

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.1461/Mum/2025
(Assessment Year :2013-14)**

Prathamesh Graphics & Digital 606, 6 th Floor D-Wing, Siddhivinayak Annex CHS Ltd., Sitaram Jadhav Marg Mumbai Maharashtra-400 013	Vs.	Income Tax Officer, 21(2)(5), Mumbai
PAN/GIR No.AALFP1552F		
(Appellant)	..	(Respondent)

Assessee by	Shri Tanmay Phadke
Revenue by	Shri Virabhadra S Mahajan, Sr. DR
Date of Hearing	09/07/2025
Date of Pronouncement	05/08/2025

अदेश / O R D E R

PER SANDEEP GOSAIN (J.M):

This appeal filed by the assessee against the order of NFAC, Delhi, dated 29/07/2023 for A.Y.2017-18 which in itself arises from the order passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'Act') dated 23/03/2016.

2. The grounds raised by the assessee reads as under:-

1. On the facts and in the circumstances of the case and as per the law, the National Faceless Appeal Centre/Commissioner of Income Tax (Appeals) [“the learned Commissioner (Appeals)] erred in confirming the addition of unsecured loans of Rs. 1,50,00,000/- under Section 68 of the Act. Thus, the said addition being untenable and bad in law may be deleted.

2. On the facts and in the circumstances of the case and as per the law, the learned Commissioner (Appeals) erred in confirming the addition of Rs. 3,78,169/- representing the interest paid on the unsecured loans of Rs. 1,50,00,000/- under Section 68 of the Act. Thus, the said addition being untenable and bad in law may be deleted.

3. On the facts and in the circumstances of the case and as per the law, the learned Commissioner (Appeals) erred in confirming the addition of Rs.1,38,405/- as made by the learned respondent on the presumption of the payment of commissioner for securing/arranging the unsecured loans of Rs. 1,50,00,000/-, Thus, the said addition of Rs. Rs.1,38,405/- being illegal and untenable in law may be deleted.

4. The Appellant craves leave to add, delete, alter, modify any ground before the conclusion of the present appellate proceeding.

3. At the very outset, we noticed that there is a delay of 520 days in filing the present appeal and in this regard Ld.AR drawing our attention to the contents of the application for seeking condonation of delay, submitted that the notice was issued by the department on e-portal which assessee was not aware of impugned orders due to lack of knowledge. In light of the above, ld. AR requests to condone the delay.

4. Whereas, on the contrary, ld. DR contested the said application, requesting to dismiss the same as there was no ‘sufficient cause’ in filing the appeal late.

5. After having heard counsels for both the parties on the application for seeking condonation of delay, we are of the view that since there was no effective service of orders upon

the assessee and due to lack of knowledge regarding the orders, assessee could not file the application in due time. Thus, keeping in view the principles laid down by Hon'ble Supreme Court in the case of **Land Acquisition Collector Vs. Mst katiji, 1987, AIR, Supreme Court, 1353** and also keeping in view the contents of the application for seeking condonation of delay and construing the expression 'sufficient cause' liberally, we condone the delay in filing the present appeal and thus the appeal is admitted to be heard on merits.

6. All the grounds raised by the assessee are inter-related and inter-connected and relates to challenging the order of the ld. CIT(A) in upholding the additions made by the assessee u/s.68 of the Income Tax Act therefore, we have decided to adjudicate these grounds by the present consolidated order.

7. We have heard Counsels for both the parties and perused the material placed on record, judgment cited before us and also the order passed by the revenue authorities.

8. From the record we noticed that additions in the present case were made by the AO u/s.68 of the Income Tax Act on account of the fact that assessee had availed unsecured loan from three parties i.e. **Josh Trading Pvt. Ltd., Pragati Gems Pvt. Ltd. & Olive Overseas Pvt. Ltd.**, of sum of Rs.50,00,000/- each from these companies. But the AO was of the view that creditworthiness of the loan in question was

in doubt therefore, additions were made and sustained by the revenue authorities.

9. Whereas, on the contrary we noticed that in order to discharge its onus, assessee had submitted all the relevant documents during the course of assessment and also before the Id. CIT(A) in the shape of confirmation / loan ledger accounts of all the three parties, which are at paper book page No.12,39 & 67. Apart from this assessee had also placed on record bank accounts of lender companies, income tax returns wherein acknowledgement of the lender company, audited financials for the F.Y.2012-13 pertaining to the year under consideration and other important aspects of assessee's case is that assessee had also repaid the said unsecured loans and in this regard bank statement of the lender companies have already been placed on record in the shape of paper book thereby establishing the repayment of loan in question. Moreover, affidavit / declaration of the Directors of the lender companies thereby accepting the transactions have already been placed on record and Form 16A issued to the lender companies for the tax debited on the interest providing to them have also been placed on record. In our view since the assessee has fully and duly discharged its onus cast upon him and no fault has been found by the department in any of the documents as referred above and contained in paper book running into page No.1-100. Moreover, we notice that the Co-ordinate Bench of ITAT in the case of ***ITO vs.Kinjal Enterprises bearing ITA No. No.50/Mum/2022*** had dealt with ***identically same lender***

companies i.e. Josh Trading Pvt. Ltd., Pragati Gems Pvt. Ltd. & Olive Overseas Pvt. Ltd., and deleted the respective addition in those cases. The Co-ordinate Bench of ITAT in the case of ***Nisarga Lifespace LLP vs. ITO; Praham India LLP vs. ITO, ITO vs. Design Deal Fashions Pvt. Ltd; DCIT vs. Pyramid Infratech Co; ITO vs. Pratima Ashar (2019) 107 taxmann.com 135***, Mumbai Tribunal has already dealt with identically same lender companies and deleted the respective additions. The relevant chart filed by the assessee is reproduced herein below:-

Sr No	Case laws	Common companies under consideration	Assessment years under consideration	Documents submitted before the assessing officer/ CIT(A)/ITAT	Observations of the Hon'ble ITAT-Mumbai bench
1	<i>ITO vs. Kinjal Enterprises (ITA 60/Mum/2022)</i>	<i>Josh Trading Pvt. Ltd., Pragati Gems Pvt Ltd (Para 2)</i>	2013-14	Para 6	Para 7
2.	<i>Nisarga Lifespace LLP vs. ITO 28(2)(3) (ITA 629/Mum/2020)</i>	<i>Josh Trading Pvt. Ltd Olive Overseas Pvt Ltd</i>	2013-14	Para 3.4. (Page 4)	Paras 3.7-3.9
3	<i>Praham India LLP Vs. TTO 31(2), Mumbai (ITA No: 4422/Mum/2024)</i>	<i>Josh Trading Pvt. Ltd</i>	2013-14	Para 4	Para 5.1-5.3
4.	<i>ITO 6(2)(2) vs. Design Deal Fashions Pvt. Ltd (ITA No: 7025/Mum/201fl)</i>	<i>Olive Overseas Pvt Ltd</i>	2009-10	Para 8	Para 9

5	<i>DCIT 27(2) vs. Pyramid Infracch Co OTA 1426/Mum/2024)</i>	<i>Josh Trading Pvt. Ltd</i>	<i>2012-13</i>	<i>Para 5.2 (1st Para on the Page 12)</i>	<i>Para 6-6.6</i>
6	<i>ITO vs. Pratima Ashar (2019) 107 taxmann.com 135 (Mum-Trib)</i>	<i>Olive Overseas Pvt. Ltd</i>	<i>2010-11</i>	<i>Para 8</i>	<i>Paras 8-10</i>

10. We noticed that additions were made by the AO merely on the ground that lenders did not appear, thus, in our view this cannot be the reason for disbelieving the genuineness of the transactions and even no adverse inference could have been made against assessee more particularly when the documents in the shape of ledger confirmations, bank statements showing receipt as well as repayment of loans, income tax returns, PAN, specific affidavits of the directors of the lending companies and evidences were duly filed before the revenue authorities which goes to prove the identity, creditworthiness and genuineness of the loan transactions.

11. Moreover, the AO merely relied upon the information received from the Investigation Wing in the case of one Pravin Kumar Jain and other entities. The statement on the basis of which additions were made were of third party and were of general in nature and had been specifically pointed out the unsecured loan transaction made in the case of assessee. Admittedly, no opportunity of cross examination was ever granted to the assessee while relying upon the statement of third person by the AO and even AO did not make any independent enquiries in order to determine as to whether the

three ingredients i.e. identity, creditworthiness and genuineness is established or not. Merely, AO rejected the documents based on the statement of third party in the absence of cross examination and without any independent enquiries. Thus, the action of the AO is illegal and against the provisions of law. It is important to mention and rely upon the decision of Hon'ble Bombay High Court in the case of **H.R. Mehta vs. ACIT reported in (2016) 72 taxmann.com 110 (Bombay)** wherein the Hon'ble Court considered the addition under section 68 of the act as incorrect, since the unsecured loan was received as well as repaid through banking channel and the material used against the taxpayer was not provided and an opportunity of cross examination was not given.

12. Even as per the facts of the present case, the '**loans were received and repaid**' through banking channel, and in this regard, the assessee has already placed on record all the relevant documents which were not disbelieved by the AO or Ld. CIT(A) and opportunity of cross examination opportunity was also not given.

13. We noticed that AO or Ld. CIT(A) instead of providing a cross examination opportunity of cross examination to the assessee, had made the additions by observing that the assessee had failed to bring the parties/lender companies before the revenue authorities. In this regard, it would not be out of place to mention her that the addition in the present case were made on the statements of a '*third party.*' It is a settled law that any statement made behind the back of the person cannot be used against him till, an opportunity of

cross examination is provided to the effected person. Thus in our view such a statement does not have any evidentiary value in the absence of cross examination. Since it is the responsibility of the revenue to provide to provide opportunity of cross-examination to the assessee but the revenue fail to discharge its responsibilities. On this proposition reliance is being placed upon the decision of the Coordinate Bench of ITAT Mumbai bench in the case of "**Rajuram Savaji Purohit vs. Income tax Officer [2024] 169 taxmann.com 18 (Mumbai Trib)**"

14. Even the additions on account of interest and commission made by the revenue by holding the unsecured loan as bogus are also incorrect as no specific observation in this regard were made by either of the authorities. Since in our view the additions made by the revenue authorities on account of unsecured loan are not sustainable therefore additions on account of interest or commission are also not sustainable.

15. The Ld. CIT(A) had relied upon certain case laws and after going through the same and considering the facts of the present case we found that the paramateria contained in the cited cases is not applicable to the facts of the present case. Thus considering the totality of the facts and circumstances and legal proposition as discussed above and also keeping in view that the Coordinate Benches of ITAT have already been dealt with identically same lender companies and deleted the additions in respective case as discussed by us above.

Moreover the assessee has successfully prove on record the loan already stood repaid, therefore in our considered view, the AO has wrongly made additions u/s.68 of the Act. Therefore, on the basis our above observations, we direct the AO to delete the same. Accordingly, the grounds raised by the assessee stands allowed.

16. In the result, appeal of the assessee stands allowed.

Order pronounced on 05 August, 2025.

Sd/-
(PRABHASH SHANKAR)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai; Dated 05/08/2025

KARUNA, *sr.ps*

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,

(Asstt. Registrar)
ITAT, Mumbai