IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA (SMC) BENCH, AGRA

BEFORE : SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

ITA No. 475/Agr/2026
Assessment Year: 2019-20

Naresh Chandra Khattar, 90, Bharatpur House, Agra-282002.	**Vs.**	ITO, Ward 1(1)(2), Aayakar Bhawan, Sanjay Place, Agra.
PAN : AGWPK1089R		
(Appellant)		**(Respondent)**

Assessee by	Sh. Sahib P. Satsangee, CA
Department by	Sh. Anil Kumar, Sr. DR

Date of hearing	06.08.2026
Date of pronouncement	16.10.2026

ORDER

PER : BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER:

This appeal is directed against the impugned order dated 15.05.2026 passed in appeal No. NFAC/2018-19/10341677 by the ld. Commissioner of Income Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the "CIT(A)] u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") for the A.Y. 2019-20, wherein ld. CIT(A) has dismissed assessee's appeal.

2. In this case, the assessee filed his return of income for the year under consideration on 03.08.2019, declaring total income at Rs.8,70,780/-. A Search & Seizure action u/s 132 of the Act in the case of Omaxe Group along with various office and residential premises was conducted on 14.03.2022 by the Directorate of Investigation of the Income Tax Department. During the search & seizure action in the case of Omaxe Group, the AO noted that a Hard Disk was seized from 14, Local Shopping Centre, Kalkaji, New Delhi (Office of Omaxe Limited) wherein data of the unaccounted transaction undertaken by the Omaxe Group entities were found to be recorded in the MAIN REPORT Excel Files which contained- (A) the Main Report Files containing only the unaccounted Cash Transactions pertaining to various companies of Omaxe Group and (B) the amounts mentioned in the MAIN REPORT Excel Files were suppressed by a factor of 100 i.e. to arrive at the actual amount, the value given in the sheet is to be multiplied by 100. In the said report, the AO noted that name of the assessee appeared and the assessee had provided the following to the Omaxe Group in form of Unaccounted Cash:

a. Rs. 7,58,600/- in Unaccounted Cash for project 'India Trade Centre' at Greater Noida.

2.1 On the basis of the above information, notice u/s. 148 of the Act dated 31.03.2023 was issued to the assessee. The AO issued notice u/s. 142(1) of the Act and the assessee in response to the said notice denied having made cash payment of Rs.7,58,600/- during the year. The reply of the assessee as extracted in the assessment order is reproduced as under :

> "Your honour in the impugned notice alleged that the assessee has paid cash amounting to Rs. 7,58,600 as on-money to Omaxe Group during the year under consideration. In this regard, it is respectfully submitted that the perusal of the statement of account in the books of M/s Omaxe Ltd. (filed before the Assessment Unit Page 35 of the submission dated 25.01.2023) will reveal that adjustment of the amounts paid by the allotees made towards earlier allotment has been made by the Company and no payment was made by the allottees during the year under consideration. It is respectfully submitted that the allotees. assessee and his wife, have not paid any cash towards on-money to Omaxe Group during the year under consideration i.e. F.Y. 2018-19 relevant to the A.Y. 2019-20, but in fact subsequently received refund of the excess payment made to them in the earlier years."

2.2 However, the AO did not accept the same and added the sum of Rs.7,58,600/- u/s. 69 read with section 115BBE of the Act.

3. Aggrieved with the said order, the assessee filed an appeal before the learned CIT(A), who dismissed the appeal of the assessee.

4. Aggrieved with the said order, the assessee is in appeal before us on the following grounds of appeal :

1. "Because on the facts and in law, the satisfaction purportedly recorded by the ld. Assessing Officer under clause (iv) of Explanation 2 to Section 148 of the Act was not preceded by the prior approval of the ld. PCIT. The reassessment proceedings are *void ab initio* and liable to be quashed.

2. Because on the facts and in law, the approval granted by the ld. PCIT under Section 151 of the Act is vitiated with non-application of mind, inasmuch as (a) there is a material discrepancy between the quantum of escaped income recorded in the Approval form and that mentioned in the annexure attached thereto; and (b) the reasons recorded by the ld. AO do not specify either the relevant assessment year of escapement or the nature of alleged payment. The notice issued under Section 148 and the consequent reassessment are therefore without jurisdiction and liable to be quashed.

3. Because the approval under Section 148B of the Act granted by ld. Addl. CIT, Range-1(1), Agra vide letter F. No. 3767 dated 27.03.2024 is a single composite sanction issued in respect of multiple assessees, accorded mechanically without any independent application of mind to the Appellants case. The impugned assessment order passed is *void ab initio* and liable to be quashed.

4. Because neither (a) a complete and unredacted copy of the Main Report Excel file, (b) any statement of any official, director or employee of the Omaxe Group recorded under section 132(4) or section 131 of the Act, nor (c) the certificate under section 65B(4) of the Indian Evidence Act, 1872 was at any stage been furnished to the Appellant rendering the proceedings violative of principles of natural justice.

5. Because an electronic record extracted from the possession of a third party requires authentication by a competent witness, and the right to cross-examine such witness on the genesis, custody, authorship and contents of the seized record is integral to the principles of natural justice, a right denied to the Appellant throughout the proceedings.

6. Because the Learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 7,58,600/- made by the Learned Assessing Officer under section 69 read with section 115BBE of the I.T.Act,1961 (the Act) ignoring that the very jurisdictional pre-condition for the application of section 69 of the Act that, that the assessee must have been found to have made investments in the previous year relevant to the Assessment Year in question is patently absent in the facts of the present case.

7. Because the entire consideration in respect of the original commercial space at "Omaxe Connaught Place", Beta-II, Greater Noida (Unit No. 9, First Floor, admeasuring 633.42 sq. ft.) aggregating to Rs. 34,49,203/- was paid by the Appellant jointly with his wife Smt. Achla Khattar (PAN : ABRPK3480C) entirely through account-payee banking instruments during Financial Years 2010-11 and 2014-15. The learned Authorities below have erred in not appreciating that no fresh outflow whatsoever, whether by way of cash or otherwise, took place during F.Y. 2018-19.

8. Because the cancellation of the original booking and the substitution thereof by Unit No. ITC/Fifteenth/Premier Suite/1550 (551.25 sq. ft.) in the India Trade Centre project at joint allottees request vide letter dated 23.03.2018 was a mere internal contractual re-adjustment of consideration already paid in earlier years, which culminated in a net refund of Rs. 4,34,664/- to the Appellant and his wife by through six account-payee cheques aggregating to the said sum during F.Y. 2019-20, a transaction yielding a net refund cannot on any construction, constitute an investment within the meaning of section 69 of the Act.

9. Because the seized "Main Report" Excel file is, qua the Appellant, in the nature of a "dumb document", and no addition can be sustained upon such an entry in the absence of independent corroborative material.

10. Because the Learned Authorities below failed to demonstrate, through any cogent independent enquiry that (a) the entry in question in fact pertains to the Appellant and not to some person of similar name, (b) the entry represents an actual receipt of cash by the Omaxe Group and not a mere internal projection, target or speculative working, and (c) the alleged receipt is referable to F.Y. 2018-19.

11. Because the entire addition of Rs. 7,58,600/- under section 69 of the Act has been impermissible fastened in the hands of the Appellant despite joint booking by the Smt. Achla Khattar (PAN : ABRPK3480C), wife of the Appellant and an independent assessee, who had contributed Rs. 16,90,000/- (approximately 49%) of the recorded consideration of Rs. 34,49,203/- through her own banking instruments.

12. The Appellant craves leave to add, alter, amend, modify, delete and/or substitute all or any of the foregoing Grounds of Appeal at or before the hearing of the present appeal."

5. At the outset, the learned AR referring to ground no. 2 of the appeal submitted that in the proforma seeking approval u/s 151 of the Act, in column no. 7 – the quantum of income which has escaped assessment is mentioned – 0, (placed at page no 69 of the paper book) which does not match with the quantum of this escapement mentioned in the annexure thereto (placed at page no. 71-72 of the paper book). Further, it was submitted that the reasons recorded by the AO do not specify either the relevant assessment year of escapement or the nature of the alleged payment. In view these facts the Ld. AR submitted that the approval given by the Ld. PCIT was not proper and therefore the notice u/s 148 of the Act was without jurisdiction and was liable to be quashed.

6. On the other hand, learned Sr. DR supported the orders of the authorities below.

7. We have heard both the parties and perused the material on record. The extract of the seized document relied upon by the AO in the assessment order for making the addition of Rs. 7,58,600/- which is also referred in the annexure to the proforma for the approval in respect of the reasons recorded for the reopening of the assessment is reproduced as under:

BOOK	DATE	MONTH	CASH SHEET NO.	CURRENCY	ERP I.D.	PROJECT AREA	PROJECT NAME
CD	27-06-2008	Jun-2008			ITC/1964	Greater Noida	India Trade Centre
UNIT NO.	**CUSTOMER**	**AMOUNT**	**PROJECT HEAD**	**INFLOW GROUP**	**NATURE OF RECEIPT**	**GROUPING (NITIN)**	**GROUPING (VINIT)**
ITC/FIFTEENTH /PREMIUR SUITE/1550	Naresh Chandra Khattar & Achla Khattar	7586.00	MUKESH GOYAL	Customer Inflow	Customer Inflow	COMME RCIAL	ITC

7.1 On perusal of the above seized document we notice that the date mentioned there in the seized document is 27.06.2008 relating to month of June 2008. We also notice that in the annexure to the proforma for the approval in respect of the reasons recorded for the reopening of the assessment (placed at page no. 71-72 of the paper book), the AO has not given any finding as to which assessment year the above escapement relates to. Further, as noted above, the assessee had submitted during the assessment proceedings that the perusal of the statement of account in the books of M/s Omaxe Ltd. (filed before the Assessment Unit Page 35 of the submission dated 25.01.2023) revealed

that adjustment of the amounts paid by the allotees made towards earlier allotment was made by the Company and no payment was made by the allottees during the year under consideration. This fact has not been contradicted by the AO by any material on record to indicate that the cash payment of Rs. 7,58,600/- based on the above seized document was paid during the year. Therefore, neither in the annexure to the proforma for the approval in respect of the reasons recorded for the reopening of the assessment, the basis for the escapement of Rs. 7,58,600/- to this assessment year is spelt out nor any such basis has been given in the assessment order. In absence of the same the addition of Rs. 7,58,600/- in this case is not sustainable for the present assessment year and accordingly, we delete the addition of Rs.7,58,600/-. Ground No. 6 of the appeal is allowed. In view of ground No. 6 of appeal, being allowed, the other grounds of appeal become academic and are left open in this case.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 16/10/2026.

Sd/-	***Sd/-***
(SUNIL KUMAR SINGH)	**(BRAJESH KUMAR SINGH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 16/10/2026
*aks/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra