

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.4766/Del/2016
(ASSESSMENT YEAR 2011-12)

Income Tax Officer, Ward-16(2), New Delhi.	Vs.	M/s Marathon Finlease Ltd., 95-B, DDA MIG Flats, Shivam Enclave, Opp. Jhilmil Colony, Delhi-110095. PAN-AAACM5536C
(Appellant)		(Respondent)

Assessee by	None
Department by	Ms. Amisha S. Gupt, CIT-DR
Date of Hearing	06/05/2025
Date of Pronouncement	09/07/2025

ORDER

PER MANISH AGARWAL, AM:

This appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-20 ('the CIT(A)' in short), New Delhi in Appeal No.273/2015-16 vide order dated 27.06.2016 passed u/s 250(6) of the Income Tax Act, 1961 ('the Act', in short) for Assessment Year 2011-12.

2. Brief facts of the case are that the assessee is a Company and filed its return of income on 30.09.2011 declaring total income at Rs.5,01,985/-. The case of the assessee was taken up for scrutiny. During the course of assessment proceedings, it was observed by the AO that assessee has received share capital of Rs.4,04,50,000/- from eighteen share applicants and thus, the AO asked the assessee to prove the genuineness of the transactions. The AO also observe that they are certain expenses claimed which was not properly explained by the assessee and it is further observed by the AO that the assessee has outstanding

creditors of Rs.13,99,77,000/- from 11 corporate entities and since assessee has failed to prove their entity and creditworthiness and finally the AO completed the order u/s 143(3) dated 30.03.2011 wherein the total income was assessed of Rs.18,43,30,554/- by making following observations/additions:

- (i) Disallowance out of legal or professional charges Rs.13,00,000/-
- (ii) Disallowance of Commission of Rs.3,50,000/-
- (iii) Disallowance of fee paid to ROC Rs.31,654/-
- (iv) Disallowance u/s 14A of the Act r.w.s Rule 8D of Rs.2.06,333/-
- (iv) Disallowance out of interest expenses of Rs.1,52,582/-
- (v) Additions u/s 68 for share capital and premium Rs.4,04,50,000/-
- (vi) Additions u/s 68 for unsecured loans of Rs.13,99,70,000/-.

3. Against the said order, assessee preferred first appeal before the Ld. CIT(A) who partly allowed the appeal of the assessee after admitting the additional evidences filed by the assessee. The Ld. CIT(A) has substantially reduced the disallowance and deleted the additions made u/s 68 of the Act.

4. Aggrieved by the said order, the Revenue's is in appeal before the Tribunal in the present appeal. The grounds of appeal taken by the Revenue read as under:-

- “1. *Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is legally justified in admitting the additional evidence despite the fact that the assessee had not fulfilled the conditions laid down under rule 46A of I.T. Rules and even when the facts of the case were not covered within the exceptions provided under Rule 46A of the Income Tax Rules 1962 (the Rules)?*
2. *Whether on the facts and circumstances of the case and in law, the ld. CIT(A) is legally justified in deleting the addition of Rs. 4,04,50,000/- made u/s 68 of the I.T. Act in respect of unexplained credits introduced in the garb of share application money/ share capital by to appreciating the facts the assessee did not discharge its onus of prove genuineness of the transactions, identity and creditworthiness of investors?*
3. *Whether on the facts and circumstances of the case and in law, the ld. CIT(A) is legally justified in deleting the addition of Rs. 13,99,77,000/- made u/s 68 of the IT Act in respect of unexplained credits introduced in the garb of unsecured loan by the appreciating the facts that the assessee did not discharge its onus to prove genuineness of the transactions, identity and creditworthiness of loan providers?*

4. *Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in holding that filing details of PAN and ITR are sufficient evidence to discharge the onus of the assessee u/s 68 of the IT Act with regard to identity of creditor, genuineness of transactions and credit worthiness of the creditor?*
5. *Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in deleting the additions made u/s 68 on account of unexplained credits in respect of share application money and unsecured loans by completely ignoring the ratio decidendi laid down by Hon'ble Delhi High Court on the issue on the cases of CIT v N.R. Portfolio Pvt. Ltd. (2014) 2 ITR-OL-68, CIT v Nipun Builders and Developers Pvt. Ltd (2013) 350 ITR 407, CIT v Novodaya Castles Pvt. Ltd. (2014) 367 ITR 306 and Developers Pvt. Ltd. (2013) 350 ITR 407, CIT v Novodaya Castles Pvt. Ltd. (2014) 367 ITR 306?*
6. *Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is legally justified in deleting the disallowance of Legal and professional charges amounting to Rs. 13,00,000/- even when the assessee has failed to discharge its onus u/s 37 of the Act and there was no evidence that the assessee had a actually received any services in lieu of payment of Rs. 13,00,000/-?*
7. *Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is legally justified in deleting the disallowance of commission expenses of Rs. 3,50,000/- even when the assessee has failed to discharge its onus u/s 37 of the Act and there was no evidences that the assessee had a actually received any services in lieu of payment of Rs. 3,50,000/-?*
8. *Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is legally justified in deleting the disallowance of interest of Rs. 8,56,839/- by ignoring the findings of the Tax Audit Report that TDS on payment of M/s KSB Ltd. Was not deducted ?*
9. *The appellant craves leave to add, amend, alter or forgo any ground(s) of appeal."*

5. In support of the grounds taken by the Revenue, the Ld. CIT-DR submits that the assessee has not made compliances of the notices issued u/s 142(1) during the course of assessment proceedings on many occasions and lastly though the notices were complied with however, requisite details were not filed by the assessee. The ld. CIT-DR submits that by taking adjournments or partly complying the statutory notices, the assessee has tried to delay the assessment proceedings using deliberate and willful tactics. The Ld. CIT(A) further submitted that the assessee has filed the copies of share applications forms but the creditworthiness and genuine transactions remained unproved. The summons issued u/s 133(6) of the Act to all the 19 shares applicants however, 9 were

received unserved and with respect to the remaining, no compliance was made. Likewise, summons 133(6) that were also issued to the relevant parties from whom unsecured loans were obtained but only one party filed the documents but they were incomplete documents. The Ld. CIT-DR further submit that the assessee during the course of appellate proceedings filed additional evidences/ documents which contained share application forms, copy of return of filed before ROC, audited financial statements in some of cases alongwith their bank statements. The Ld. CIT(A) obtained the remand report without considering the observations of the AO in remand report deleted the addition made. It is therefore, submitted by Ld. CIT-DR that issue of share capital may be sent back to the file of the AO for necessary examination with reference to the details filed before the Ld. CIT(A) as additional evidences.

6. Regarding unsecured loans Ld. CIT-DR submitted that similarly as done in the case of share applications, assessee also filed additional evidences during the course of appellate proceedings which contained the details of unsecured loans and some cases confirmations, their ITR and their audited balance sheets were filed. The Ld. CIT(A) had admitted the same and without discussing the merits of the details filed simply on the ground that assessee had filed necessary evidences deleted the additions. Therefore, Ld. CIT-DR submitted that this issue may also be sent back to file of AO for fresh examination.

7. Regarding disallowance of various expenses made by AO and deleted by Ld. CIT-DR submit that assessee has not filed substantiate evidences to substantiate the claim nor any details were filed that TDS was made on the said expenses. In the last, Ld. CIT-DR also filed the details written submissions which read as under:

Sub: Written Synopsis in the above case- reg.

Facts of the case (Pg 1 of order u/s 143(3) r.w.s 144)

- ITR was processed u/s 143(1) and the case was subsequently selected for scrutiny.
- Notice u/s 143(2) dt. 14.09.2012 was issued and served upon assessee in time.

Instances of non-delivery of further notices and non-compliance by assessee:

- Notices dt.13.09.2013 along with questionnaire was sent via speed post, however, **received back unserved** with postal remarks "Left". (Pg 1)
- Notices dt.07.10.2013 were again sent via speed post through the director of assessee company Mr.Manoj Kumar, 95-B, DDA MIG Flats, Shivam Enclave, Opp. Jhilmil Colony, Delhi-110095, however, **there was no compliance to these notices.** (Pg 1-2)
- Another letter dt.30.10.2013 were sent via speed post to assessee company as well as to two of its directors at 95-B and 95-C, DDA MIG Flats, Shivam Enclave, however, **there was no compliance** by any of them. (Para 4, Pg 2)
- Penalty show cause notice u/s 271(1)(b) dt.06.12.2013 was sent via speed post, however, the same was **received back unserved** with postal remarks "Left". (Para 5, Pg 2)
- **Final opportunity dt.23.12.2013** was provided to assessee and other 3 directors along with show cause notice u/s 144, however, notice was **received back unserved** from addresses of 2 of the directors with postal remarks "No such person" & "Incomplete address without floor". (Para 6, Pg 2-7)
- However, upon request letter dt.24.12.2013 from one Mr.Kundan Jha, Mr.Manoj Kumar (director) **requested for adjournment in the case and the same was granted till 07.01.2014.** It is pertinent to note that address of assessee company has been mentioned as 95-B, DDA MIG Flats, Shivam Enclave, however, at this address, as many as 4 notices were either received unserved or there was no compliance to them. Moreover, **again there was no compliance on 07.01.2014.** (Para 7-8, Pg 7-8)
- **Again, final opportunity dt.18.01.2014** was provided to the assessee company and its two other directors for compliance by 24.01.2014. (Pg 9)
- AR of assessee appeared on 20.01.2014, **giving written reply to few queries,** enclosing some documents and stating that the company deals in various

- financial products like shares, advances, financing, leasing, money lending, etc. The case was again **adjourned for 24.01.2014**. (Para 10, Pg 14-15)
- As per the details filed above, amount of **share application money/share capital/share premium** received during the year was Rs.4,04,50,000/- from various parties. (Pg 15-16)
 - AR of assessee again appeared on 24.01.2014, **enclosing therewith only few incomplete details**. He was asked to provide confirmation from the above-mentioned parties and other creditors along with remaining details and the case was **adjourned for 29.01.2014**. The case was **adjourned for 31.01.2014** upon request of the AR, however, **none appeared on this date**. (Para 11, Pg 16)
 - Thereafter, AR appeared on 05.02.2014, **again filing incomplete details** and the case was **adjourned for 10.02.2014**. (Para 12, Pg 16)
 - AR appeared on 10.02.2014, filing some details regarding **unsecured loans** were received during the year and the case was **again adjourned for 14.02.2014** for filing remaining details. (Para 15, Pg 18)
 - The case was **again adjourned for 20.02.2014** upon request of the AR. (Para 17, Pg 20)
 - AR appeared on 20.02.2014, however, with no details or any confirmations, either repeating the same instance or asking for further time or not appearing on later adjourned dates i.e. 25.02.2014, 28.02.2014, 07.03.2014 and 11.03.2014. (Para 19-23, Pg 20-21)

It is very much clear from all the above-mentioned instances that assessee tried to delay the assessment proceedings using deliberate and wilful tactics and thus, the assessment was completed ex-parte with whatever incomplete details filed by assessee so far. (Pg 21)

Inquiry u/s 133(6):

- Upon examination of whatever incomplete filed by assessee, it was observed that only photocopies of share application forms were filed in the name of confirmation from alleged parties and **the details were not satisfactory to prove** identity, creditworthiness and genuineness of the transactions. *Various judgements are cited to support that if AO is not satisfied with the documents filed by assessee to prove identity, creditworthiness and genuineness of the transactions, then AO can exercise his powers to make further inquiries.* (Para 13, Pg 16-17)
- **Notices dt.06.02.2014 u/s 133(6) were sent via speed post to 19 alleged parties from whom share capital/share application money** was claimed to have been received (at the addresses given by assessee). However, **notices from 9 parties were received back unserved** mostly with postal remarks "No such Firm/Company" or "Incomplete address" and **no compliance was made by remaining 10 parties**. (Pg 17-18)
- **Notices dt.11.02.2014 u/s 133(6) were sent via speed post to 11 parties from whom parties from whom unsecured loans** were claimed to have been received. However, only one party filed some documents and that too, incomplete. (Para 16 & 18, Pg 19-20)

Additions made by A.O. which are disputed in appeal and reasons thereof:

1. Addition u/s 68 o/a share application money/share capital/share premium received (Rs.4,04,50,000/-): (Pg 32-52)

• Addition was made for following parties:

Sr. No.	Name of the party	Amount involved (in Rs.)	Findings of A.O. in brief
1.	M/s E. Daksh Marketing Pvt. Ltd.	23,50,000	(Pg 33-34) <ul style="list-style-type: none"> • Notice u/s 133(6) received back with remark "No such person". • As seen from balance sheet of this company, total sources of funds of Rs.3.53 crore are invested in shares of other companies (Rs.3.37 crore) and remaining given as loans and advances. • Net income shown as Rs.37,370/-. • Bank statement submitted for 3 months shows huge credit and immediate debit entries of same amount (some in assessee's name) in round figures of Rs.2 lakh to Rs.43 lakh, leaving a minimum balance between Rs.10,000 and Rs.14,500/-. There are certain cash deposits also.
2.	M/s Renee Trading Co. Pvt. Ltd.	20,00,000	(Pg 34-36) <ul style="list-style-type: none"> • No compliance of 133(6) notice. • Similar findings regarding investment of funds available as in (1) above and net income of Rs.13,220/-. • Bank statement for period 01.12.09 to 28.12.09 shows payment of Rs.10 lakh to assessee, shown as loans and advances as on 31.03.2010. The same has been shown as returned back on 25.10.10 as per some confirmation filed from this company. No other entry or balance shown.
3.	M/s Anmol Township Pvt. Ltd.	19,50,000	(Pg 36-37) <ul style="list-style-type: none"> • No compliance of 133(6) notice. • Similar findings regarding investment of funds available as in (1) above and net income of Rs.15,860/- • Bank statement submitted for 1.5 months shows similar observations as in (1) above. • Party also shown in list of unsecured loans and as per its details, entries were received and repaid back within few days.
4.	M/s Arpit Infrabuild Pvt. Ltd.	6,00,000	(Pg 37-38) <ul style="list-style-type: none"> • No compliance of 133(6) notice. • Balance sheet and P&L A/c not filed. • Net income is Rs.8,790/-

Sr. No.	Name of the party	Amount involved (in Rs.)	Findings of A.O. in brief
			<ul style="list-style-type: none"> • Bank statement submitted with no name of bank, account number and name of party appearing on it.
5.	M/s Innovative Power Energy	5,00,000	<ul style="list-style-type: none"> • (Pg 38) • No compliance of 133(6) notice. • Further, no detail filed by assessee.
6.	M/s Mohit Consultants Pvt. Ltd.	4,00,000	<ul style="list-style-type: none"> • (Pg 38) Same as in (5) above
7.	Sh. Pramod Kumar Nand	30,00,000	<ul style="list-style-type: none"> • (Pg 38-39) • No compliance of 133(6) notice. • No bank statement/balance sheet/computation of income.
8.	M/s Pushpanjali Commotrade Pvt. Ltd.	30,00,000	<ul style="list-style-type: none"> • (Pg 39) • No compliance of 133(6) notice. • No bank statement/P&L/ITR/bank statement filed.
9.	M/s Seven Heaven Infrabuild Pvt. Ltd.	9,00,000	<ul style="list-style-type: none"> • (Pg 39) Same as in (8) above.
10.	M/s Subham Finstock Pvt. Ltd.	26,00,000	<ul style="list-style-type: none"> • (Pg 39 40) Same as in (5) above.
11.	M/s Sub News and Broadcast Corporation Ltd.	56,00,000	<ul style="list-style-type: none"> • (Pg 40) • No compliance of 133(6) notice. • Similar findings regarding investment of funds available as in (1) above and net income of Rs.9,100/-. • Bank statement submitted from 13.10.10 to 16.03.11 shows similar observations as in (1) above.
12.	M/s Balaji Fincap Pvt. Ltd.	30,00,000	<ul style="list-style-type: none"> • (Pg 40-41) Same as in (5) above.
13.	M/s Eltec Communications Pvt. Ltd.	43,00,000	<ul style="list-style-type: none"> • (Pg 41) Same as in (5) above.
14.	M/s Anikesh Telecom Project Pvt. Ltd.	40,00,000	<ul style="list-style-type: none"> • (Pg 41) Same as in (5) above.
15.	M/s Tocsin Investment Pvt. Ltd.	10,00,000	<ul style="list-style-type: none"> • (Pg 41) Same as in (5) above.
16.	M/s DPA Finvest Serves Pvt. Ltd.	15,00,000	<ul style="list-style-type: none"> • (Pg 41) Same as in (5) above.
17.	M/s GSM Trade Links Pvt. Ltd.	22,00,000	<ul style="list-style-type: none"> • (Pg 42) Same as in (5) above.
18.	M/s Passion Impex Pvt. Ltd.	15,50,000	<ul style="list-style-type: none"> • (Pg 42 43) • Notice u/s 133(6) received back with remark "No such firm". • Similar findings regarding investment of funds available as in (1) above and net income of Rs.17,300/-. • Bank statement submitted from 11.01.11 to 19.02.11 shows similar observations as in (1) above. • As per some confirmation filed, unsecured loan of Rs.8,50,000/- received and returned on 27.01.2011.

- Assessee could not produce any substantiating documents to prove identity, creditworthiness and genuineness of alleged parties, notices u/s 133(6) were either received back unserved or remained non-complied & assessee could not produce its directors and directors of the alleged corporate entities also. (Pg 32-33 & 49)
- None of the directors of alleged investor entities appeared in response to summons u/s 131 issued. (Pg 50)
- From all the facts mentioned above, it is concluded/proved as under:
 - all the alleged entities are not doing actual business but involved in providing accommodation entries to the beneficiaries in lieu of cash plus commission (Pg 44)
 - No relationship between assessee company/its directors and alleged investors/subscribers which is in contrary to what is pragmatic and generally seen in other closely held companies (Pg 48)
 - Identity of parties is proved by merely producing their PAN/ITR/Balance sheet/other paper documents. Identity refers to actual place of work, staff & business carried on in reality. (Pg 49)
 - Though, the money has been received via banking channel, but transactions do not reflect actual genuine business activity. Also, no dividend or profit was declared on the shares issued. (Pg 49)
- Thus, entire amount of Rs.4,04,50,000/- (amount as per list filed by assessee with its reply dt.17.01.2014) received from 17 corporate entities & 1 individual was added to income u/s 68 as assessee's own unaccounted money, since assessee could not prove 3 factum of the transactions. (Pg 45 & 52)
- Reference is made to judgement of Delhi HC in CIT Vs Nova Promoters & Finlease Pvt. Ltd. (ITA No.342 of 2011, dt.15.02.2012) in which it was held that compliance of statutory formalities of Companies Act while issuing shares is not sufficient to prove credibility of transactions u/s 68. (Pg 44)
- Other judgements cited in support of the addition: (Pg 45-48)
 - CIT Vs Divine Leasing and Finance Ltd. 299 ITR 268 (Delhi HC)
 - Sumati Dayal Vs CIT 214 ITR 801 (SC)
 - CIT Vs L.N. Dalmia 207 ITR 89 (Calcutta HC)
 - Sunil Sidharatha Vs CIT 156 ITR 507 (SC)
 - Mittal Belting and Machinery Stores Vs CIT 253 ITR 341 (Punjab and Haryana HC)
 - CIT Vs Durga Prasad More (1971) 82 ITR 540 (SC)
- (Pg 50-51)
 - CIT Vs Nipun Builders and Developers (2013) 350 ITR 407 (Delhi HC)
 - CIT Vs N.R. Portfolio P. Ltd. (ITA No. 1018 & 1019 of 2011) (Delhi HC)

2. Addition u/s 68 o/a Unsecured loans received: (Pg 52-62)

- Addition was made for following parties:

Sr. No.	Name of the party	Amount involved (in Rs.)	Findings of A.O. in brief
1.	M/s Air Wave Technocraft Pvt. Ltd.	10,00,000	(Pg 53-54) <ul style="list-style-type: none"> • No compliance of 133(6) notice • Wrong confirmation submitted by assessee. No interest on loan shown.
2.	M/s Anushree Securities P. Ltd.	34,50,000	(Pg 54) <ul style="list-style-type: none"> • No compliance of 133(6) notice • Net income is Rs.1,56,610/- with interest receipts as revenue of Rs.12,95,302/- only. • Frequent credit and debit entries in round figures upto Rs.50 lakh in bank statement. No interest on loan shown.
3.	M/s Prabhu Residency Pvt. Ltd.	30,00,000	(Pg 54-55) <ul style="list-style-type: none"> • No document filed by assessee company • Party filed incomplete reply in response to 133(6) notice • Frequent credit and debit entries shown in bank statement. • No interest on loan shown.
4.	M/s R.V. Electrotech Pvt. Ltd.	76,00,000	(Pg 55-56) <ul style="list-style-type: none"> • No compliance of 133(6) notice • Net income is Rs.83,080/- • Frequent credit and debit entries in bank statement and there is always a debit balance between 32 lakh and Rs.62 lakh. • Total funds available invested in shares of other companies and loans and advances given. • Wrong confirmation submitted by assessee. No interest on loan shown.
5.	M/s Samman Trading Pvt. Ltd.	14,30,000	(Pg 56-57) <ul style="list-style-type: none"> • No compliance of 133(6) notice • Frequent credit and debit entries shown in bank statement. • Wrong confirmation submitted by assessee. No interest on loan shown. • Total funds available invested in shares of other companies and loans and advances given.
6.	M/s SFS Infinities Pvt. Ltd.	88,50,000	(Pg 57) <ul style="list-style-type: none"> • No compliance of 133(6) notice • No document filed by assessee.
7.	M/s Simi Finance Ltd. (Now USB Financial Corpn Ltd.)	3,49,40,000	(Pg 57-58) <ul style="list-style-type: none"> • No compliance of 133(6) notice • No bank statement and P&L filed • Wrong confirmation submitted by assessee. No interest on loan shown. • Income shown as 2,92,371 in ITR. • 45 crore out of total funds available of Rs. 47 crore are invested in shares of other unlisted companies.

Sr. No.	Name of the party	Amount involved (in Rs.)	Findings of A.O. in brief
			<ul style="list-style-type: none"> Loans and advances of only Rs.60 lakh shown in related schedule of balance sheet of this company
8.	M/s Sunshine Infrabuild Corp. Ltd.	7,38,00,000	(Pg 58-59) <ul style="list-style-type: none"> No compliance of 133(6) notice No bank statement filed Wrong confirmation submitted by assessee. No interest on loan shown.
9.	M/s Stuti Consultants Pvt. Ltd.	34,00,000	(Pg 59-60) <ul style="list-style-type: none"> Notice u/s 133(6) notice received back with remark "Incomplete address" No interest on loan shown in alleged confirmation submitted by assessee. Net income is Rs.11,200/-. Entire funds given as loans and advances Huge credit and immediate debit entries of same amount in bank statement.
10.	M/s Trueman Auto Pvt. Ltd.	5,00,000	(Pg 60-61) <ul style="list-style-type: none"> No compliance of 133(6) notice No interest on loan shown. Loss of Rs.29,231/- Entire amount of funds invested in shares of other companies and loans and advances Huge credit and immediate debit entries in bank statement.
11.	USB Infratech Pvt. Ltd.	20,00,000	(Pg 61-62) <ul style="list-style-type: none"> Notice u/s 133(6) notice received back with remark "Incomplete address" No interest on loan shown Net income is Rs.1,14,920/- as per ITR Bank statement not filed Out of total funds of Rs.47.40 crore, invested in shares of other companies Rs.17.74 crore. Only 1 computer in fixed assets of Rs.17,500/- and that too purchased during the year.

- The assessee failed to produce directors of the alleged entities, which, coupled with above-mentioned facts and findings, clearly proves that the alleged entities have provided only accommodation entries in lieu of cash. (Pg 62)
- Thus, amount of Rs.13,99,70,000/- received from 11 corporate entities was added to income u/s 68 as income from undisclosed sources, since assessee could not prove 3 factum of the transactions. (Pg 62)
- Case Laws in support of addition as cited supra.

3. Disallowance of Legal & Professional charges (Rs.13,00,000/-): (Pg 21-23)

- Legal professional charges shown at Rs.13,00,000/- in schedule 9 of P&L A/c as against Rs.5,500/- in the immediately preceding AY.

- Assessee simply details of other expenses Rs.14,92,379/- in which Rs.5 lakh has been shown to be paid to Mr.Piyush Agarwal and Rs.8 lakh to Mr.Ayush Agrawal as professional charges.
- TDS amount has been given against their names without any documentary proof as to whether the same has been deducted and deposited.
- Thus, legal and professional charges of Rs.13,00,000/- were disallowed as:
 - No substantiating evidence filed to prove that the expenses were incurred wholly and exclusively for business purpose, &
 - No evidence filed regarding TDS deposit on time as assessee neither filed any TDS challan nor copy of tax audit report

4. Disallowance of commission expenses (Rs.3,50,000/-): (Pg 23-24)

- Assessee simply gave name of Tushar Garg, amount and TDS in his reply against inquiry regarding commission expense.
- Thus, commission expenses of Rs.3,50,000/- were disallowed because of the same reasons as mentioned in addition no.3 supra.

5. Disallowance of interest expenses (Rs.15,20,582/-): (Pg 32)

- Assessee simply gave unsigned ledger account with incomplete narration as to whom it was paid. No evidence of TDS deduction on the same was filed.
- 3 big amounts are shown of Rs.2,97,353/-, Rs.5,08,912/- and Rs.50,574/- with narration as KSBL, late payment charges.
- Thus, interest expenses are disallowed as:
 - In respect of interest pertaining to unexplained unsecured loans
 - No evidence of TDS deduction
 - No explanation and nature of late payment charges

Summary of CIT(A) findings/decision and amount disputed in appeal:

Sr. No.	Nature of addition	Decision of CIT(A)	Findings of CIT(A)	Amount disputed before ITAT by revenue
1.	Addition u/s 68 o/a share application money/share capital/share premium received	Deleted	<p>(Pg 28-44)</p> <ul style="list-style-type: none"> • Assessee filed details including new addresses of alleged entities either during assessment proceedings or before CIT(A). • No adverse material in possession of AO • Money received from banking channel • Money received from corporate entities who are regular income tax assessee and get their accounts audited • Shares have been allotted to applicants • Some corporate entities have been existing shareholders and their genuineness has been accepted by the revenue in preceding years. 	4,04,50,000

Sr. No.	Nature of addition	Decision of CIT(A)	Findings of CIT(A)	Amount disputed before ITAT by revenue
2.	Addition u/s 68 o/a unsecured loans received	Deleted	(Pg 56-66) <ul style="list-style-type: none"> All findings as in point (1) above Creditors gave confirmations about loan 	13,99,70,000
3.	Disallowance of legal and professional charges	Deleted	(Pg 70) <ul style="list-style-type: none"> Assessee is working in the field of finance and leasing, thus it is company's prerogative to take technical assistance For a company which is showing Rs.3.89 cr as professional receipts, alleged amount of consultancy/professional charges is quite reasonable. TDS has been deducted and confirmation from consultant submitted as additional evidence. Payment done through banking channel 	13,00,000
4.	Disallowance of commission expenses	Deleted	(Pg 72-73) <ul style="list-style-type: none"> Commission charges were paid on sale of property as the company is also dealing in sale/purchase/brokerage in property. Declared income from this business during the year is Rs.35 lakh TDS has been deducted Additional evidence filed 	3,50,000
5.	Disallowance of interest expense	Confirmed upto Rs.77,900/- out of addition of Rs.15,20,582/-	(Pg 86 87) <ul style="list-style-type: none"> Additional evidence filed giving details of interest expense Interest paid to Nainital Bank of Rs.7,23,462/- exempt from TDS as per exception clause in sec 194A(iii) Financial charges paid to KSBL on share dealings of Rs.8,56,839/-. Assessee has declared income from sale/purchase of shares and submitted that the shares are listed and in demat form. Thus, any interest payable on such shares is exempt u/s 193(ix). Financial charges of Rs.77,900/- paid to GLG Chit Funds P Ltd, same is confirmed as assessee not able to explain non-applicability of TDS on the same. 	8,56,839

It may kindly be noted that the assessee has filed additional details, on the issue of share applications and unsecured loan before the CIT(A) which were admitted by the Ld. CIT(A) and subsequently send to the A.O on remand. However, CIT(A) remanded the matter with limited authority to the A.O to give his comments on the additional evidences (Page 56 of CIT(A) order.).

On a perusal of the Para 9 of the remand report it can be seen that the A.O has given his conclusion as follows:-

“ From all the facts discussed above, all the additions/disallowances made by the AO deserve to be upheld. Further it is most humbly submitted that in the Remand Report your goodself has only directed undersigned to give comments on the submission filed by the appellant. Undersigned was not authorized to make any cross verification. Hence, the aforesaid remand report has been submitted in the light of your directions, without making any cross verification u/s 131 or 133(6) of the I.T Act”.

In this respect the Revenue seeks reliance on the decision of Hon'ble Apex Court in NRA Iron & Steel Pvt. Ltd in which it was held that merely because assessee company had filed all primarily evidence, it could not be said that Onus on assessee to establish creditworthiness of investor companies stood discharge when several investors companies were found to be nonexistent. Also in the case of Jansampark Advertising & Marketing Pvt. Ltd., the Hon'ble Jurisdictional High Court held that in event of Assessee Officer failing to discharge his function properly, obligation to conduct proper inquiry shift to Commissioner (Appeals) & Tribunal and they cannot delete additions made by the A.O on ground of lack of inquiry.

Legal Grounds raised by revenue:

Ground No.1: CIT(A) is not justified in admitting additional evidence despite the fact that conditions of Rule 46A are not fulfilled

➤ CIT(A) on Pg 8-10 of his order has accepted the additional evidence filed by assessee, in respect of substantiating genuineness of unsecured loans and amount received on account of issue of shares and expenses disallowed, stating that the assessee was prevented by genuine and sufficient reasons to submit these evidences during the assessment proceedings.

It is submitted that assessee just tried to delay the assessment proceedings either by not appearing on the specified date or by filing incomplete details or by seeking further adjournment. Sufficient opportunities were provided to assessee to file all the evidences. Further, no reasons whatsoever, as furnished before CIT(A), for the delay in submission of documents were ever cited before A.O. Even the notices sent to assessee and its directors were returned unserved on various instances.

Ground No.4 & 5: CIT(A) is not justified in holding that filing details like PAN and ITR are sufficient evidence to discharge onus u/s 68 and ignoring the ratio laid down by Delhi HC in following cases:

- CIT Vs Nipun Builders and Developers (2013) 350 ITR 407
- CIT Vs N.R. Portfolio P. Ltd. (ITA No. 1018 & 1019 of 2011)
- CIT Vs Navodaya Castles Pvt. Ltd. (2014) 367 ITR 306

Conclusion:

All the additions are based on the various facts/findings/non-production of complete documents and information/non-production of directors of alleged entities/non-compliance or non-servicing of notices issued u/s 133(6)/131, as mentioned above.

Thus, CIT(A) has grossly erred in deleting the additions, disputed in the present appeal, merely relying on additional evidences filed by assessee and his decision is perverse.

Other relevant case laws in favour of revenue:

1. Regarding insufficiency of the fact that payments made through banking channels/cheques to prove that transactions are genuine: *Principal Commissioner of Income-tax-7 Vs. Bikram Singh* 399 ITR 407 (Delhi HC)
2. *Income-tax Officer Vs Sai Everest Building & Developers* (ITA No. 4096, 4105, 6489 and 6490 of 2019, ITAT Mumbai Bench 'G')

7. On the other hand, none appeared on behalf of the assessee nor any written submission was filed. It is seen that on earlier occasion also the case was fixed for hearing, however, none was appeared though on some occasion some counsel appeared and sought adjournment, thus, it appears that except relied upon the orders of the Ld. CIT(A), the assessee has nothing more to say.

8. After considering the facts and submissions advanced by the Ld. CIT-DR and from the perusal of the order of the Ld. CIT(A), we find that the assessee has filed certain additional evidences during the course of appellate proceedings under Rule 46A of IT Rules as the said details were not filed before the Assessing Officer though ample opportunities were provided to the assessee by the Ld. AO wherein the assessee had avoid the proceedings by not appearing or by taking

adjournments. Further it is seen that summons issued u/s 133(6) to the share applications also remained un-complied with. Further the details filed in support of the unsecured loans also not sufficient to prove the genuineness and creditworthiness of the parties and no compliance was made with respect to the summons issued u/s 133(6) of the Act and the additional evidences were filed before the Ld. CIT(A) claiming that amounts were received through banking channels and companies has sufficient funds for granting the loans to the assessee. However, all these facts remained unexamined on the part of the Assessing Officer, thus, in the larger interest of justice, the matter is remand back aside to the file of the Assessing Officer to examine afresh the details filed by the assessee during the course of appellate proceedings and decide the issue in accordance with law. The assessee is also directed to file all the details and evidences in support of the claim made. With these directions, all the grounds of appeal taken by the revenue are partly allowed for statistical purposes.

9. In the result, the appeal filed by the Revenue is partly allowed.

Order is pronounced on 09.07.2025.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 09.07.2025

PK/PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI