

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI ANIKESH BANERJEE (JUDICIAL MEMBER)**

**ITA No. 8396/MUM/2025
Assessment Year: 2023-24**

Aspri Spirits Private Limited,
1203 Riana Business Centre,
Kanakia Wall Street Andheri
East, Chakala, Mumbai -
400093, Maharashtra.

Vs.

National Faceless Appeal Centre
(NFAC) / DCIT 4(1)(1),
Room No. 640, Aaykar Bhavan,
Maharishi Karve Marg, Mumbai -
400020, Maharashtra.

**PAN NO. AAECA 8483 E
Appellant**

Respondent

**ITA No. 8643/MUM/2025
Assessment Year: 2023-24**

Ms. Pragya Jat,
Asst. Commissioner of Income
Tax, Circle-4(1)(1), Mumbai,
Room No. 642, 6th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai - 400 020,
Maharashtra.

Vs.

Aspri Spirits Pvt. Ltd.,
1203 Riana Business Centre,
Kanakia Wall Street Andheri-
East, Chakala, Mumbai -
400093, Maharashtra.

PAN NO. AAECA 8483 E

Appellant

Respondent

Assessee by : Shri Vimal Punmiya
Revenue by : Shri Rajesh Kumar Yadav (CIT- DR)

Date of Hearing : 16/04/2026
Date of pronouncement : 19/05/2026



ORDER

PER OM PRAKASH KANT, AM

These cross appeals by the assessee and Revenue are directed against order dated 09.10.2025, passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for Assessment Year [in short ‘the AY’] 2023-24.

2. The grounds raised by the assessee in its appeal are reproduced as under:

“1. On the facts and circumstances of case and in law, the Ld. CIT has erred in confirming the Assessment Order passed by the Ld. AO under Section 143(3) r.w.s. 144B of Income Tax Act which is passed against the principal of natural justice.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT has erred in making an Adhoc disallowance of Rs. 50,00,000/- out of the total expenses of Rs. 39,04,04,000/- for the expenses paid for business promotion on estimation basis.

3. The Appellant craves leave to add amend and or delete any of the above grounds of Appeals.”

3. The grounds raised by the Revenue in its appeal are reproduced as under:

“1. Whether, on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in law in deleting the addition of Rs. 1,07,12,000/- made by the Assessing Officer u/s 68 of the Income-tax Act, 1961 towards unsecured loan received from Sunrise Petroleum Services, by holding that identity, creditworthiness and genuineness were proved, despite the AO's finding that the lender was a loss-making entity and source of funds remained unverified?

2. Whether the Ld. CIT(A) erred in law in allowing the deduction of interest expenditure of Rs.11,19,013/- claimed by the assessee u/s 37(1) after accepting the unsecured loan as genuine, when the Assessing Officer had held that the assessee failed to prove the utilization of the loan for business purposes and the loan itself was unverified?



3. Whether, on the facts and in law, the Ld. CIT(A) was correct in deleting the addition of Rs.54,32,900/- made u/s 68 in respect of trade payables pertaining to M/s ASK Agencies & Investment Pvt. Ltd., when according to the AO the party ledger reflected only advance payment and no outstanding balance, thereby rendering the creditor balance unverifiable?

3.1 Whether, on the facts and in law, the Ld. CIT(A) was justified in deleting the addition by admitting additional evidence in violation of Rule 46A(3) of the Income-tax Rules, without providing an opportunity to the Assessing Officer, as required under Rule 46A(1) of the Income-tax Rules.

4. Whether the Ld. CIT(A) erred in law in deleting the addition of Rs.7,04,77,565/-made u/s 68 of the Income-tax Act towards trade payables in the name of M/s Moet Hennessy India Pvt. Ltd., despite the assessee's failure before the AO to produce confirmations, ITRs, audited financials or complete invoices from the said party, as mandated for proving identity, creditworthiness and genuineness under Section 68?

4.1. Whether, on the facts and in law, the Ld. CIT(A) was justified in deleting the addition by admitting additional evidence in violation of Rule 46A(3) of the Income tax Rules, without providing an opportunity to the Assessing Officer, as required under Rule 46A(1) of the Income-tax Rules.

5. Whether, on the facts and in law, the Ld. CIT(A) was justified in deleting the AO's application of Section 115BBE on additions made u/s 68, despite the AO recording that the assessee failed to discharge the onus under Section 68, and whether CIT(A) erred in concluding that Section 115BBE was not applicable in the case?

6. Whether the Ld. CIT(A) was correct in law in restricting the ad-hoc disallowance to Rs. 50,00,000/- instead of Rs. 3,90,40,400/- (10% of Incentives and Promotion Expenses) made u/s 37(1) by the Assessing Officer on the basis of non-furnishing of invoices, contracts, TDS applicability details and complete supporting documents, without verifying whether the assessee had actually substantiated the genuineness and business purpose of such large-scale expenditure?

7. The appellant craves leave to add, amend, or alter any of the above grounds of appeal before or during the course of hearing, in the interest of justice."

4. Briefly stated, the facts borne out from the record are that the assessee, a private limited company engaged in the business of import, trading and distribution of liquor, filed its return of income for the year under consideration declaring total income of Rs.25,83,98,310/-. The return was selected for scrutiny



assessment and, in the assessment framed under Section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as “the Act”), the Assessing Officer made, inter alia, the following additions/disallowances: (i) addition of Rs.1,07,12,000/- under Section 68 of the Act in respect of unsecured loan received from the proprietary concern of one of the Directors of the assessee-company; (ii) disallowance of interest expenditure amounting to Rs.11,19,013/- under Section 37 of the Act; (iii) addition of Rs.7,59,10,465/- towards trade payables under Section 68 of the Act; and (iv) ad-hoc disallowance of 10% of incentive and promotion expenses amounting to Rs.3,90,40,400/-. Consequently, the total income of the assessee was assessed at Rs.38,51,80,188/-.

5. Aggrieved, the assessee carried the matter in appeal before the learned Commissioner of Income Tax (Appeals) [“Ld. CIT(A)”], who granted substantial relief to the assessee. The additions made under Section 68 in respect of unsecured loans and trade payables, as well as the disallowance of interest expenditure, were deleted. Insofar as the disallowance relating to incentive and promotion expenses is concerned, the Ld. CIT(A) restricted the disallowance to Rs.50,00,000/- as against Rs.3,90,40,400/- made by the Assessing Officer. Being dissatisfied, both the assessee as well as the Revenue are in appeal before the Tribunal.



6. At the outset, one of the principal grievances raised by the Revenue is that the Ld. CIT(A) admitted and relied upon additional evidences in contravention of Rule 46A of the Income-tax Rules, 1962, without affording the Assessing Officer an adequate opportunity to examine or rebut the same. During the course of hearing, both parties fairly conceded that substantial documentary evidences, which were not part of the assessment record, had indeed been furnished before the Ld. CIT(A) and formed the basis of the appellate relief granted to the assessee.

7. We have carefully considered the rival submissions and perused the material available on record. From a perusal of the impugned appellate order, it is evident that the Ld. CIT(A) has extensively relied upon various documentary evidences, including confirmations, bank statements, income tax acknowledgements, financial statements, reconciliations, invoices, delivery challans and other supporting documents furnished by the assessee during appellate proceedings, while deleting the additions made under Section 68 of the Act and while substantially reducing the disallowance of incentive and promotion expenses.

7.1 In respect of unsecured loans received from M/s Sunrise Petroleum Services, the Ld. CIT(A) recorded findings on the basis of fresh evidences relating to the identity and creditworthiness of the lender and genuineness of the transaction, including financial statements, bank statements, Form 16, Form 26AS and confirmations. Similarly, while deleting additions relating to trade



payables standing in the names of M/s ASK Agencies & Investments Pvt. Ltd. and M/s Moet Hennessy India Pvt. Ltd., reliance was placed upon confirmations, income-tax acknowledgements, reconciliations, invoices, delivery challans and banking records furnished during appellate proceedings. Likewise, in relation to incentive and promotion expenses, the Ld. CIT(A) took cognizance of detailed reconciliations, transaction-wise analyses, ledgers and supporting invoices which admittedly were not subjected to examination by the Assessing Officer.

7.2 The scheme of Rule 46A embodies a salutary principle of natural justice. Though the appellate authority possesses powers to admit additional evidence in appropriate circumstances, such power is circumscribed by the statutory obligation to provide the Assessing Officer a reasonable opportunity to examine the evidence so admitted, to conduct necessary enquiries and to furnish rebuttal, if any. Compliance with Rule 46A is not a mere procedural formality but a substantive safeguard intended to preserve fairness in adjudication.

7.3 In the present case, the relief granted by the Ld. CIT(A) is founded substantially upon additional evidences admittedly not examined by the Assessing Officer. The record does not reveal that any effective remand opportunity was granted to the Assessing Officer to verify the authenticity, correctness and evidentiary value of such documents. Once the appellate authority intended to rely upon those materials for reversing the



findings recorded in assessment proceedings, adherence to the mandate of Rule 46A became imperative.

7.4 In our considered opinion, the failure to afford the Assessing Officer an opportunity to examine the additional evidences has resulted in violation of the principles of natural justice and has rendered the impugned appellate findings procedurally unsustainable. At the same time, since the evidences furnished by the assessee may have material bearing on adjudication of the issues involved, the ends of justice would be best served by restoring the entire controversy to the file of the Assessing Officer for fresh consideration.

7.5 Accordingly, we set aside the impugned order of the Ld. CIT(A) on all issues under challenge and restore the matter to the file of the Assessing Officer. The Assessing Officer shall examine the additional evidences furnished by the assessee, conduct such enquiry or verification as may be deemed necessary and thereafter adjudicate the issues afresh in accordance with law after affording adequate opportunity of hearing to the assessee. The assessee is directed to extend full cooperation and furnish all requisite documents and explanations as may be called for by the Assessing Officer during the set-aside proceedings.



8. In the result, the appeals filed by both the assessee and the Revenue are allowed for statistical purposes.

Order pronounced in the open Court on 19/05/2026.

**Sd/-
(ANIKESH BANERJEE)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 19/05/2026

Kunal Kumar, P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai