is also pertinent to mention here that the during course of Assessment proceedings the Appellant had furnished a Certificate dated 30.08.2024 issued from M/s. Omaxe Limited confirming the Bank Payment received from Appellant and also that no cash transaction had taken place were also furnished which were altogether discarded by the Ld. Assessing Officer while framing the Assessment Order dated 20.03.2025. Appellant had also sought opportunity of Cross Examination of Witness whose statement were relied upon by Ld. AO to make impugned additions of Rs.32,13,800/-but same was discarded and hence the impugned addition of Rs.32,13,800/- is not justified on such count because Hon'ble Calcutta High Court ruled in Hindusthan Tabacco Co. v. CIT (2012) 27 taxmann.com 155/211 Taxman 111/2014) 366 ITR 282 that if the assessee feels that cross-examining of any person is necessary for establishing its case it is incumbent upon assessee to make such prayer before Assessing officer during the assessment proceeding. High Court of Delhi in the case of CIT v. Ashwani Gupta [2010] 191 Taxman 51/322 ITR 396 held that once there is a violation of the principles of natural justice in as much as seized material is not provided to an assessee nor is cross-examination of the person on whose statement the Assessing Officer relies upon, granted, then, such deficiencies would amount to a denial of opportunity and, consequently, would be fatal to the assessment proceedings. Based on the above finding, the Hon'ble Court upheld the order of the tribunal wherein the tribunal confirmed the order passed by the Commissioner of Income-tax (Appeals) which held the entire addition made by the Assessing Officer to be invalid and had deleted the same. High Court of Delhi in the case of CIT v. Pradeep Kumar Gupta (2008) 303 ITR 95 held that the reassessment based on deposition of third party without allowing opportunity to assessee to cross examine third party is not valid. Commissioner of Income-tax Rajesh Kumar (2008) 172 TAXMAN 74 (DELHI) The jurisdictional High Court of Delhi held as under: "The Tribunal had, on those facts, rightly come to the conclusion that since the revenue had relied upon the statement of 'M', it should have been made available to the assessee with an opportunity of cross-examining him. That was not done by the Assessing Officer. It clearly showed that the principles of natural justice had been violated. [Para 11] There was no infirmity

in the view taken by the Tribunal on the facts of the case. It was quite clear that material collected by the revenue behind the back of the assessee was used against him without disclosing that material to him or giving any opportunity to him to cross-examine the person whose statement had been used by the revenue against the interests of the assessee [Para 12]" Based on the aforementioned findings, the appeal of the revenue was dismissed and upheld the order of the tribunal wherein the tribunal deleted the additions since the material collected by revenue behind the back of assessee was used against him without disclosing such material or giving any opportunity to him to cross-examine the person whose statement had been used by revenue against his interests and thereby principles of natural justice had been violated. Hon'ble Supreme Court in the matter of Andaman Timber Industries Vs Commissioner of Central Excise, Kolkata-11 (2015, 62 taxmann.com 3 SC), held that when statements of witnesses are made basis of demand, not allowing assessee to cross-examine witnesses, is a serious flaw which makes order nullity, as it amounts to violation of principles of natural justice. Honorable Supreme Court in the case of Kishancand Chellaram v/s CIT (125 ITR 713) has held that evidence which is not shown to the Assessee cannot be admitted and the opportunity to controvert should be given to the Assessee. In case of Andaman Timber Industries vs. CICE (2015) 281 CTR 0241(SC), it was held that held that not allowing Assessee to cross-examine witnesses by Adjudicating Authority though statements of those witnesses were made as basis of impugned order, amounted in serious flaw which make impugned order nullity as it amounted to violation of principles of natural justice. In CIT vs Kelvinator of India Ltd., [2010] 320 ITR 561 (SC), where the Hon'ble Apex Court held that after 1-4-1989, the Assessing Officer has power to reopen provided there is "tangible material" to conclude that there is an escapement of income from assessment and reasons must have a live link wit the formation of the belief. "However, one needs to give a schema interpretation to the words 'reason to believe', failing which section would give arbitrary powers to the Assessing Officer to rec assessments on the basis of 'mere change of opinion', which cannot be se reason to reopen. One must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review; he has the power to reassess, but the reassessment has to be based on fulfillment of certain pre-conditions and if the concept of 'change of opinion' is removed as contended on behalf of the department, then in the garb of reopening the assessment,

review would take place. One must treat the concept of 'change of opinion' as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1-4-1989, the Assessing Officer has power to reopen, provided there is tangible material' to come to conclusion that there is escapement of income from assessment. Under the Direct Tax Laws (Amendment) Act, 1987, the Parliament not only deleted the words 'reason to believe' but also inserted the word 'opinion' in section 147. However, on receipt of representations from the companies against omission of the words 'reason to believe', the Parliament re-introduced the said expression and deleted the word 'opinion' on the ground that it would vest arbitrary powers in the Assessing Officer. [Para 4)". 147. Income escaping assessment. Hon'ble Delhi High in Commissioner of Income Tax Vs Indo Arab Air Services, [2016] 283 CTR 92 (Del.) has held "20. Keeping the above legal position in view when the cases on hand are examined, it is seen that as far c Indo Arab is concerned while the AO set out the information received fr the ED, he failed to examine if that information provided the vital link form the 'reason to believe' that income of the Assessee had escaped assessment for the AY in question. While the AO has referred to the fact that the ED gave information regarding cash deposits being found in the books of the Assessee, the AO did not state that he examined the returns filed by the Assessee for the said AY and detected that the said cash deposits were not reflected in the returns. In fact, the AO contradicted himself in the reasons recorded by him by noticing the information of the ED to the above effect and then stating that on perusal of the records for the AY in question it was noticed that the Assessee "had not disclosed these transactions in its books of account." Further, the AO refers to the ED's information that Mr. Chetan Gupta, partner of the Assessee, failed to explain the sources of the cash deposits as shown in the books of account. However, that by itself could not have led the AO to even prima facie conclude that income of the Assessee had escaped assessment. The explanation or the lack of it of the entries in the books of account may have certain relevance as far as ED is concerned but that by itself does not provide the vital link for concluding that for the purposes of the Act any part of cash deposits constituted income that had escaped assessment.

There is a long distance to travel between a suspicion that income had escaped assessment and forming reasons to believe that income had escaped assessment. While the law

does not require the AO to form a definite opinion by conducting any detailed investigation regarding the escapement of income from assessment, it certainly does require him to form a prima facie opinion based on tangible material which provides the nexus or the link to having reason to believe that income has escaped assessment. "Reliance is also placed on *Signature Hotels (P) Ltd. vs. ITO*, (2011) 338 ITR 51 (Del): "15. The previously mentioned reasons do not satisfy the requirements of section 147 of the Act. The reasons and the information referred to is extremely scanty and vague. There is no reference to any document or statement, except the annexure, which has been quoted above. The annexure cannot be regarded as a material or evidence that prima facie shows or establishes nexus or link, which discloses escapement of income. The annexure is not a pointer and does not indicate escapement of income. Further, it is apparent that the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. The Assessing Officer accepted the plea on the basis of vague information in a mechanical manner. The Commissioner also acted on the same basis by mechanically giving his approval. The reasons recorded reflect that the Assessing Officer did not independently apply his mind to the information received from the Director of Income-tax (Investigation) and arrive at a belief whether or not any income had escaped assessment." *Principal Commissioner of Income-tax-4 v. G & G Pharma India Ltd.*, [2016] 384 ITR 147 (Delhi),: "12. In the present case, after setting out four entries, stated to have been received by the Assessee on a single date i.e. 10th February 2003, from four entities which were termed as accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: "I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries." The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the AO, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the Assessee, which must have been tendered along with the return, which was filed on 14th November 2004 and was processed under Section 143(3) of the Act. Without forming a prima facie opinion, on the basis of such

material, it was not possible for the AO to have simply concluded: "it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries". In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decisions discussed hereinbefore, the basic requirement that the AO must apply his mind to the materials in order to have reasons to believe that the income of the Assessee escaped assessment is missing in the present case. Pr. CIT VS RMG Polyvinyl (1) Ltd., [2017] 396 ITR 5 (Delhi), 12. Recently, in its decision dated 26th May, 2017 in ITA No. 692/2016 Pr. CIT v. Meenakshi Overseas 2017 82 taxmann.com 300 (Delhi), this Court discussed the legal position regarding reopening of assessments where the return filed at the initial stage was processed under Section 143(1) of the Act and not under Section 143(3) of the Act. The reasons for the reopening of the assessment in that case were more or less similar to the reasons in the present case, viz., information was received from the Investigation Wing 'known' accommodation entries provided by accommodation entry provider. There, on facts, the Court came to the conclusion that the reasons were, in fact, in the form of conclusions "one after the other" and that the satisfaction arrived at by the AO was a "borrowed satisfaction" and at best "a reproduction of the conclusion in the investigation report." 13. As in the above case, even in the present case, the Court is unable to discern the link between the tangible material and the formation of the reasons to believe that income had escaped assessment. It is humbly submitted that by merely collecting some information and proceedings accordingly wil vitiate the intent and wisdom of section 147 r.w.s. 148 of The Income Tax Act, 1961 because Reason to Believe must be based upon some documents/cognate material/evidence and not on mere suspicion /gossip. In the case of "Chuharmal Vs. CIT ((1988) 172 ITR 250 (SC)) for the proposition that documentary evidence plays an important part. There is no dispute to the said proposition but in the absence of any corroborative evidence no addition could be made in the hands of the third party. It was held in case of "Dhakeshwari Cotton Mills; SC in 87 ITR 349" Addition cannot be made merely on the basis of conjectures and surmises of the Assessing Officer. The department cannot draw inferences and assume that there has been some illegality in the assessee's transaction in the absence of any material in its possession (Mad HC in 34 ITR 328 & Ker HC in 117 ITR 371). Mere suspicion however strong cannot take the place of evidences as was held in case of Shaw and Bros. vs. CIT (1959) 37 ITR 271 (SC). In case of CIT vs

Kamdhenu Steel and Alloys Ltd., Vijay Foils (P) Ltd., JH Finvest (P) Ltd., North Delhi Construction and Investment (P) Ltd., Laxman Industrial Resources Ltd. and Ors. Gupta Citi Shelters Ltd., Infomediary India (P) Ltd. and Ors. Vs CIT Citation 206 Taxman 254 it was held that to make the assessee responsible, there has to be proper evidence. It is equally important that an innocent person cannot be fastened with liability without cogent evidence. Reliance is placed on the decision of Hon'ble Supreme Court and Hon'ble Delhi High Court in the cases of CIT vs. Smt. P. K. Noorjahan reported in 237 5 ITA No.5085/ Del./2012ITR 570 (SC), "Roshan Di Hatti vs. CIT-107 ITR 938 (SC), CIT vs. Value Capital Services Ltd. 307 ITR 334 (Del.), CIT vs. Real Time Marketing (P) Ltd. 306 ITR 35 (Del.) and CIT vs. Kamdhenu Steel and Alloys Ltd. 248 CTR 33 (Del.) wherein it was held that where the assessee's explanation is prima facie reasonable then it cannot be rejected merely on suspicion. In view of above submissions it is submitted that the addition of Rs.32,13,800/- (Thirty Two Lakhs Thirteen Thousands Eight Hundreds Only)-made by the Ld. Assessing Officer to the returned Income and erringly upheld by Ld. CIT(Appeal) deserves to be deleted.

BECAUSE Ld. Assessing Officer while passing impugned Assessment Order dated 20.03.2025 erred/misconstrued and made huge addition of Rs. 32,13,800/- (Thirty Two Lakhs Thirteen Thousand Eight Hundred Only) U/s 69 r.w.s. 115BBE of IT Act, 1961 by considering information retrieved/extracted from Investigation DDIT (Inv.)-2, Chandigarh that the Appellant has made unexplained Cash Payments of Rs. 32,13,800/- (Thirty Two Lakhs Thirteen Thousand Eight Hundred Only) during Financial Year 2019-20 to M/s. Omaxe Limited against purchase of one - Commercial Unit at Omaxe Connaught Place-IV, Greater Noida, UP an which was erringly upheld by Ld. CIT(Appeal) vide impugned Order dated 10.11.2025.

OUR DETAILED SUBMISSION/REPLY TO THE ABOVE GROUND OF APPEAL:

Impugned Assessment Order dated 20.03.2025 passed by Ld. Assessing Officer is perverse and unsustainable and which was erringly upheld by Ld. CIT (Appeal) deserves to be set aside/quashed or suitably modified in view of the

facts that the Ld. Assessing Officer while passing impugned Assessment Order dated 20.03.2025 exclusively relied upon the information furnished by Investigating Wings and unfairly observed at Para 11 by observing On examination of reply of the assessee it is found that the assessee deliberately trying to divert the fact of the case and denied the entries of cash transactions appearing in the excel sheets without going into merits of the information. The basis of information was the search action carried out u/s 132 of the IT Act, 1961 on 14.03.2022 in the case of M/s Omaxe Group and documents were seized during the course of search action contained information which showed that the assessee was one the customers who had engaged in the cash transaction to the tune of Rs.32,13,800/-(Thirty Two Lakhs Thirteen Thousands Eight Hundreds Only) with the Omaxe Ltd. during the F.Y. 2019-20 relevant A.Y. 2020-21 for purchase of immovable property but the assessee denying that no cash payment was made to the Omaxe Group in cash which is not acceptable. Further it is evident, from the excel sheet seized and modus operandi given in investigation report, that the cash payment of Rs.32,13,800/-(Thirty Two Lakhs Thirteen Thousands Eight Hundreds Only) was made by the assessee to the Omaxe Group against the unit No. OCPK/FIRST/47 during the F.Y. 2019-20 relevant to A.Y. 2020-21. The same is acceptable evidences without any doubt in given circumstances and not required any confrontation". Para 12 "In view of the above and considering the facts and circumstances of the case, it is concluded that sufficient evidence is available on records that proves that the assessee was engaged in the cash transaction to the tune of Rs.32,13,800/-(Thirty Two Lakhs Thirteen Thousands Eight Hundreds Only) with the Omaxe Group during the F.Y. 2019-20 for purchase of unit No. OCPK/FIRST/47. In the light of the above discussion, I have decided to bring the unexplained investment of the assessee in respect to the cash payment of Rs.32, 13,800/- (Thirty Two Lakhs Thirteen Thousands Eight Hundreds Only) made to the Omaxe Group during the F.Y. 2019-20 relevant to A.Y. 2020-21 to tax u/s 69 r.w.s. 115BBE of the Act and add it to the total income of the assessee. Penalty proceedings u/s 271AAC of the Act is initiated separately", Ld. CIT (Appeal) while passing impugned Order dated 10.11.2025 erringly held that the Assessing Officer has duly recorded reasons based on credible and specific information received from the Investigation Wing, which indicated that the appellant was a beneficiary of cash-based transactions not recorded in the regular books of account and that the information received was not vague or general in nature but was accompanied

by detailed transaction-wise data, forming a reasonable basis for the formation of a belief that income had escaped assessment. The Assessing Officer has examined the material available, formed an independent opinion based on the tangible information, and recorded detailed reasons for reopening and that the replies of the appellant were duly considered but found unsatisfactory. Humbly submitted that vide Letter dated 30.08.2024 and in response to the query raised by Ld. Assessing regarding Source of Cash Payment of Rs.32,13,800/- (Thirty Two Lakhs Thirteen Thousands Eight Hundreds Only), it was categorically contended by the Appellant that the Appellant had purchased/booked Commercial Space/Unit measuring 465.77 Sq.Ft in the Project launched by M/s. Omaxe Limited namely "Omaxe Connaught Place" as per his requirement/needs and against which the total consideration of Rs.35,42,006/- (Thirty Five Lakhs Forty Two Thousands Six Only) and that the said amount was paid between 25th October, 2019 to December, 2019 i.e. Rs.2,00,000/- (Two Lakhs) vide Cheque bearing No. 000116, dated 29.09.2019 & drawn at ICICI Bank Limited, Greater Noida, Rs.32,93,933/- (Thirty Two Lakhs Ninety Three Thousands Nine Hundred Thirty Three Only) vide Cheque/RTGS dated 24.10.2019 from ICICI Bank Limited, New Delhi & Rs.44,073/- (Forty Four Thousands Seventy Three Only) vide Cheque No. 000120 dated 27.12.2019 from ICICI Bank Limited, Greater Noida and all such money were transferred/remitted/paid from SB Account of Husband of the Assessee namely Mr. Rajeev Kumar Singh and payment/receipt of such amount is also evident/reflecting from the Statement of Account issued by M/s. Omaxe Limited and Ledgers Confirmation Letter dated 30.08.2024 issued by M/s. Omaxe Limited & Saving Bank Statement of Mr. Rajeev Kumar Singh maintained with ICICI Bank, Greater Noida. This was further contended that no cash transactions of any amount/quantum or nature was ever entered into by the Appellant with M/s. Omaxe Limited or their representative/officials and there was no prior relationship between the Omaxe Group or their representative and the Appellant has purchased/booked Commercial Space/Unit measuring 465.77 Sq. Ft in the Project launched by M/s. Omaxe Limited namely "Omaxe Connaught Place IV" as per his requirement/needs and therefore merely collecting some information and proceedings accordingly will vitiate the intent and wisdom of applicable provision of the statute and even otherwise also if d. Assessing Officer consider it appropriate then the Appellant may kindly be allowed/conferred to cross examine the Witness on whose statement the information of

Cash transactions Rs.32,13,800/-Thirty Two Lakhs Thirteen Thousands Eight Hundreds Only)against e Appellant presumed to be paid to M/s. Omaxe Group for purchase of movable properties i.e. OCPK/First /14 in the Project named Omaxe Connaught Place has been relied upon and thereafter the proceedings U/s 147 r.w.s 148 were initiated against the Assessee. Relaince was placed on M/S Andaman Timber Industries vs Commr. of Central Excise, Kolkata-11 (Civil Appeal No. 4228 of 2006) decided on 02.09.2015 wherein it was held According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them".

Reliance is also placed on Commissioner Of Income Tax vs Smc Share Brokers Ltd. on 29 August, 2006 (Delhi High Court (2007) 210 CTR (DEL) 353, (2007) 288 ITR 386 (DELHI) wherein Hon'ble Delhi High Court held at Para-7" We are of the opinion that the Tribunal was right in its view that in the absence of Manoj Aggarwal being made available for cross-examination, despite repeated requests by the assessed, his statement could not be relied upon to his detriment. Since the Appellant was not conferred opportunity to rebut allegations/presumptions or cross

examine the Witness of whose statement was relied upon before making huge additions of Rs.32,13,800/-(Thirty Two Lakhs Thirteen Thousands Eight Hundreds Only) and therefore under such circumstances and additions made on such ground alone deserves to be deleted. This is further submitted that even Certificated 30.08.2024 issued by Omaxe Limited confirming payments received through Banking Channel and denying any Cash Payments received were totally discarded.

BECAUSE Ld. Assessing Officer while passing impugned Assessment Order dated 20.03.2025 did not adhere to Principal of Natural Justice as the Appellant was not permitted to cross-examine witnesses by Adjudicating Authority though statements of those witnesses were made as basis of impugned order and which amounted to serious flaw and which made impugned order nullity as it amounted to violation of principles of natural justice, Reliance is placed on case of Andaman Timber Industries vs. CICE (2015) 281 CTR 0241(SC).

OUR DETAILED SUBMISSION/REPLY TO THE ABOVE GROUND OF APPEAL:-

That the impugned Assessment Order dated 20.03.2025 passed by Ld. Assessing Officer is illegal and perverse and deserves to be set aside/quashed or suitably modified in view of the facts that the Appellant was not conferred adequate opportunity to represent his case as the Appellant was not conferred opportunity to confront the material gathered against him before making huge additions of Rs.32,13,800/-(Thirty Two Lakhs Thirteen Thousands Eight Hundreds Only) and also to cross examine the Witness on whose statement the information of Cash transactions Rs.32,13,800/- (Thirty Two Lakhs Thirteen Thousands Eight Hundreds Only) against the Appellant presumed to be paid to M/s. Omaxe Group for purchase of immovable properties i.e. OCPK/First/14 in the Project named Omaxe Connaught Place and has been relied upon and thereafter the proceedings U/s 147 r.w.s 148 were initiated against the Appellant. Reliance was placed on M/S Andaman Timber Industries vs Commr. of Central Excise, Kolkata-II (Civil Appeal No. 4228 of 2006) decided on 02.09.2015

BECAUSE the Ld. Assessing Officer while passing impugned Assessment Order dated 20.03.2025 erred in Charging interest U/s 234A, 234B & 234C and in fact in initiating penalty proceedings U/s 271AAC of the Income Tax Act, 1961.

That the appellant reserves the right to raise any other ground of Appeal in addition to the grounds of appeal as mentioned above.

:-RELIEF:-

(a) To quash/set aside the impugned Appellate Order dated 10.11.2025 passed by Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi qua impugned Assessment Order dated 20.03.2025 passed by the Ld. Income Tax Officer, Assessment Unit, Income Tax Department keeping in view statutory provisions of the Act and justifiable explanations and pertinent judicial pronouncements.

(b) That the impugned Appellate Order dated 10.11.2025 passed by Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi qua impugned Assessment Order dated 20.03.2025 passed by the Ld. Income Tax Officer, Assessment Unit, Income Tax Department be suitably modified to delete/modify addition of Rs. 32,13,800/- (Thirty Two Lakhs Thirteen Thousand Eight Hundred Only).

(c) To pass an appropriate order as this court may deem fit and to give any other relief which may deem fit in view of the provision of the applicable statute and in the interest of justice.

4. On the other hand the Ld. DR strongly placed reliance on the orders of the authorities below.

5. Heard rival submissions and perused the orders of the authorities below. It is noticed that the addition was made based on the seized materials pursuant to the search carried out in M/s. Omaxe Group, there was an Excel Sheet which was found in the course of search is the basis for making the addition. The contention of the assessee is that the statements which were relied on for making the addition was not provided to Assessee and cross-examination was not allowed was dealt with by the Ld. CIT(A) holding that none of the statement of witnesses are recorded during the course of search are the basis for the addition, except for Excel Sheet found and corroborative maintained by M/s. Omaxe Group Ltd.

6. On the other hand the Ld. Counsel for the assessee submitted that the assessee was not provided any materials which were basis for making the addition. The Ld. Counsel also contended that the detailed objections filed by the assessee were not dealt with the AO. No cross-examination was provided to the assessee to examine the statements of the employees of M/s. Omaxe Group Ltd and the some of the customers of M/s. Omaxe Group Ltd. on which the AO relied on for making the addition in the hands of the assessee presuming the assessee has paid cash for purchase of commercial unit though the assessee had explained that all the sale consideration was paid from banking channels from various sources.

7. Taking the totality of the facts and circumstances into consideration this issue is restore back to the file of the Ld. AO with a direction to provide all the materials which were the basis

for making the addition and also provide cross-examination if it any statement are relied on for making the addition. The AO shall also dispose of the detailed objections filed by the assessee before making assessment afresh and keeping in view the above directions.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 25.02.2026.

Sd/-

[C.N. PRASAD]
JUDICIAL MEMBER

Dated: 25.02.2026

*M. S. S. S., Sr. P.O. **

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi