

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 1976/Ahd/2024  
(Assessment Year:2017-18)

Deputy Commissioner of Income Tax, Circle-2(1)(1), Ahmedabad	Vs.	Krishna Corporation, 101, 1 <sup>st</sup> Floor, ACME Centre, Shrimali Co. Op. H.S. Ltd., Opp. Vadilal House, Navrangpura, Ahmedabad-380009
<b>[PAN No.AARFK0152E]</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by</b> :	Shri Alpesh Parmar, CIT-DR
<b>Respondent by</b> :	Shri Mehul Thakkar, A.R.

<b>Date of Hearing</b>	14.05.2025
<b>Date of Pronouncement</b>	20.05.2025

**ORDER**

**PER: ANNAPURNA GUPTA - AM:**

The present appeal has been filed by the Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals), (hereinafter referred to as “CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi under Section 250 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) dated 04.09.2024 relates to A.Y. 2017-18.

2. The grounds of appeal raised by the Revenue are as under:

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the Addition of Rs. 7,76,63,888/- on account of unexplained cash credit u/s 68 of the Act without appreciating the fact that the assessee failed to provide proper confirmations about the authenticity of the claimed liabilities u/s. 68 of the Act?

2. Whether in the facts of the case and in law, the Ld. CIT(a) erred in deleting the addition of Rs. 10,92,271/- made on account of interest received from income tax refund without appreciating the facts of the case?

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3. *The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.*

4. *It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored?"*

**Ground No. 1 pertains to the issue of deletion of addition made of creditors amounting to Rs. 7,76,63,388/-.**

3. The creditors balances which were so added are

(i) Visatkrupa Enterprise	Rs. 55,11,987/-
(ii) Vijaykumar Bharatbhai Patel	Rs. 39,60,000/-
(iii) Prime Sales Agency	Rs. 6,81,91,901/-
Total	Rs. 7,76,63,388/-.

The balances of these sundry creditors were added by the Assessing Officer for the reason that they had not responded to notices issued by the Assessing Officer under Section 133(6) of the Act.

4. The Ld. CIT(A), however, noted that the assessee had sufficiently discharged its onus of proving the genuineness of these creditors finding that the assessee had filed confirmation from all these parties and had also furnished bank statement reflecting payment made to them in the subsequent year. He accordingly, deleted the addition. His finding in this regard are contain at Para 6 of his order:

***“6. FINDINGS & DECISION***

*I have gone through the assessment order and grounds of appeal. The Ld. AO during the year under consideration has treated certain creditors of the appellant as unverifiable and thus treated it as tool to reduce the tax liability. Aggrieved by said assessment order, the appellant has filed appeal with multiple grounds which are adjudicated as under:*

***Ground 1 and 2***

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*Underlined grounds of the appellant comprises of two issues. (a) addition on account of creditors closing balance (b) taxation of interest on income tax refund. Each issue is dealt with as under:*

***1. Adjustment on account of closing balance of creditors***

*During the assessment proceedings, the Ld. AO had called for details of creditors having more than Rs.10 Lakhs closing balance. The appellant had filed following details in response to the said notice:*

<b>PARTY NAME</b>	<b>AMOUNT</b>	<b>PAN NO.</b>
Ashapura Trading Company	63,16,001.00	COCPP5231E
Electrotherm (India) Ltd.	3,94,44,232.00	AAACE2669L
Janki Sales Corporation	29,08,760.00	CUTPP2959J
Jindal Saw Limited - D.I.	4,77,20,130.00	AABCS7280C
Manav Sales Corporation	27,97,641.00	CNOPP1137Q
Nikita Sales Corporation	62,57,982.00	BYNPP1954L
Prime Sales Agency	68,19,101.00	ALPPT6432R
Visatkrupa Enterprise	55,11,987.00	AQDPP4483B
<b>TOTAL</b>	<b>11,77,75,834.00</b>	

*The appellant also filed full address of above parties along with ledger extract and available confirmations. Thereafter, the ld. AO issued notice U/s 133(6) to 6 parties, and he received response from 3 parties. Thus, he proceeded to treat remaining three parties vis. Visatkrupa Enterprise (Rs.55,11,987/-), Vijaykumar Bharatbhai Patel (Rs.39,60,000/-), Prime sales Agency (Rs.68,19,101/-) as unexplained. Further, it is observed that the Ld. AO has considered closing balance of Prime Sales Agency as Rs.6,81,91,901/- instead of Rs.68,19,101/-. The appellant at all places i.e. in its submission, ledger extract of Prime sales agency and closing balance confirmation of Prime sales agency had mentioned balance of Rs. 68,19,101/- only. Thus, the amount considered by the Ld.AO is erroneous.*

*During the appellate proceedings the appellant submitted that the underlined creditors are genuine. The appellant had filed names, address, PAN, ledger extracts of the creditors and bank statement reflecting payments made to said creditors. The Ld. AO has not considered the submission of the appellant and has merely put force on 133(6) confirmation to hold that the creditors are not genuine.*

*Filing of confirmation is beyond appellant's control and the same shall not be adopted as basis to carry out any adjustment.*

*The party wise details filed are summarised hereunder:*

<i>Name of party</i>	<i>Amount</i>	<i>Documents filed</i>
<i>Jindal Saw Limited</i>	<i>4,77,20,130</i>	<i>• Ledger Extract in appellant's books</i>

		<ul style="list-style-type: none"> <li>• Ledger confirmation from party</li> <li>• Bank statement reflecting payment made in subsequent year</li> </ul>
<i>Visatkrupa Enterprise</i>	55,11,987	<ul style="list-style-type: none"> <li>• Ledger Extract in appellant's books</li> <li>• Ledger confirmation from party</li> </ul> <p><i>Bank statement reflecting payment made in subsequent year</i></p>
<i>Vijaykumar Bharatbhai Patel</i>	39,60,000	<ul style="list-style-type: none"> <li>• Ledger Extract in appellant's books</li> <li>• Ledger confirmation from party</li> </ul> <p><i>Bank statement reflecting payment made in subsequent year</i></p>
<i>Prime sales Agency</i>	68,19,101	<ul style="list-style-type: none"> <li>• Ledger Extract in appellant's books</li> <li>• Ledger confirmation from party</li> </ul> <p><i>Bank statement reflecting payment made in subsequent year</i></p>
<i>Electrotherm India Ltd.</i>	3,94,44,232	<ul style="list-style-type: none"> <li>• Ledger Extract in appellant's books</li> <li>• Ledger confirmation from party</li> </ul> <p><i>Bank statement reflecting payment made in subsequent year</i></p>
<i>Eiffil Construction</i>	2,66,87,600	<ul style="list-style-type: none"> <li>• Ledger Extract in appellant's books</li> <li>• Ledger confirmation from party</li> </ul> <p><i>Bank statement reflecting payment made in subsequent year</i></p>

*The appellant also mentioned that the assessment order do not speak computation of total disallowance of Rs.7,76,63,888/-, therefore it has filed relevant documents for all alleged parties even though the Ld. AO intended to adjust only 3 parties.*

*The contentions of the appellant are considered and found to be acceptable. The Ld. AO has merely proceeded to carry out adjustment without appreciating the fact that material bought from these parties are also subsequently sold/ utilised in a project. Without proving that the fact that underlined material procured is bogus/ never received by the appellant, the underlined purchases cannot be mechanically treated as incorrect that too merely non receipt of confirmation from creditor.*

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The appellant has very well discharged its primary onus to file documents in relation to substantiate the closing balance and the Ld. AO has not provided any remarks on those documents.

In this regard, reliance is also place of following judicial pronouncements:

***Cheil India Pvt. Ltd. Vs ITO Ward 3(3) (ITAT Delhi) [ITA - 6183/Del/2014]***

*Claim cannot be denied if sufficient documents are in hand of AO even though the party does not reply to notice issued u/s 133(6); (even though the party confirmation is not available against notice issued u/s 133(6).*

***Flagship Housing Development Pvt. Ltd. Vs ACIT (ITAT Mumbai) [ITA No.4642/Mum/2017]***

*non-response to notice u/s. 133(6) of the Income Tax Act by some parties that does not prove that the entire transactions are bogus especially when all other*

- ***M/s Kesha Appliances Pvt. Limited Vs. ITO (ITAT Delhi) [TA No. 2715/Del/2016]***

*Thus the assessee cannot be penalized merely on the ground that the six companies as discussed above failed to reply to the notices issued to them under section 133(6) of the Act.*

The Ld.AO has carried out disallowance of Rs.7,76,63,888/-, the extract from assessment order is re-produced hereunder:

*remaining four creditors namely (1) Visatkrupa Enterprise (Rs.5511987/-) (2) Vijaykumar Bharatbhai Patel (Rs.3960000/-) (3) Prime Sales Agency (Rs.68191901/-) and (4) Electrotherm (India) Ltd. (Rs.39444232/-) neither the compliance has been received from the*

*unverifiable. The aggregate creditors amounting to Rs.7,37,03,888/- wherein the notice issued and the compliance has not been received by this office. In respect of one creditor namely, Vijaykumar B. Patel (Rs.39,80,000/-), no PAN or copy of return is filed. In totality, the creditors amounting to Rs.7,76,63,888/- as claimed by the assessee in the balance sheet as liability remain unexplained. It is crystal clear that*

The aforesaid sum of Rs.7,76,63,888/- is computed as under:

<b><i>Name of Creditor</i></b>	<b><i>Amount considered in assessment order</i></b>
<i>Visatkrupa Enterprise</i>	<i>55,11,987</i>
<i>Vijaykumar Bharatbhai Patel</i>	<i>39,60,000</i>

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Prime Sales Agency	6,81,91,901
<b>Total</b>	<b>7,76,63,888</b>

*The above table clarifies that the amount considered for Prime Sales Agency is Rs. 6,81,91,901/- in stead of Rs. 68,19,101/-.*

*IN view of the above, I am of the considerate opinion that the appellant has filed sufficient documentary evidence to substantiate the correctness of the closing balance and the Ld. AO has incorrectly disallowed part of creditors merely on non-receipt of confirmation. The appellant has discharged its primary onus of filing requisite details in which the Ld. AO has not brought out any lacuna. The appellant has also demonstrated that alleged creditors are being paid as well in subsequent year which will not be done by any rationale businessman. Therefore, the addition of Rs.7,76,63,888/- made by Ld. AO is found to be incorrect and being quashed.*

5. Before us, the Ld. D.R. was unable to controvert the factual finding of the Ld. CIT(A) that with regards to all the three creditors balances amounting in all to 7.76 crores which was added by the Assessing Officer u/s 68 of the Act, the assessee had furnished their confirmations and had also demonstrated the fact of having paid of their balances in the subsequent year.

6. In light of the same we completely agree with the Ld. CIT(A) that the assessee had sufficiently discharged it's onus of proving the genuineness of these creditors and there was no occasion therefore for treating them as in genuine merely because said parties had failed to respond to notice issued by the Assessing Officer under Section 133(6) of the Act. The order of the Ld. CIT(A) is therefore, upheld.

7. Ground No. 1 of the Revenue is dismissed.

**Ground No. 2 relates to the deletion of addition of interest on income tax refund amounting to Rs. 10,92,271/-**

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8. The order of the Ld. CIT(A) reveals the Ld. CIT(A) to have noted that the assessee had offered the said interest to tax in it's computation of income and noting, so, therefore, he deleted the addition made by the Assessing Officer. The relevant findings of the Ld.CIT(A) in this regard are as under:

**1. Adjustment on account of Interest on Income tax refund**

*The assessing officer added sum of Rs.10,92,271/- which is on account of interest on refund of income tax. In this regard, the appellant submitted that it had already offered said interest to tax in its computation.*

*The extract from computation of total income is re-produced hereunder:*

*In view of the above, the addition of Rs.10,92,271/- carried out by the assessing officer is found to be incorrect and being deleted.*

*Accordingly, Ground 1 and 2 of the appeal are **Allowed**.*

9. The Ld. D.R. was unable to controvert the fact so noted by the Ld. CIT(A) that the assessee itself had offered interest on income tax refund of Rs. 10,92,271/- to tax in it's computation of income. No reasoning was given to us by the Ld.DR as to why the addition of the interest of income tax refund needed to be made when it was already offered to tax by the assessee. In light of the same we do not find any infirmity in the order of the Ld. CIT(A) deleting the addition made of interest on income tax refund amounting to Rs. 10,92,271/-. Ground of appeal No. 2 is accordingly, dismissed.

10. In effect, the appeal of the Revenue is dismissed.

**This Order pronounced in Open Court on**

**20/05/2025**

Sd/-

**(SUCHITRA KAMBLE)  
(JUDICIAL MEMBER)**

Ahmedabad; Dated 20/05/2025

TANMAY, Sr. PS

Sd/-

**(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

**TRUE COPY**

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**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad