

**आयकरअपीलीयअधिकरणन्यायपीठमुंबईमें।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“C” BENCH, MUMBAI**

**BEFORE AMIT SHUKLA, JM**  
**&**  
**SHRI ARUN KHODPIA, AM**

**I.T.A. No.6812/Mum/2025**  
(Assessment Year: 2010-11)

<b>Deputy Commissioner of Income Tax,</b> Tower No.6 Room No, Navi Mumbai, Vashi, Mumbai – 400703.	Vs.	<b>Chilles&amp; Garlic Commission Co.</b> C46, APMC Market, TurbheVashui, Navi Mumbai, Mumbai – 400703, Maharashtra. <b>PAN: AADFC2843G</b>
<b>Revenue- अपीलार्थी / Appellant</b>	:	<b>Assessee-प्रत्यर्थी/ Respondent</b>

**Assesseeby** : Shri Rajen Damani  
**Revenueby** : Shri Virabhadra Mahajan (Sr. DR)  
**Date of Hearing** : 09.03.2026  
**Date of Pronouncement** : 04.06.2026

**ORDER**

**Per Arun Khodpia, AM:**

The captioned appeal is preferred by the revenue, directed against the order of Commissioner of Income Tax Appeals/ National Faceless Appeal Centre (NFAC), Mumbai [“the Ld. CIT(A)"] dated 04.08.2025, for the Assessment Year 2010-11, arises from assessment order u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 (“the Act”) dated 26.03.2015, passed by Income Tax Officer Ward 28(1)(3), Mumbai. The grounds of appeal are as under:

*“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made on account of undisclosed sales and estimated*

*profit, including the addition consequent to rejection of books of account under section 145(3), without properly appreciating the assessment order, survey findings (including excess stock), absence of stock/sales records, and the reasonableness of profit estimation based on past results; and in holding that APMC cess represented consignors' turnover and that the books reflected verifiable evidence.*

*2 Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in admitting and relying upon additional evidence, submissions, reconciliation statements, consignment records, and other documents produced for the first time during appellate proceedings, without affording the Assessing Officer a reasonable opportunity to examine or rebut the same, thereby violating the mandatory provisions of Rule 46A(3) of the Income-tax Rules, 1962.*

*3. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the additions made on account of sundry debtors and sundry creditors, without appreciating that the assessee failed to furnish complete details, confirmations, PAN, addresses, or supporting evidence despite repeated opportunities, and in accepting the claim that such balances represented intermediary/agency transactions (del credere or commission basis) without establishing their genuineness nexus with the assessee's business.*

*4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made on account of unexplained loans, advances and deposits, ignoring the assessee's failure to reconcile and substantiate the differences appearing in the balance sheet and the absence of verifiable evidence regarding the source, nature, and genuineness of such balances.”*

2. The Brief facts of the case are, that the assessee is a firm acting as a Commission/Del Credere agent registered with Agricultural Produce Market Committee (APMC), Vashi and deals in agricultural commodities, predominantly in 'Garlic'. The assessee filed its original return for the relevant assessment year on 13.10.2010, declaring the total income at Rs.4,10,760/-. Subsequently, a survey was conducted at the premises of the assessee on 07.01.2011, wherein it was found that, for the instant year an APMC Cess of Rs.3,53,654/- was paid to a APMC, Vashi.

3. By reverse calculation, the AO estimated a sale of Rs.4,42,06,750/- whereas the assessee has shown a sale of Rs.4,66,000/- only in its return of

income. A notice u/s 148 was issued on 06.03.2014, the reassessment proceedings were completed by making following additions/disallowances:

- (i) Profit on discrepancy in sales Rs.14,12,826/-
- (ii) Sundry Debtors Rs.2,36,39,718/-
- (iii) Unsecured Loans Rs.2,59,779/-
- (iv) disallowance U/s 40(a)(ia) Rs.2,65,431/-
- (v) Commission expense disallowed Rs.11,97,930/-
- (vi) Sundry creditors Rs.1,42,08,748/-
- (vii) difference in loans/advances and deposits Rs.3,66,153/-
- (vii) various expenses disallowed Rs.68,384/-.

4. The assessee carried the matter before the Ld. CIT(A), wherein the First Appellate Authority had decided the issues one by one, thereby the appeal of the assessee has been partly allowed.

5. Since, substantial relief was granted by the Ld. CIT(A) to the assessee the Revenue is in appeal before us.

6. At the outset, the Ld. Sr. Departmental Representative [in short "the Ld. DR"] representing the Revenue submitted that the additions on account of unexplained loans, advances and deposits were wrongly and fallaciously deleted by the Ld. CIT(A), ignoring that the assessee was failed to reconcile and substantiating the balances appearing in the balance sheet, in absence of verifiable evidence regarding the source, nature and genuineness of such balances.

7. The Ld. DR also submitted that the assessee had furnished various documents first time before the Appellate Authority. However, the AO was not provided with any opportunity to examine such additional evidences or to revert to the same under a remand report, thereby the appellate proceedings were violative of mandatory provision of rules 46A(3) of the Income Tax Rules, 1962. It is argued that there was an error in the decision of Ld. CIT(A) in deleting the additions on account of sundry debtors and creditors, without appreciating that the assessee failed to furnish complete details, confirmations, PAN, addresses or supported evidence despite repeated opportunities and in accepting the claim that such balance represents intermediary agency transactions, without establishing their genuineness and nexus with the assessee's business. It is also submitted that the assessee was unable to reconcile and substantiate the differences appearing in the balance sheet, de hors the verifiable evidence regarding the source, nature and such genuineness of such balances. Therefore, the order of Ld. CIT(A) was not in correct appreciation of the facts. The order Ld. CIT(A) is, thus, liable to be set aside and the additions/disallowance made by the AO deserves to be restored back.

8. Per contra Ld. Authorized Representative [in short "the Ld. AR"] submitted that the Ld. CIT(A) had correctly and judiciously adjudicated the issue after lengthy deliberations on the submissions made by the assessee qua the findings of the AO. The Ld. DR reiterated the facts of the case and the decision

part from the order of Ld. CIT(A). It is submitted that the assessee is in business of agricultural commodities as an agent registered with APMC, Vashi, and necessary certificate in this regard are placed on record. The core business of the assessee is Del Credere Commission agent operating from the APMC Market, Vashi. Where the assessee acts on behalf of various farmers and aggregators in respect of garlic and other perishable agricultural produce. The nature of business of the assessee is consistently accepted by the Revenue in the earlier assessments and the income declared as commission income has been assessed accordingly. However, in the instant year, the AO has completely disregarded the fundamental character of the assessee's business and proceeded to estimate income solely on the basis of APMC cess paid. As per the rules and regulations of APMC Market, it is an undisputed position that APMC cess is levied on goods that enter the market premises irrespective of the fact that they are on own account or on behalf of the consigner.

9. Before the AO, the Appellant furnished the reconciliation of different category of sale effected in the market and the cess paid on them and also during the Appellate proceedings. The Ld. AR drew our attention to Para No.5.4.2 of order of the Ld. CIT(A), wherein the reconciliation statement was produced, according to the said statement, the payment of cess to the APMC amounting to Rs.3,53,654/- pertains to consignment sale against which the assessee has shown

a commission income of Rs.10,70,388/- on a sale of Rs. 4,42,06,790/-. The reconciliation table furnished by the assessee is reproduced as under:

Sr. No.	Particulars	Sale Amount	Amount Credited	Cess Paid
1.	Trading Sale	4,66,000	4,66,000	NA
2.	Consignment Sale outside of APMC	15,10,77,472	36,58,069	NA
3.	Consignment Sale within of APMC	4,42,06,790	10,70,388	3,53,654
	<b>Total</b>	<b>19,57,50,262</b>	<b>51,94,457</b>	<b>3,53,654</b>

9.1 The AO completely ignored the fact that the receipt of commission income would also entail the sale of goods within the market, when the appellant is Del Credere Agent acting on behalf of the consignors, had to pay the cess on consignment sale also.

10. This fact is being recorded by the Ld. CIT(A), that the appellant has offered commission of Rs.10,70,388/- on sale of Rs.4,42,06,790/- corresponding to the cess payment of Rs.3,53,654/-, which is at the rate of around 2.5% and well within the market rate. The Ld. CIT(A) also noted that AO has ignored the consignment chain sample document, wherein the assessee submitted the complete chain of document, start from receiving the goods from the consignor to sale invoice to the consignor, wherein the amount of commission and other

expenses are duly recorded. It was the observation that the AO has therefore completely misunderstood the nature of business of the assessee and computed the estimated turnover on the basis of cess payment only. From the reconciliation table reproduced (supra) it is apparent that if the consignment sales are also taken as apart of the turnover of the appellant, then the same is much more than what has been computed by the AO. Therefore, the AO is not correct in holding that the real business of the appellant is being carried outside the books and that the books of accounts of the appellant do not reflect the correct and complete financial status of the assessee.

11. The Ld. CIT(A) further deliberated the issue by discussing the alleged discrepancies noted in stock by the AO. The Ld. CIT(A) found that the rejection of books and accounts u/s 145(3) of the Act, was not appropriately done by the AO as per the conditions for invoking such provisions are not looked into by the AO, with further deliberations the Ld. CIT(A) had directed the AO to delete the estimated additions of Rs.14,12,826/-.

12. Regarding the addition of Rs.2,36,39,718/- on account of sundry debtors and of Rs.1,42,08,748/- on account of sundry creditors as appearing in the balance sheet of the assessee. The AO noted that during the course of survey action it is found, that there are sundry debtors of Rs. 2,54,49,716/- as on 31.03.2010. The assessee was asked to furnish the full details of debtors and creditors such as name, address, PAN, amount and age of sundry debtors. In response assessee vide

its letter dtd.16.03.2015 furnished the details of sundry debtors for the A.Y. 2010-11, the total of which comes to Rs. 1,31,78,929/-. For 53 debtors out of which PAN of only ten persons could be furnished. Regarding other debtors, neither the full postal address is provided by the assessee nor the PAN number.

13. The AO also noted that as per audited report the auditor has mentioned in remark column that "*The assessee has not obtained balance confirmation for the accounts of sundry debtors and sundry creditors, hence they are subject to the confirmation*". The AO accordingly made an addition of Rs.2,54,49,716/- on account of assessee's inability to furnish details of the sundry debtors.

14. Further, regarding sundry creditors the assessee was unable to furnish necessary details in addition of Rs.1,42,08,748/- was made. The Ld. CIT(A) taken into consideration the submissions of the assessee and have deleted the addition by observing that the assessee has recognized the commission arising out of sale in the capacity of an agent and as credited the same in profit and loss account. Further there is no material on record to hold that the sale or the purchases done by the appellant in the capacity of an agent is bogus. In view of such observations, it is held that the debtors and creditors of the balance sheet of the assessee are purely receivable and payable and required to be shown as per the accounting standards, are not income in themselves but only an intermittent entry, awaiting squaring off on behalf of the principle. The addition of Rs.2,36,39,718/-

on account of sundry debtors and Rs.1,42,08,748/- on account of sundry creditors was deleted.

15. Regarding unexplained loan the Ld. CIT(A) had held that the addition made by the AO for Rs.2,59,779/- against which the assessee is not in appeal therefore the issue is settled.

16. Regarding nonpayment of TDS on interest payment of Rs.2,65,431/- the AO had made the addition u/s 40(a)(ia) of the Act, however such disallowance has been deleted by the Ld. CIT(A) by observing that the assessee has paid total interest of Rs.17,70,549/- during the relevant assessment year out of which Rs.11,40,260/- was paid to the bank towards the overdraft / Cash Credit facility which are not subject to TDS under the provisions of section 194A of the Act. Out of remaining interest, the assessee had deducted and paid TDS on Rs.1,80,186/- and substantial TDS receipts were placed on record. Regarding balance of Rs.2,58,267/-, the assessee has submitted valid Forms 15G/15H from the respective recipients, who declared that their income was below the taxable limit and requested for non-deduction of tax under Section 197A of the Act. The said declarations were furnished to the Assessing Officer also. Therefore, as per provisions of Section 197A(1A) and 197A(1C), on failure to deduct TDS, in such cases does not attract disallowance under Section 40(a)(ia).

17. The AO also made an addition on account of its loans, advances and deposits for Rs.3,66,153/-. For this issue the Ld. CIT(A) observed that the addition was made by the AO on account of failure of assessee in disclosing complete details regarding loans, advances and deposits amounting to Rs.15,28,275/- as on 31.03.2010. It is observed that the assessee has provided party wise information for Rs.11,62,122/-, which includes names, addresses, and transaction details to the extent available. The Ld. CIT(A) directed to delete the disallowance, as the AO was failed in clearly mention the specific items or parties name on account of which the so-called unverifiable amount of Rs.3,66,153/- was disallowed. The Ld. CIT(A) noted in absence of such identification the addition becomes vague and lacks a factual basis. It is also noted by the Ld. CIT(A) that as per the settled law the loans and advances appearing in the balance sheet unless shown to be non-genuine or fictitious, cannot be treated as income merely for want of confirmation. Accordingly, the addition was directed to be deleted.

18. The AO also made a disallowance of 20% of expenses on estimated basis under various heads such as Telephone expenses, Vehicle expenses and depreciation on Motor car, as the assessee was unable to produce the log book of uses. The Ld. CIT(A) deleted the addition stating that the assessee's books are duly audited under section 44AB of the Act and no such comment has been made by the Auditor and even the AO has not pointed out any specific discrepancy in the course of assessment. Therefore, the addition of Rs.68,384/- was deleted.

19. The AO has made an addition on commission paid by the assessee amounting to Rs.11,97,930/-, as the assessee was failed to provide supporting evidence such as confirmation and details called for. This issue was remanded back to the file of the AO for verification of evidence furnished by the assessee before the Ld. CIT(A). Therefore, the ground was set aside to the file of the AO being allowed for statistical purposes.

20. Based on aforesaid facts of each addition/disallowance made by the AO which either are deleted by the Ld. CIT(A) or confirmed or set aside to the file of the AO, the assessee relied on the order of the Ld. CIT(A) by accepting his decision, however the revenue is in appeal regarding the reliefs granted by the Ld. CIT(A) to the assessee.

21. We have considered the rival submission and perused the material available on record. Admittedly, in present case the AO had completed the assessment after lengthy deliberations on various issues, arises during the assessment. Such issues were surfaced on account of the survey action conducted in the case of assessee as certain information were revealed during that survey action. Since, certain addition/disallowances were upheld by the Ld. CIT(A) or the issues are set-aside to the file of the AO, such issue does not survive before us for our consideration, as the assessee is not in appeal on those issues. Regarding the issues of disallowance/additions made by the AO, which were reversed by the Ld. CIT(A),

the Revenue is in appeal before us. Our adjudication to respective issues is as under:-

**21.1. Addition on account of profit on discrepancy in sale as per Para No.7 of the Assessment Order of Rs.14,12,827/-.**

On this issue Ld. CIT(A) has discussed the working of assessee's turnover under different categories. The assessee has transacted by way of direct sales as well as through consignment sales on behalf of other sellers / consignors, for which the assessee has declared and offered commission income in its books of accounts. Since, lengthy deliberations are made by the Ld. CIT(A), had reconciled the turnover of the assessee, the AO's perception is found to be on misconceived understanding in construing the consignment sale also to be the turnover of assessee, thus, the disallowance was uncalled for and unwarranted. Therefore, in our considered opinion the Ld. CIT(A) has rightly adjudicated the issue by deleting the uncalled disallowance. We accordingly upheld the decision of Ld. CIT(A) on this issue.

**21.2. The Disallowance regarding sundry debtors and creditors.**

On this issue, the assessee had made extensive submissions before the Ld. CIT(A). The CIT(A) has gone through such submissions, though the same are not referred to the AO for his comments. The Ld. CIT(A) decided the issue in favour of the assessee by observing that the assessee is a commission agent working as Del Credere Agent (DCA). The addition was deleted by observing that the assessee is recognizing commission arising out of the sales made as commission

agent and has credited the same in profit and loss account. Further there is no material on record to hold that the sale or the purchases done by the assessee in the capacity of a bogus agent. With such observations it is held that debtors and creditors in the balance sheet of the assessee are purely receivable and payable and are required to be shown as per accounting standards and are not income in themselves and only an intermittent entry awaiting to squaring off on behalf of the principle.

21.2.1 On Perusal of the order of AO and Ld. CIT(A), we find that the Ld. CIT(A) had directed to delete the addition on a generalized statement that the assessee is recognizing commission arising out of such debtors or creditors. However, no such factual verification has been carried out by the Ld. CIT(A). The AO has requested the assessee to furnish necessary evidences regarding the balances appearing in the books of assessee, which in our considered opinion was duty and obligation of the AO which he did. The assessee was failed to furnish complete details before the AO, which the assessee should have furnished, merely saying that there was no allegation that the assessee was involved in bogus transaction cannot spare the assessee from furnishing necessary details before the AO, which were called for in terms of provision of section 68. Even if the entries and the balances are reflecting on behalf of principle, the consolidated confirmation could be obtained and furnished before the AO to verify the genuineness of the transactions, instead of deleting the addition under generalized

observations. We, under such facts and circumstances, constrained to differ with the decision of the Ld. CIT(A), therefore, restore this issue back to the file of Ld. AO to adjudicate it afresh. Reasonable opportunity of being heard to be provided to the assessee to furnish to all the necessary details called for by the Ld. AO in order to satisfy the mandate of section 68 and 69 of the Act. **The ground No. 1 and 3** raised by the revenue therefore are **allowed for statistical purposes.**

21.3 Regarding violation of provisions of Rule 46A, there was no specific mention by the revenue, stating that as to what are the additional evidence, which the assessee had furnished before the Ld. CIT(A), which were not produced before the AO, we reject such contention of the revenue. **Ground no 2** is thus **rejected.**

21.4 **Addition on account of loans, advances and deposits for Rs.3,66,153/-.** For this issue the Ld. CIT(A) observed that the addition was made by the AO on account of failure of assessee in disclosing complete details regarding loans, advances and deposits amounting to Rs.15,28,275/- as on 31.03.2010. It is observed that the assessee has provided party wise information for Rs.11,62,122/-, which includes names, addresses, and transaction details to the extent available. The Ld. CIT(A) directed to delete the disallowance, as the AO was failed in clearly mention the specific items or parties name on account of which the so-called unverifiable amount of Rs.3,66,153/- was disallowed. The Ld. CIT(A) noted in absence of such identification the addition becomes vague and lacks a

factual basis. It is also noted by the Ld. CIT(A) that as per the settled law the loans and advances appearing in the balance sheet unless shown to be non-genuine or fictitious, cannot be treated as income merely for want of confirmation. Accordingly, the addition was directed to be deleted.

21.4.1 We are absolutely, unable to fathom the decision of Ld. CIT(A), who directed to delete the addition, even after assessee's failure to furnish details of advances, loans and deposits. The argument of Ld. CIT(A) that the AO has to specifically mention the name of parties found to be illogical, since the details of total loans, advance and deposits are on record and the part details furnished by the assessee are also on record. Non furnishing of some details by the assessee became the reason for addition and rightly so, even if the names of parties are mentioned by the AO, how does it help the Ld. CIT(A) to decide the veracity and genuineness of such balances in terms of provisions of Act. If the Ld. CIT(A) was not satisfied with the AO's finding a report could have been called for to look into such details, instead of deleting the addition by finding fault in the AO's working. From the order of Ld. CIT(A), it is not emanating that even such details were called from the assessee and examined by the Ld. CIT(A) by him self or through AO. We are unable to persuade and to subscribe to such an approach of Ld. CIT(A). Since the details could not be furnished by the assessee, we find force in the contention of the revenue that, the Ld. CIT(A)'s decision cannot justify in the facts of present case, while the issue was decided in favour assessee under generalized and vague perceptions instead of factual verifications of source,

nature and genuineness of the balances. We thus set aside the order of Ld. CIT(A) and direct to uphold the addition of Rs. 3,66,153/- made by the AO, on account of assessee's failure to furnish details of loans, advances and deposits. **Ground No. 4** of revenue is **allowed**.

22. Ground 5 of the revenue's appeal is general in nature.

23. In result the appeal of revenue is **partly allowed**, in above terms.

*Order pronounced on 04.06.2026.*

*Sd/-*  
**(AMIT SHUKLA)**  
**Judicial Member**

*Sd/-*  
**(ARUN KHODPIA)**  
**Accountant Member**

Mumbai, Dated : 04-06-2026.  
*Ranganath, Sr. PS*

**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**