IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.753 OF 2025

Accost Media LLP — Appellant
versus
Deputy Commissioner of Income Tax,
Circle 27(1), Navi Mumbai-400071. — Respondent

WITH
INCOME TAX APPEAL (L) NO.25904 OF 2025

Deputy Commissioner of Income Tax,
Circle 27, Navi Mumbai-400071. — Appellant
versus
Accost Media LLP — Respondent

Mr.Gunjan Kakkad i/by Mint & Confreres for Appellant in ITXA.753/2025 and for Respondent in ITXA(L).25904/2025.

Mr.Arjun Gupta for Revenue in both matters.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 19th June 2026

ORAL JUDGMENT - (Per - Aarti Sathe, J.) :-

1. This Appeal has been filed by the Appellant-Assessee under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") challenging the order dated 10th December 2024 (hereinafter referred to as the impugned order) passed by the Income Tax Appellate Tribunal (hereinafter referred to as "ITAT") dismissing the Appeal bearing No. ITA No. 4553/MUM/2024 filed by the Appellant-Assessee before the ITAT. By way of the

impugned order, the ITAT upheld the order passed by the Commissioner of Income Tax - Appeals (CIT(A)) dated 9th July 2024, against which the Appellant-Assessee had filed the Appeal in the ITAT. The assessment year (A.Y.) in question is A.Y. 2021-2022. By the present Appeal the Appellant-Assessee has raised the following substantial questions of law -

i. Whether on the facts and circumstances of the case and in law, the Tribunal has erred by not setting aside the assessment order which has been passed without complying with the mandatory provisions of section 144B of the Act?

ii. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in disallowing 12.50% of the expenditure disallowed by the Respondent by ignoring certain material facts which were accepted by the Respondent to be true and correct?

Or in the alternative, the following re-framed question of law :

"Whether in the facts and circumstances of the case, the proceedings require reconsideration by the Tribunal in the context of the Petitioners' contention regarding the applicability of Section 144 of the Income Tax Act and the percentage of expenditure disallowed by the Tribunal?"

2. Before adverting to the relevant facts involved in the present appeal, it will be pertinent to reproduce specific findings of the ITAT in the impugned order, by which the Appellant-Assessee is aggrieved. The relevant findings are reproduced below:

> "8. After hearing the submissions of both parties and reviewing the documents on record, we proceed to dispose the appeal filed by the assessee. It is evident that the Ld.AO conducted a thorough inquiry, including issuing notices and utilizing the Verification Unit. However, the identity of the parties involved in the

transactions was not conclusively established. The expenses recorded by the assessee in relation to purchases and labor charges were supported only by documentary evidence. The Ld. AR presented documents related to compliance with the GST Act, including GST returns, Input Tax Credit (ITC) claimed by the assessee, and evidence of Tax Deducted at Source (TDS) from the concerned parties. However, the Ld. DR highlighted specific issues regarding the creditworthiness of the parties, their non-filing of Income Tax Returns (ITRs), non-declaration of business income by the parties and the lack of identification during the verification process conducted by the Ld. AO. The Ld. DR also emphasized that mere inclusion of these transactions in GST returns is insufficient to establish the identify of the parties, a requirement the assessee failed to meet during the proceedings.

The Ld. AO undertook verification efforts by issuing notices under Section 133(6) of the Act and through the Verification Unit. Despite these steps, discrepancies remained, including ambiguity regarding the nature of the business activities of the parties. Notably, among the 28 parties involved, 9 had not filed their ITRs, casting doubt on the authenticity of the transactions.

The Ld. CIT(A) deemed the entire set of purchases as bogus and relied on the judgment of the Hon'ble High Court of Bombay in PCIT-19 Vs. Ashwin P.Bajaj(Appeal No.576/2018, dated 12/07/2023). Following this precedent, the Ld. CIT(A) restricted the addition to 12.5% of the alleged bogus purchases, amounting to Rs.2,16,42,907/-. While we considered the judgment of the Hon'ble Bombay High Court in Ashok Kumar Rungta (supra), which addressed cases involving insufficient inquiries by the Ld. AO, we note that in the present appeal, the Ld. AO conducted a comprehensive investigation, providing the assessee with ample opportunities, including virtual hearings, to present evidence. Considering these facts, we find no infirmity in the impugned order passed by the Ld. CIT(A). Therefore, the impugned appeal order is upheld.

9. In the result, the appeal of the assessee bearing ITA No.4553/Mum/ 2024 and the appeal filed by the revenue bearing ITA No.4561/Mum/2024 are dismissed."

3. Briefly the facts are as follows: -

i. The Appellant-Assessee is involved in the business of painting and advertising, like wall painting, digital wall painting, board advertising and mini hoardings. During the previous year 2020-21 relevant to A.Y. 2021-22, the Appellant had declared in the return of income (ITR) an income of Rs. 1,36,89,870/-. The books of account of the Appellant-Assessee were duly audited under section 44AB of the Act. Post filing of the ITR, a notice dated 28th June 2022 under Section 142(1) of Act was issued to the Appellant-Assessee, requiring

the Appellant-Assessee to furnish a point-wise reply to the questionnaire issued along with the notice. In response to the aforesaid notice, the Appellant-Assessee by their letter dated 18th August 2022 furnished all the relevant details, i.e., bank statement, audited financial statements, tax audit report, details of turn over disclosed in the Goods and Services Tax (GST) returns, etc.

ii. Thereafter on 11th October 2022, the Assessing Officer (AO) issued another notice under Section 142(1) of the Act seeking further details from the Appellant-Assessee, i.e., GST returns, party-wise details of the sales and purchases, and also sought reasons for low income and receipts in comparison to the liabilities declared. In response to the aforesaid notice, the Appellant-Assessee once again provided the GST returns and also furnished requisite details along with explanation in respect of higher liabilities declared in respect of sundry creditors. It was stated that due to the COVID situation, flow of receipts and income was reduced, which resulted in postponement of clearance of liabilities. Therefore, the COVID pandemic was the reason behind the delay of clearance of liabilities in the form of sundry creditors.

iii. On 24th November 2022, the AO issued a further notice under Section 142(1) of the Act, seeking further details in respect of the purchases made by the Appellant-Assessee in the course of its business from various parties (in all 43 parties), in a specific format provided in the aforesaid notice. It is Appellant-Assessee's contention that the AO was aware of the permanent account numbers of the suppliers in respect of purchase of goods from them and had still sought details of the transportation of the goods in a particular

format. It is the Appellant-Assessee's contention that since the information sought for was voluminous, and online portal of the Income Tax Department has limitations to receive such voluminous details, the said details were furnished in several parts. A physical copy of the letter also was furnished on 9th December 2022 by the Appellant, wherein the details of the transportation as was sought by the AO was also furnished to AO.

iv. On 9th December 2022, the AO issued a show-cause notice of even date to the Appellant-Assessee, *inter alia*, seeking to disallow Rs.22,80,97,511/-, which represented expenditure incurred for purchase of goods as also services from various parties. In the aforesaid show-cause notice it was stated that the case was selected for scrutiny assessment, inasmuch as the suppliers from whom the purchases were made by the Appellant-Assessee had filed SGTR1 return, however, the said suppliers were either non-filers, or had no business income, or reflected a substantially lower turnover in the ITR. On the basis of the aforesaid show-cause notice, the genuineness of the transactions which the Appellant-Assessee had entered into with the suppliers were sought to be doubted.

v. On 15th December 2022, the Appellant-Assessee furnished a detailed response in respect of all the points as sought for in the aforesaid show-cause notice dated 9th December 2022, along with all the relevant evidence and material. Thereafter, on 23rd December 2022, an assessment order of even date was passed by the AO, whereby income of the Appellant-Assessee was assessed at figure of Rs. 18,68,33,127/- as opposed to the income returned by the Appellant-Assessee in its ITR for an amount of Rs. 1,36,89,870/-. By way of the aforesaid

assessment order, the AO denied to the Appellant-Assessee the deduction of Rs. 17,31,43,257/- on account of purchases and labour charges and treated the same as unexplained expenditure and added back the entire amount of Rs. 17,31,43,257/- to the income of the Appellant-Assessee under Section 69C read with Section 115BBE of the Act and also initiated penalty proceedings under Section 271AAC(1) of the Act. In the assessment order, the aforesaid disallowance of unexplained expenditure was on the ground that physical verification could not be carried out from three parties at the addresses provided, and genuineness of the transactions entered into by the Appellant-Assessee with them had not been established, since many of the suppliers had not filed any ITRs in pursuance of the notice issued under Section 133(6) of the Act.

vi. Being aggrieved by the assessment order passed by AO, the Appellant-Assessee filed an appeal before the CIT(A) raising the grounds of appeal as per Form-35. In support of the grounds of appeal raised before the CIT(A), the Appellant-Assessee filed written submissions dated 3rd June 2024 and 4th June 2024.

vii. On 9th July 2024, the CIT(A) disposed of the appeal filed by the Appellant-Assessee, and partly allowed the appeal filed by the Appellant-Assessee and disallowance of Rs. 17,31,43,257/- was upheld to the extent of 12.5% of the entire expenditure disallowed. The CIT(A) upheld the aforesaid disallowance on the basis that the Appellant-Assessee had not discharged its primary onus of proving the identity, genuineness, and creditworthiness of the transactions, and ITR copies of the suppliers were not provided. Further, the

CIT(A) held that this was not a case where cash has been siphoned off by debiting the bogus purchases or bogus labour expenses. The CIT(A) held that this was a case where purchases/ expenses might have been inflated, and on the basis thereof relied on the decision of the Punjab & Haryana High Court in **Mittal Belting and Machinery Stores Vs. CIT**[1] and the decision of Gujarat High Court in **CIT Vs. Simit P. Seth**[2], and upheld the disallowance up to 12.5%.

viii. Being aggrieved by the order passed by the CIT(A), the Appellant-Assessee filed an appeal in Form No. 36 before the ITAT raising several grounds. The Revenue also filed cross-objections, being aggrieved by the order passed by the CIT(A) in respect of the partial relief granted to the Appellant-Assessee by the CIT(A). By the impugned order, and on the basis of findings reproduced in paragraph No. 2 above, the ITAT dismissed the appeal filed by the Appellant-Assessee and also the cross-objections filed by the Revenue, primarily on the ground that genuineness of the transactions was not established, since the parties who had supplied the goods to the Appellant-Assessee did not respond to the notice under Section 133(6) of the Act, physical verification of three parties could not be carried out, 9 out of 28 parties had not filed their ITRs, and some of the parties had not declared their business income in the ITRs.

ix. Being aggrieved by the impugned order passed by the ITAT, the Appellant-Assessee filed Miscellaneous (Rectification) Application No. 184/Mum/2025 under Section 254(2) of the Act before the ITAT, seeking to rectify its impugned order on the ground that mistakes had crept in to the

---

1 (253 ITR 341)

2 (356 ITR 451)

impugned order, inasmuch as the ITAT had not taken into consideration that on the basis of the material on record which was submitted before the ITAT, the question of non-genuineness of the transactions did not arise and the finding that the suppliers are non-existent was incorrect, and that the ITAT had erred in holding that identity, genuineness and creditworthiness of the suppliers was not established. In the aforesaid Miscellaneous Application, the Appellant-Assessee categorically raised the contention that the AO in the show-cause notice dated 9th December 2022 had never mentioned that physical verification of the parties was carried out, and this aspect was brought up for the first time in the assessment order which was passed by the AO on 23rd December 2022. The Appellant-Assessee, therefore, contended that it never had an opportunity to address this aspect of the matter and it is well-settled law that any addition made to the total income without providing an opportunity to an assessee to rebut or substantiate its claim, goes to the root of the matter, and hence must be disregarded. Various other contentions were raised in the aforesaid Miscellaneous Application.

x. However, the ITAT by its order dated 13th October 2025, dismissed the Miscellaneous Application filed by the Appellant-Assessee on the ground that the order which was sought to be rectified by the Appellant-Assessee, was beyond the period of six months from the end of the month from which the order was passed, as the impugned order was passed on 13th August 2024 and the Miscellaneous Application had been filed on 9th April 2025. In view thereof, the ITAT held that the Miscellaneous Application filed by the Appellant-Assessee was barred by limitation and therefore, not maintainable, and even on merits it held

that the Appellant-Assessee was seeking to review the order of ITAT, which was not justified.

xi. Being aggrieved by the order dated 13th October 2025 passed by the ITAT on the Miscellaneous Application filed by the Appellant-Assessee, the Appellant-Assessee filed Writ Petition (L) No. 35160 of 2025 before this Court assailing the aforesaid order passed with regard to the Miscellaneous Application filed by the Appellant-Assessee before the ITAT. In the writ petition, a co-ordinate bench of this Court by its order dated 1st December 2025 held that the ITAT had misdirected itself when it held that the rectification application filed by the Petitioner therein (the Appellant-Assessee) was barred by law of limitation, and held that the same was clearly filed within time. On merits, the co-ordinate bench of this Court had held that it would be in the interest of the Petitioner therein (the Appellant-Assessee) to canvass all the grounds raised in that writ petition in the appeal filed challenging the order. Relevant paragraphs of the order of the co-ordinate bench dated 1st December 2025 are reproduced below:

> "9. For all these reasons, we are clearly of the view that the ITAT misdirected itself when it held that the Rectification Application filed by the Petitioner was barred by the law of limitation. It was clearly filed within time.
>
> 10. Having said so, one still has to examine whether this Writ Petition ought to be entertained and the matter be remanded back to the ITAT to hear the Rectification Application afresh. Having heard Mr.Pardiwalla, the learned senior counsel appearing on behalf of the Petitioner, as well as Mr. Gupta, learned advocate appearing on behalf of the Revenue, we are of the view that since the Petitioner has already filed Income Tax Appeal No.753 of 2025 challenging the original order passed by the ITAT dated 10th December 2024, we need not send the aforesaid Rectification Application back to the ITAT. We find that the interest of the Petitioner would be adequately protected if he is permitted to canvass all the grounds raised in the present Petition pertaining to the merits of the matter in the appeal filed challenging the original order.
>
> 11. In view of the aforesaid facts, we dispose of the above Writ Petition by clarifying that all the grounds raised in the above Petition on the merits of the

> matter are kept open to be agitated by the Petitioner in the Appeal filed by him challenging the order dated 10th December 2024.
>
> 12. The Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs."
>
> (emphasis supplied)

4. It is in the backdrop of the aforesaid facts that the learned Counsel for the Appellant-Assessee Mr. Kakkad has submitted that the questions of law raised in the present appeal need to be admitted as they are substantial questions of law. The primary thrust of the arguments of Mr. Kakkad is that action of the AO was contrary to the mandate of Section 144B of the Act, wherein it has been specifically provided in sub-section (xii) that the assessment unit shall, after taking into account all the relevant material available on record, prepare in writing a show-cause notice stating the variations prejudicial to the interest of the assessee, proposed to be made to the income of the assessee, and call upon the assessee to submit as to why the proposed variation should not be made, and serve such show-cause notice on the assessee through the National Faceless Assessment Centre ('NFAC'). He further submitted that the standard operating procedure of issue of show-cause notice under Section 144B(6)(xi) of the Act also provides specific format of show-cause notice to be issued. For ease of reference, the provisions of Section 144B(xii) of the Act and the standard operating procedure prescribed under Section 144B(6)(xi) of the Act are reproduced below:

> "Section 144b(1)(xii) of the Act :
>
> **144B. (1)** Notwithstanding anything to the contrary contained in any other provision of this Act, the assessment, reassessment or recomputation under sub-section (3) of section 143 or under section 144 or under section 147, as the case may be, with respect to the cases referred to in sub-section (2), shall be made in a faceless manner as per the following procedure, namely:—

…

(xii) the assessment unit shall, after taking into account all the relevant material available on the record, prepare, in writing,—
(a) an income or loss determination proposal, where no variation prejudicial to assessee is proposed and send a copy of such income or loss determination proposal to the National Faceless Assessment Centre; or
(b) in any other case, a show cause notice stating the variations prejudicial to the interest of assessee proposed to be made to the income of the assessee and calling upon him to submit as to why the proposed variation should not be made and serve such show cause notice, on the assessee, through the National Faceless Assessment Centre;

Section 144B(6)(xi)

(6) For the purposes of faceless assessment—

(xi) the Principal Chief Commissioner or the Principal Director General, as the case may be, in-charge of the National Faceless Assessment Centre shall, with the prior approval of the Board, lay down the standards, procedures and processes for effective functioning of the National Faceless Assessment Centre and the units set up, in an automated and mechanised environment.

Standard Operating Procedure (SOP) for Assessment Unit (AU), Verification Unit (VU), Technical Unit (TU) and Review Unit (RU) under the Faceless Assessment provisions of Section 144B of the Income-tax Act.

N. Process of Assessment

N.l Show Cause Notice (SCN) shall be issued in the prescribed format (Annexure AU-7), in all cases where any variation prejudicial to the assessee is proposed –

N.1.1 SCN shall be drafted after conduct of all necessary enquiry/verification and collection of relevant information.

N.1.2 SCN should contain:

N.1.2.1 Complete description of the issues involved;

N.1.2.2 Details of dates of all notices/opportunities given;

N.1.2.3 Details of dates of compliance/non-compliance of the assessee;

N.1.2.4 Summary of all submissions of the assessee, to demonstrably reflect application of mind and consideration of all submissions;

N.1.2.5 Specific Information/material proposed to be used against the assessee;

N.1.2.6 Variations proposed on the basis of reasonable inferences drawn.

N.1.3 To ensure adherence to the principles of natural justice and reasonable opportunity to the assessee, timelines to be given for obtaining response to the SCN shall be:

N.1.3.1 Response time of 7 days from the issue of SCN.

N.1.3.2 Response time of 7 days may be curtailed, keeping in view the limitation date for completing the assessment.

5. It is, therefore, the submission of Mr. Kakkad that this procedure was not followed by the AO prior to the passing of the assessment order dated 23rd December 2022, and the same is contrary to the mandate of Section 144B of the Act. He therefore submitted that the assessment order itself was erroneous, and since the jurisdictional issue on non-compliance of the mandate of Section 144B of the Act was not decided by the ITAT, either in the impugned order, or in the order dated 13th October 2025 dismissing the Miscellaneous Application of the Appellant-Assessee, the same goes to the root of the matter and thus, this jurisdictional issue itself needs to be decided at its very threshold. He further submitted that even otherwise on merits, the Appellant-Assessee had furnished documents which were generated by the suppliers of the Appellant-Assessee. which included GST returns filed by the suppliers, tax paid by the suppliers and also that the payments that were made to the suppliers through banking channels, which go to prove the genuineness of the transactions, which in fact was not appreciated by the ITAT. He therefore submitted that the impugned order was passed on an erroneous interpretation of the facts and law, and hence, the findings of the ITAT were perverse to that extent. It was, therefore, his submission that the impugned order had failed to take into consideration that the Appellant-Assessee had no control about the whereabouts of the suppliers, and merely because physical verification of the suppliers never took place, which was never put to the

Appellant-Assessee, the ITAT by way of impugned order, ought not to have discarded the documentary evidence placed before it to come to the conclusion that the genuineness and creditworthiness of the transactions was not proved. He therefore submitted that considering that the very jurisdictional issue regarding the non-compliance of the provisions of Section 144B of the Act had not been decided by the ITAT by its impugned order, the aforesaid matter needs to be remanded back to the ITAT to give its findings on the aforesaid issue and also on all other issues regarding the genuineness/creditworthiness of the transactions which the Appellant-Assessee had entered into with its suppliers.

6. *Per contra*, Mr. Gupta appearing on behalf of Revenue vehemently opposed the submissions as made on behalf of learned counsel on behalf of the Appellant-Assessee and submitted that the impugned order passed by the ITAT is a well- reasoned order, passed on a complete appreciation of the evidence on record. He further submitted that the jurisdictional issue under Section 144B of the Act was never raised by the Appellant-Assessee before ITAT, and hence the Appellant-Assessee could not raise this issue for the first time before this Court. He therefore submitted that the non-consideration by the ITAT of the jurisdictional issue was justified, as the Appellant-Assessee had never raised the same before the ITAT. It was, hence, his submission that the remand of the matter to the ITAT to decide the jurisdictional issue would not be justified in the facts of the present case, and the appeal deserves to be dismissed.

7. We have heard learned counsel for the parties and perused the record, the impugned order and relevant sections of the Act. We find much substance in

the arguments advanced on behalf of the Appellant-Assessee that the very jurisdictional issue regarding non-compliance of the provisions of Section 144B of the Act, which goes to the very root of the matter, has not been decided by the ITAT in its impugned order, and also in the order dated 13th October 2025 dismissing Miscellaneous Application filed by the Appellant-Assessee. We are further of the view that the contention as sought to be advanced by the learned counsel on behalf of the Revenue that no grounds of appeal were raised or no submission was made by the Appellant-Assessee insofar as the jurisdictional issue was concerned before the ITAT, deserves to be rejected inasmuch as in the Miscellaneous Application filed by the Appellant-Assessee against the impugned order of the ITAT, the Appellant-Assessee had specifically raised the aforesaid ground. The relevant paragraph of the Miscellaneous Application filed by the Appellant-Assessee is reproduced below:

> "e. It is a matter of record that the Respondent in his show cause notice had never mentioned that physical verification of the parties was carried out. This aspect was brought out in the assessment order for the first time. The Applicant therefore submits that it never had an opportunity to address this aspect of the matter. It is settled law that any addition made to the total income without providing opportunity goes to the root of the matter and must thus be disregarded as being held by the Hon'ble Bombay High Court in case of H.R.Mehta Vs. ACIT (2016)387 ITR 561 (Bombay). The Applicant most respectfully submits that the Tribunal has failed to appreciate this aspect of the matter."

8. We are also of the view that in the order dated 1st December 2025 passed by the co-ordinate bench of this Court, which we have reproduced above in paragraph no. 3(xi) this Court had specifically allowed the Appellant-Assessee to canvass all the grounds raised in the said writ petition pertaining to the merits of the matter in the appeal, which is the present appeal challenging the impugned order. Considering the aforesaid, we are of the view that the very jurisdictional

issue, which as rightly submitted by the Appellant-Assessee, goes to the root of the matter, needs to be adjudicated upon by the ITAT, and a finding in that regard needs to be given by the ITAT. Even though in the decisions of **CIT Vs. Jhabua Power Limited**[3] and **Ashish Estates & Properties (P) Ltd. Vs. CIT**[4], it has been held that a jurisdictional issue which goes to the root of the matter can be raised for the first time before the High Court, we are of the view that the same had been raised by the Appellant-Assessee before the ITAT, as held above, and no findings in respect thereof have been rendered by the ITAT.

9. Even otherwise, on merits, the ITAT was required to consider and appreciate the documentary evidence as sought to be produced by the Appellant-Assessee to prove the genuineness and creditworthiness of the transactions, and hence an opportunity to appreciate the aforesaid evidence in its entirety needs to be given to the Appellant-Assessee. We are therefore of the view that the impugned order of the ITAT dated 10th December 2024, hence is required to be set aside considering the jurisdictional issue raised by the Appellant-Assessee. The same goes to the root of the matter and has to be adjudicated.

10. In the aforesaid circumstances, the appeal is allowed on the re-framed question of law (supra).

(AARTI SATHE, J.) (G. S. KULKARNI, J.)

---

3 (2013) 37 Taxmann.com 162 (SC)

4 (2018) 96 Taxmann.com 305 (Bombay)