

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 2479/MUM/2025  
Assessment Year: 2021-22**

ITO 5(3)(1),  
526, Aayakar Bhavan, M.K Road,  
Mumbai-400020.

**Vs.** Verve Industries Pvt. Ltd.,  
Plot No. 16, Office No. 1, Ground  
Floor Aman Chamber 2, Mama  
Permanand Marg, Opera House,  
Mumbai-400 004.  
**PAN NO. AAHCV 1577 H  
Respondent**

**Appellant**

Assessee by : Mr. Mehul Talera  
Revenue by : Mr. Vivek Perampurna, CIT-DR

Date of Hearing : 09/07/2025  
Date of pronouncement : 17/07/2025

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the Revenue is directed against order dated 04.02.2025 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2021-22, raising following grounds:

*“1(a) "Whether on facts and circumstances of the case and in law, the CIT(A) erred in allowing the appeal filed by the assessee and deleting the addition of Rs. 19,49,32,568/-*



*being addition made u/s 68 of the Income tax Act, 1961 on the Issue of non genuine unsecured loans though the creditworthiness of the parties from whom the unsecured loans were taken and genuineness of the said transactions were not proved."*

*1(b) Whether on the facts and circumstances of the case and in law, CIT(A) erred in allowing the assessee's appeal by deleting the addition of Rs.19,49,32,568/-on the issue of non genuine unsecured loans ignoring the facts of the case and not appreciating the fact that mere filing of PANS, ITRS, account confirmations and banks statements of the creditors is not sufficient enough to discharge the onus cast upon the assessee u/s 68 of the Income tax Act, 1961.*

*2(a)" Whether on facts and circumstances of the case and in law, the CIT(A) erred in allowing the appeal filed by the assessee and deleting the addition made on account of unsubstantiated service charge of Rs.7,09,24,217/- paid to M/s. Roselife Sales Pvt. Ltd. Ignoring the fact that the assessee failed to provide documentary evidences regarding receiving any service(s) from M/s. Roselife Sales Pvt. Ltd. during the relevant period." ners of*

*2(b) "Whether on facts and circumstances of the case and in law, the CIT(A) erred in allowing the appeal filed by the assessee and deleting the addition made on account of unsubstantiated service charges of Rs.7,09,24,217/- paid to M/s. Roselife Sales Pvt. Ltd. ignoring the fact that notice u/s 133(6) of the the Act was issued to M/s. Roselife Sales Pvt. Ltd to provide details of the said transactions but no reply was received."*

*3. "Whether on facts and circumstances of the case and in law, the CIT(A) erred in allowing the appeal filed by the assessee and deleting the addition made on account of disallowance of interest expenditure of Rs.5,65,507/- ignoring the fact that entire amount of funds borrowed by the assessee were treated as unexplained cash credit." par*

*4. "Whether on facts and circumstances of the case and in law, the CIT(A) erred in deleting the additions made by the Assessing Officer by accepting the additional evidences submitted by: the assessee during the appellate*



*proceedings which were not submitted during the assessment proceedings despite adequate opportunities."*

*5. "Whether on facts and circumstances of the case and in law, the CIT(A) erred in deleting the additions made by the Assessing Officer on the basis of the assessee's submissions but without giving opportunity to the AO as per sub-rule(3) of Rule 46A of the Income tax, 1962 by calling for remand report."*

*6. The appellant prays that the order of the CIT(A) on the grounds to be set aside and confirm the order of the AO."*

2. Briefly stated, facts of the case are that during the relevant year, the assessee company was engaged in the business of coal trading, handling & disposal of fly ash and related activities. The assessee filed its return of income on 15.03.2022 declaring total income at Rs.13,29,90,950/-, which was subsequently revised on 26.03.2022 retaining the same total income. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. In the assessment completed u/s 143(3) of the Act, the Assessing Officer made following additions:

Sr No.	Particulars	Amount in Rupees
1.	Unexplained cash credit u/s 68 of the Act	19,49,32,568/-
2.	Disallowance un-substantial on service u/s 37 of the Act	7,09,24,270/-
3.	Disallowance u/s 36(1)(iii) of the Act	5,65,507/-

3. Aggrieved, the assessee filed appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee filed certain additional evidences including bank statement in respect of certain parties. The Ld.



CIT(A) after considering the submission of the assessee allowed relief to the assessee. Aggrieved, the Revenue is in appeal before us by way of raising grounds as reproduced above.

4. Before us, the learned Departmental Representative (Ld. DR) drew attention to Ground Nos. 6 and 7 of the appeal, which, in his submission, go to the root of the matter. Accordingly, with the consent of both parties, arguments were first addressed on these grounds prior to delving into the merits of the addition. The Ld. DR submitted that, in connection with the additions made under Sections 68 and 37 of the Act, the assessee had filed certain additional evidence before the Ld. CIT(A). However, it was contended that the Ld. CIT(A) did not adhere to the procedural safeguards mandated under Rule 46A of the Income-tax Rules, 1962 (hereinafter “the Rules”), inasmuch as no opportunity was granted to the Assessing Officer (AO) to furnish objections or offer comments on the merits of such additional evidence. In support of this contention, the Ld. DR referred specifically to the findings of the Ld. CIT(A) concerning “Deomight Enterprises Pvt. Ltd.” It was pointed out that the Ld. CIT(A), in the impugned order, observed that the bank account of the said company had not been produced during the assessment proceedings. However, the Ld. CIT(A) noted that during the course of appellate proceedings, the bank statement was furnished and considered. The Ld. DR submitted that said consideration of bank statement is without putting the same to the



AO or seeking his comments thereon. The relevant observation of the Ld. CIT(A) is reproduced as under:

**“Deomight Enterprises Pvt Ltd-6,58,00,000**

*During the course of appellate proceeding complete financials of Deomight Enterprises Pvt Ltd were produced. During F.Y. March 21 income declared by the company was income of 3,65,532/- which AO has duly acknowledged in the assessment order and also held that it is meagre income and on the basis of this fact only addition was made by AO. During appeal proceeding balance sheet and complete financials were submitted before undersigned. The total of all assets as per balance sheets comes to Rs 293.36 crores. Loans and advances given (assets) comes to Rs 14.36 crores which is quite high in comparison to the loan advanced to Verve industries. On examination of Profit and loss account submitted during appellate proceeding it was found that the total Revenue from operation as on March 21 comes to Rs 286.62 crores. Still Ld. AO held this company as bogus company. During the appeal proceeding it was also found that interest is being paid to the above company on borrowing and TDS was also deducted by assessee. With respect to the above lender all funds have been transferred to appellant through Banking channel only. Regarding the Bank Account of above company AO has mentioned that same was not produced. However, during appeal proceeding bank statement was produced and was examined. Thus, looking to the balance sheet profit loss account and return of income of the company, loan imparted to appellant cannot be held bogus. It is worth mentioning here that loan was already repaid during March 2023 in the books of appellant. Regarding the loan payment copy of Bank statement was also produced. Therefore, AO was not justified in making addition on account of loan received from Belly Gems Private limited holding the company bogus.”*



4.1 Similarly, with respect to the addition made on account of unexplained cash credit pertaining to the entity “Refex Aviation Pvt. Ltd.”, the Ld. CIT(A) has recorded that the bank statement of the said party was not furnished during the course of assessment proceedings but was subsequently produced during the appellate proceedings. The Ld. Departmental Representative (DR) cited these two instances—namely, “Deomight Enterprises Pvt. Ltd.” and “Refex Aviation Pvt. Ltd.”—as illustrative of a procedural lapse amounting to a violation of Rule 46A of the Rules. He therefore submitted that the appellate order passed by the Ld. CIT(A) be set aside and the matter be restored to his file for fresh adjudication after complying with the mandatory procedure laid down under Rule 46A(3) of the Rules, including affording an opportunity to the Assessing Officer to examine the additional evidence and furnish his comments thereon.

4.2 In response, the Ld. Counsel for the assessee submitted that the alleged infraction, if any, was minor and only pertained to a few pages of the bank statements, which, according to him, had already been partially submitted before the Assessing Officer. However, he fairly conceded that the complete set of bank statements was filed only at the stage of appellate proceedings before the Ld. CIT(A).

5. We have heard rival submissions of the parties and perused the relevant materials on record. In the grounds raised, the violation of the Rule 46A of the Rules has been challenged and



therefore, for ready reference, we feel it appropriate to reproduce said Rule as under:

**6[Z]Production of additional evidence before the 8[8a][Joint Commissioner] (Appeals)] 9[and Commissioner (Appeals)].**

**46A.** (1) *The appellant shall not be entitled to produce before the 8[8a][Joint Commissioner] (Appeals)] 9[or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the 10[Assessing Officer], except in the following circumstances, namely :—*

- (a) *where the 10[Assessing Officer] has refused to admit evidence which ought to have been admitted ; or*
- (b) *where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the 10[Assessing Officer] ; or*
- (c) *where the appellant was prevented by sufficient cause from producing before the 10[Assessing Officer] any evidence which is relevant to any ground of appeal ; or*
- (d) *where the 10[Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.*

(2) *No evidence shall be admitted under sub-rule (1) unless the 11[11a][Joint Commissioner] (Appeals)] 12[or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.*

13(3) *The 14[14a][Joint Commissioner] (Appeals)] 15[or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the 16[Assessing Officer] has been allowed a reasonable opportunity—*

- (a) *to examine the evidence or document or to cross-examine the witness produced by the appellant, or*
- (b) *to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.*

(4) *Nothing contained in this rule shall affect the power of the 17[17a][Joint Commissioner] (Appeals)] 18[or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or*



*the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the [19](#)[Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.]”*

5.1 Upon a plain reading of the provisions contained in Rule 46A of the Rules, it is manifest that where additional evidence is sought to be adduced by the assessee before the first appellate authority, it is incumbent upon the 1d CIT(A) to provide an opportunity to the Assessing Officer to submit his objections, if any, and to offer comments on the merits of such additional evidence. In the present case, it is evident that the learned CIT(A) has failed to adhere to the procedure so prescribed under Rule 46A. The admission of additional evidence without affording the Assessing Officer such opportunity constitutes a breach of the mandatory procedural safeguard, and is, in substance and effect, a violation of the principles of natural justice.

5.2 In view of the foregoing, we are of the considered opinion that the order passed by the learned CIT(A) stands vitiated. Accordingly, the impugned order is set aside, and the matter is remanded to the file of the CIT(A) for fresh adjudication in accordance with law, after strictly complying with the requirements of Rule 46A, including the obligation to grant the Assessing Officer due opportunity to respond to the additional evidence.



5.3 Consequently, Ground Nos. 6 and 7 of the present appeal are allowed. In light of the matter being restored to the file of the CIT(A), we do not consider it necessary or appropriate to adjudicate Ground Nos. 1 to 5 at this stage, which pertain to the merits of the additions. We Order accordingly.

6. In result, the appeal of the Revenue is allowed for statistical purposes.

**Order pronounced in the open Court on 17/07/2025.**

**Sd/-  
(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER**

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

Mumbai;  
Dated: 17/07/2025  
Rahul Sharma, Sr. 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**