

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH AT KOLKATA**

Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No(s). 360/KOL/2025
Assessment Year(s) 2016-17**

DCIT, Circle-11(1), Kolkata	Vs.	Anushikha Investments Private Limited
<i>(Appellant)</i>		<i>(Respondent)</i>
PAN: AACCA5568N		

Appearances:

Department represented by : Anup Biswas, CIT, DR.

Assessee represented by : N.S. Saini, AR and
Priyanka Salarpuria, AR.

Date of concluding the hearing : 17-March-2026

Date of pronouncing the order : 07-April-2026

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2016-17 dated 11.08.2023.

1.1 The Registry has informed that the appeal is barred by limitation by 477 days. The Revenue has filed a petition for condonation of delay explaining the reasons that the order of the Ld. CIT(A) was received in the office of the Ld. PCIT on 11.08.2023. On 22.07.2024 the ASR was submitted to the office of the Ld. PCIT through proper channel. On 12.08.2024 the certificate for filing the second appeal was received and on 19.02.2025 the second appeal was filed before the Hon'ble Tribunal after collecting the necessary hardcopies of documents/paper/details required for filing the appeal. The Ld. DR stated that the appeal could



not be filed on or before the due date due to an immense work load relating to assessment, penalties and writ petition filed by the various assessee in the Calcutta High Court against the order u/s 148A(d) and notice u/s 148, as well as collecting and arranging the required documents/files for the 2nd appeal. The Ld. DR requested the Bench to condone the delay of 498 days in filing appeal before the Hon'ble ITAT, Kolkata for the sake of substantial justice. After perusing the same, we are satisfied that the Revenue had a reasonable and sufficient cause and was prevented from filing the instant appeal within the statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication.

2. The Revenue is in appeal before the Tribunal raising the following grounds of appeal:

"1) Whether on the facts & circumstance of the case and in law, the Ld. CIT(A) was erred in deleting the addition of Rs. 13,83,00,000/- u/s 68 of the Act on account of unexplained unsecured loan and addition u/s 69C of Rs. 88,18,821/- on account of disallowance of corresponding interest expenses on such unexplained loan merely relying on paper submission of the assessee ignoring the contention of the AO based on enquiry and detailed analysis of the financial statement/bank account statement in respect of the respective loan creditor?"

2) Whether on the facts & circumstance of the case and in law, the Ld. CIT(A) was erred in holding merely on the basis of paper submission that the assessee successfully discharged its onus of proving identity & creditworthiness of the loan creditors and genuineness of the loan transactions?"

3) Whether on the facts & circumstance of the case and in law, the Ld. CIT(A) was erred in ignoring the surrounding circumstance of case as logically & elaborately brought on record by the AO?"

4) Whether on the facts & circumstance of the case and in law, the Ld. CIT(A) was erred in ignoring the non-existence of the respective loan creditor companies at their given addresses and also ignoring non-compliance of the respective loan creditors in response to the summons u/s 131 of the Act?"



5) The appellant craves leave to make any amend, addition, alternation, modification etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings.”

3. Brief facts of the case are that the assessee is a domestic private NBFC company, stated to be engaged in the business of granting loans and advances. Apart from share trading, in the current year there was a commodity related transaction in Sugar as well. The assessee filed its original return of income for the AY 2016-17 on 17.10.2016 declaring total loss of ₹12,43,09,479/- which was processed u/s 143(1) of the Act, accepting the returned income. Subsequently, the return was selected for Scrutiny through CASS (Computer Assisted Scrutiny Selection) for various reasons mentioned in the Assessment order. Statutory notices u/s 143(2) and 142(1) of the Act were issued to the assessee. Subsequently, the assessment order was passed u/s 143(3) of the Act, determining the total income of ₹14,71,18,821/- after making additions/disallowances on account of the unsecured loans deemed as unexplained cash credits u/s 68 of the Act amounting to ₹13,83,00,000/- and interest paid on such loans treated as unexplained expenditure u/s 69C of the Act amounting to ₹88,18,821/-. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A), who noted that the assessee had successfully discharged its onus of proving the identities of the loan creditors, which in the instant case were duly registered with the Ministry of Corporate Affairs, having PANs and had filed return of income as well. Further creditworthiness of the transactions stood proven with the fact that all these loan transactions had been carried out through the banking channel and sufficient funds were available with the loan creditors to explain the amount of loan given and the genuineness of the transaction was proved with the fact that the assessee company was carrying out regular money



lending activity and the loan was obtained in the regular course of business at commercial rate of interest which was also repaid at a later date in the subsequent year, interest was paid on the loans and tax at source had been deducted. Therefore, the Ld. CIT(A) failed to find any justification for the action of the Assessing Officer (hereinafter referred to as Ld. 'AO') in invoking the provisions of Section 68 of the Act. The Ld. CIT(A) also following the ratios laid down by the coordinate Benches of the Tribunal, High Courts and Apex Court on the concerned issue and held that the loan transactions could not be considered as cash deposits u/s 68 of the Act and thus, the Ld. AO's order was not sustainable to that extent. Consequently, the interest paid on these loans was also held to be allowable as a deduction from business profits. Accordingly, the AO was directed to delete the additions of ₹13,83,00,000/- and ₹88,18,821/- made u/s 68 and 69C of the Act and allowed the grounds No. 1 to 3 and partly allowed the appeal of the assessee.

4. Aggrieved with the order of the Ld. CIT(A), the Revenue has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made have been examined. The Ld. DR stated that the addition related to interest, unexplained cash credits and interest thereon amounting to ₹13.8 Crore from 37 NBFCs. The Ld. AO issued notices to 6 entities on a test check basis and thereafter summons u/s 131 of the Act were issued to 17 companies for personal appearance of the directors but the notices could not be served by Post. The Inspector was deputed but he could not find the companies at the given addresses. However, replies along with copy of bank statements were received in response to the initial



notices issued u/s 133(6) of the Act in some cases but the summons u/s 131 of the Act could neither be served nor the Inspector could find the premises. The Ld. AO analysed the details of the 17 companies and found them to be shell companies with minimum profit and only giving loans and share capital to the different companies. The Ld. DR also stated that part of the loan was repaid during the year and our attention was drawn to page 44 of the assessment order in which the Ld. AO relied upon the decision of the Hon'ble Delhi High Court in the case of **Commissioner of Income Tax-VI Vs. M/s. T.S. Kishan & Co. Ltd. [ITA No 1270/2011]** and added the loans and also the interest on such loans. The Ld. DR relied upon the order of the Ld. AO and requested that the same may be upheld.

6. The Ld. AR on the other hand, stated that the appeal of the Department is delayed by 409 days and opposed the application for condonation of delay. On the merits he has stated that the notices issued u/s 133(6) of the Act were duly complied with and out of 7 companies, 3 parties filed the reply. The Ld. AR gave an example of one of the managing directors of the leading industrial house and stated that the summons would not be complied as the director could not be expected to appear in response to all the summons. The Ld. AR relied upon the decision of the Hon'ble Gujarat High Court in the case of **Principal Commissioner of Income-tax vs. Ambe Tradecorp (P.) Ltd. [2022] 145 taxmann.com 27 (Gujarat)** dated 05.07.2022 and stated that since the loans had been repaid, there was no justification for any addition as the major amount had been paid in this year and the rest was paid in the subsequent year. It was stated that it cannot be practically expected that everyone will attend to all the notices issued, otherwise none of the companies could work. Our attention was also



drawn to page 75 of the Ld. CIT(A)'s order in order to state that the companies had sufficient funds. He stated that from pages 112 to 124, the Ld. CIT(A) has given detailed finding and detailed observation and from pages 14 to 72 of the Ld. CIT(A)'s order, the rebuttal details were also filed. The Ld. AR also relied upon page 77 of the Ld. CIT(A)'s order.

7. A query was raised from the Bench as to how the income was computed as per the computation shown in the assessment order in which despite adding a sum of ₹14,71,18,821/- to the returned loss of ₹12,43,09,479/-, the total income has been computed at ₹14,71,18,821/-, which is incorrect.

8. The Ld. AR stated that this was an error in the computation which has not been corrected. The Ld. AR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld.

9. We have considered the facts of the case, the rival submissions made and the documents filed. None of the directors of the investor companies could be produced before the Ld. AO for examination. The assessment was taken up for examining the huge business loss which had occurred on account of transactions. However, the details of the same are not mentioned in the assessment order. The creditors responded to the notices u/s 133(6) of the Act. However, it is incomprehensible as to how the replies could be sent when the ITI could not trace any of the companies at the given addresses nor the directors had appeared in response to the summons issued. It is a very fallacious argument of the Ld. AR that none of the companies could work if the director had to respond to each and every summons and they cannot be practically expected to attend to all the notices issued. However, the fact remains that these creditors were all private limited companies and



it has been judicially held that in the case of private limited companies, a greater onus lies on the assessee to explain and justify the source of credits as it is within the knowledge of the assessee only regarding the whereabouts of the creditors. Despite the summons not being served upon the directors nor the directors appearing and the creditors not being traceable, mere furnishing of the details that the claim that the creditors had sufficient funds of their own to advance the loans does not justify the genuineness of the transactions, more so when the Ld. AO has stated that the creditors were shell companies. However, the Ld. AO has also not apparently brought out the correct facts of the case for which the assessment was taken up for scrutiny as the details of business loss shown in the return are not mentioned anywhere in the assessment order. This is a case where there is not only error in the computation of income and raising of demand but there is also non-compliance by the assessee as the directors could not be produced. Therefore, in the interest of justice and fair play to both the assessee as well as the Revenue, the order of the Ld. CIT(A) is hereby set aside as the Ld. CIT(A) at least should have called for a remand report from the Ld. AO and could have asked the assessee to produce the directors of the creditor companies for examination before the Ld. AO so as to establish the identity, the creditworthiness and the genuineness of the transactions. We are also conscious of the fact that Ld. DR has relied upon the decision of Hon'ble Gujarat High Court in the case of **Ambe Tradecorp (P.) Ltd.** (supra) in support of the claim that since the amount was repaid, the addition was not liable to be made. However, the fact remains that the Hon'ble Jurisdictional High Court in the case of **Pr. CIT Vs. Swati Bajaj** reported in [2022] 139 taxmann.com 352 (Cal)/446 ITR 56 (Cal) have given a categorical finding relating to the



present scenario of shell companies and the fact that the ITI could not trace out the whereabouts of the creditors, the facts being different from the case relied upon by the assessee, the deletion made by the Ld. CIT(A) without granting an opportunity to the Ld. AO to examine the facts of the case as presented before him was not justified. Therefore, in the interest of justice and fair play we hereby set aside the order of the Ld. CIT(A) and remand the issue to the Ld. AO to frame the assessment *de novo* after examining the reasons for which the case was selected for scrutiny. The assessee is also directed to produce the directors of the companies for examination before the Ld. AO, who shall grant an opportunity of being heard, examine the directors and give a categorical finding regarding the identity, the creditworthiness of the creditors and the genuineness of the transactions and thereafter the assessment shall be done *de novo* after examining the complete facts of the case and as per law. Hence, the grounds of appeal raised by the Revenue are partly allowed for statistical purposes.

10. In the result, the appeal filed by the Revenue is partly allowed for statistical purposes.

Order pronounced in the open Court on 7th April, 2026.

Sd/-

[George Mathan]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 07.04.2026

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **DCIT, Circle-11(1), Kolkata.**
2. **Anushikha Investments Private Limited, 5th Floor, Manglam-A, 24 Hemant Basu Sarani, Kolkata, West Bengal, 700001.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata