IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

Present:

The Hon'ble Justice Rajarshi Bharadwaj
And
The Hon'ble Justice Sudip Deb

ITAT No. 171 of 2026

GA 1 of 2026

GA 2 of 2026

Principal Commissioner of Income Tax (Central)-2, Kolkata
-Vs-
Suresh Kumar Banthia

For the Appellant	: Mr. Prithu Dudhoria Mr. Madhu Jana
For the Respondent	: Mr. S.M. Surana
Heard on	: 18.09.2026
Judgment on	: 05.10.2026

Sudip Deb, J.:-

1. This appeal is directed against the order dated 18th September, 2025 passed by the Income Tax Appellate Tribunal "D" Bench, Kolkata in ITA No. 835/Kol/2025 relating to the assessment year 2020-2021 at the behest of revenue.

2. The revenue has proposed the following substantial questions of law:-

"i. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal was not justified in deleting the addition made by the Assessing Officer and enhancement of Rs.3,87,01,394/- made by the Learned Commissioner of Income Tax

(Appeal)-27, Kolkata under section 69A of the Income-tax Act, 1961 amounting to Rs.11,35,00,000/- in terms of cash loan and interest?

ii. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal was not justified in setting aside the order passed by the Learned Commissioner of Income Tax (Appeal)-27, Kolkata without considering the merit of the case?

iii. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal was not justified in directing the Assessing Officer to delete the addition made under section 69A of the Income-tax Act, 1961 without considering the merit of the case?

iv. Whether the Hon'ble Income Tax Appellate Tribunal was not justified and made a perverse finding in directing the Assessing Officer to delete the addition made under section 69A of the Income-tax Act, 1961 by ignoring the corroborative impounded material and accepting the retractions made by the assessee without any reasonable explanation and evidence in support of his retraction claims?"

3. At the outset, we have asked the learned advocate appearing for the appellant to satisfy us as to whether the substantial questions of law as proposed by the appellant are at all substantial questions of law or not.
4. We have not called upon the respondent/assessee to address us since we are deciding as to whether the questions proposed by the revenue are at all substantial questions of law or not.
5. The learned advocate for the appellant showed us the impugned order and argued that the Appellate Tribunal was not justified in deleting the addition made by the Assessing Officer and enhancement of Rs.3,87,01,394/- made by the Learned Commissioner of Income Tax (Appeal)-27, Kolkata under Section 69A of the Income Tax Act (hereinafter referred to as "the said Act")

making the total addition to Rs.11,35,00,000/- in terms of cash loan and interest.

6. It is also argued that the Appellate Tribunal erred in law while deleting the addition made under Section 69A of the said Act without considering the merits of the case and the finding of the Appellate Tribunal is perverse.

7. Before deciding this issue, it is necessary to ascertain the facts of the instant case which are narrated hereinbelow.

8. The respondent/assessee had filed his return of income for the assessment year 2020-2021 on 1st February, 2021 under Section 139 of the said Act declaring total income at Rs.1,74,57,470/-.

9. It is important to mention here that earlier a search operation as contemplated under Section 132 of the said Act was conducted on the Citizen Group on 30th November, 2018. The respondent is a key person of the Citizen Group. The respondent is also having two proprietorship concerns, namely, M/s M.P. Industries and M/s M.P. Industries (FSEZ). During the said search operation several incriminating documents marked as USK/1 to USK/31 containing the loan transactions arranged through the brokers were seized during search action under Section 132 of the said Act on 30.11.2018 from the room of one Shri Uma Shanker Kasera. Documents marked as AKK/1 to AKK/12 were seized from the flat of his son Shri Anil Kumar Kasera and the documents marked as JBS/1 to JBS/25 were seized from the business premises of Shri Jai Bhagawan Sanwaria. These documents contained the details of unaccounted cash loan transactions

related to the respondent/assessee. Accordingly, survey under Section 133A of the said Act was carried out against the Citizen Group on 19.2.2020.

10. Later, the case was centralized to the Additional Commissioner of Income Tax, Central Circle-4(3), Kolkata vide order under Section 127 of the said Act.

11. Being the year of survey, the case was selected under compulsory scrutiny as per action plan for selection of cases under scrutiny. The Assessing Officer also referred to various papers impounded in the course of survey in the hands of respondent/assessee and his group company. Such documents were CUML/1 to CUMS/7, Hard Disc CUMS.HD.1 and SKB/1. The papers under identification Mark CUML were impounded from Citizen Umbrella Manufacturers Ltd. and SKB from assessee. Thereafter, statutory notices under Section 143(2) of the said Act dated 28th June, 2021 and under Section 142(1) of the said Act, 1961 dated 13th January, 2022 along with requisition/questioners were issued to the respondent/assessee.

12. The Assessing Officer while completing the assessment had relied upon the documents seized form Sanwaria and Kasera and the documents under identification no. CUML 1 and 2 impounded from the respondent/assessee.

13. The Assessing Officer in Para-5.2.2 had relied on the explanation of the respondent/assessee to the effect that the respondent/assessee in his statement recorded in the course of survey under Section 133A of the said Act, the cash loans were given out books of account. The Assessing Officer had also while passing the assessment order quantified the unexplained cash transactions carried out through financial brokers, namely, Kasera and

Sanwaria. After considering all these factors, the Assessing Officer made an addition of Rs.3,01,59,831/- towards using for advancing cash loans by the respondent/assessee as unexplained money under Section 69A of the said Act and Rs.4,46,38,775/- was added towards interest earned from advancing of cash loans as unexplained money under Section 69A of the said Act in the assessment framed under Section 143(3) of the said Act. The total income was assessed at Rs.9,22,56,080/-. The Assessing Officer had passed the aforesaid order on 26th March, 2022.

14. The said order was challenged by the respondent/assessee by filing an appeal before the Commissioner of Income Tax (Appeal)-27, Kolkata. The Commissioner of Income Tax while passing his order dated 6th April, 2025 after considering the evidence and the deposition of the respondent/assessee and also after considering the total peak credit of the assessee was Rs.11,35,00,000/-, had enhanced the total addition under Section 69A of the said Act from 7,47,98,606/- to Rs.11,35,00,000/-. The Commissioner while doing so had noted that the impounded material with identification mark SKB-01/26 and SKB/27 was looked into the highest peak on a single day comes to Rs.11,35,00,000/-. Consequently, penalty proceeding under Section 271AAC of the said Act were also initiated separately for the enhancement of Rs.3,87,01,94/-.

15. Challenging the said order, the respondent/assessee had preferred an appeal before the Income Tax Appellate Tribunal “D” Bench, Kolkata. The Appellate Tribunal after hearing the parties, by an order dated 18th September, 2025

set aside the order of the Learned Commissioner and directed the Assessing Officer to delete the addition.

16. Challenging the said order, the instant appeal has been filed by the revenue.

17. We have gone through the impugned order. We find from the impugned order the Tribunal has categorically recorded in detail about the search on two financial brokers, namely, Kasera and Sanwaria and recorded that during the search certain documents were seized. The Appellate Tribunal has also recorded that the search took place on 30th November, 2018. The Appellate Tribunal has also recorded a survey was conducted on the respondent/assessee and one M/s Citizen Umbrella Mfg. Ltd. During this, the statement of the respondent/assessee was recorded under Section 131 of the said Act. What is important to note here that the Appellate Tribunal has categorically recorded that the search was conducted on a date that falls prior to start of assessment year 2020-2021 and even the start of the financial year relevant to assessment year 2020-2021. The Tribunal has also categorically recorded that the material found during the course the of said search on Kasera and Sanwaria, has nothing to do with the assessment of income in the assessment of the respondent/assessee as the same was done prior to with the assessment year 2020-2021 and even the start of the financial year relevant to the assessment year 2020-2021. We also find from the order of the Appellate Tribunal that the Tribunal has also recorded that the respondent/assessee retracted his statement given during the course of survey under Section 133A of the said Act immediately on 24th February, 2020 which was within five days of the date of survey by filing an affidavit on

the ground that the statement was taken under coercion and there was no corroborative evidence found during the course of survey. In the said retraction, the respondent/assessee also stated that the entries in the impounded documents being CUML/1 and SKB were not relevant or they were part of the books of account maintained by the respondent/assessee.

18. The Appellate Tribunal further recorded that the Learned Assessing Officer could not bring on record any substantive material to corroborate the entries, documents/materials seized.

19. The Appellate Tribunal has also recorded that apart from the statement and jotting in the impugned papers no corroborative materials were there to show that the respondent/assessee was involved in advancing any cash loans through the brokers, namely, Gajraj Choraria and Pawan Mundhhra. The Appellate Tribunal has also recorded that though the names of the Gajraj Choraria and Pawan Mundhhra were taken by the finance brokers but their statements were not recorded nor any summons were issued even though their phone numbers and addresses were given to the survey party as well as to the Assessing Officer.

20. The Tribunal has also recorded that though the Assessing Officer had impounded viz. CUML/1, CUML/2 but nothing came out of the said documents to show that there was any investment by the respondent/assessee.

21. The Appellate Tribunal has also recorded that there was no material before the Assessing Officer which corroborates the conclusion of making huge investment by way of giving loans and earning interest thereto. There is no

supporting materials or evidences in corroboration of impounded papers of making investment by the respondent/assessee. In fact, the Assessing Officer came to a conclusion that the respondent/assessee had received and re-invested through one gentleman called Satish but nowhere in the assessment order it had been stated from where he had got the money.

22. The Appellate Tribunal has also held that there was no corroborative material to support the entries made in the said documents and accordingly held no adverse inference could be drawn against the respondent/assessee.

23. We find that the aforesaid findings of the Appellate Tribunal so far as deleting the addition is absolutely correct.

24. The law relating to the applicability of the Evidence Act to the proceedings under the Income Tax Act is well settled.

25. In the case of ***Dhakeswari Cotton Mills Ltd vs. Commissioner of Income Tax, West Bengal*** reported in ***AIR 1955 Supreme Court 65*** the Supreme Court held that *"8. … the Income-tax Officer is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a court of law, but there the agreement ends; because it is equally clear in making the assessment under sub-section (3) of Section 23 of the Act, the Income-tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. …"*

26. In the case of ***Omar Salay Mohamed Sait vs. Commissioner of Income-tax, Madras*** reported in ***AIR 1959 Supreme Court 1238*** the Supreme Court held *"42. We are aware that the Income-tax Appellate Tribunal is a fact*

finding Tribunal and if it arrives at its own conclusions of fact after due consideration of the evidence before it this Court will not interfere. It is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its findings in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were the findings reached on the evidence on record before it. The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which required to be explained by the assessee, the assessee should be given an opportunity of doing so. On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of the sort, its findings even though on questions of fact will be liable to be set aside by this Court."

27. Rigours of the Evidence Act does not apply to the Income Tax proceedings, but the principles embodied in the Act, i.e. Section 110 on possession and ownership can still be invoked by the taxing authority where the facts justifying it as held by the Supreme Court in the case of ***Chuharmal S/O Takarmal Mohnani vs. Commissioner of Income Tax, M.P. Bhopal*** reported in ***(1988) 3 SCC 588***.

28. Considering the above legal principles relating to the applicability of Evidence Act so far as Income Tax is concerned, we are of the considered view that though the strict rules of the Indian Evidence Act (now Bharatiya Sakshya Adhiniyam) do not apply to income tax proceedings but the Tax Authorities are guided by its underlying general principles and natural justice. It is important to mention here though the Income Tax Authority and Tribunals are not bound by the rigours but the proceedings initiated under Income Tax Act can still invoke common law principles and foundation of rules of evidence.

29. Non-applicability of the Evidence Act in its technical sense does not prevent the Income Tax Authority from invoking the general principles embodied in the Evidence Act. We find from the impugned order that the Appellate Tribunal has correctly assessed the admissibility of the documentary evidence.

30. The Appellate Tribunal being the last fact finding authority has correctly arrived at the finding after considering the entire evidence and the documents produced before it and rightly passed the order of deletion. We do not find any irregularity or perversity in the impugned order. According to us, the questions raised in the instant appeal are pure questions of fact and the Appellate Tribunal as the last fact finding authority has correctly arrived at such finding.

31. In view of the above facts and circumstances of the case, we hold there is no substantial questions of law involved in the matter and accordingly, the instant appeal is dismissed. GA No. 2 of 2026 which is an application for

stay is also dismissed accordingly. GA No. 1 of 2026 is an application for condonation of delay and the same has been allowed by an order dated 3rd August, 2026. The department should record its disposal.

32. There will be no order as to costs.

33. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with the all necessary formalities.

I Agree.

(Rajarshi Bharadwaj, J.) **(Sudip Deb, J.)**