

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.308/Bang/2025
Assessment Year : 2017-18

Mr. Shivakumar Mahadevaiahre B-9, 9 th Main Lalith Mahal Nagar Mysore, Karnataka 570028 PAN:ACZPM8866F	Vs.	ITO Ward 2(3) Mysuru-570010 Karnataka
APPELLANT		RESPONDENT

Appellant by	:	Sri Sukesh Patil, CA.
Respondent by	:	Sri Subramanian, JCIT DR

Date of Hearing	:	15.05.2025
Date of Pronouncement	:	12.08.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of the ld. CIT(A)/NFAC dated 20.12.2024 vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1071397505(1) passed u/s. 250 of the Income Tax Act, 1961 (in short “the Act”) for the assessment year 2018-19.

2. The assessee has raised the following grounds of appeal:-

- “1. The order passed by Learned Assessing officer is bad in law without considering the fact of the case.*
- 2. The Learned Commissioner of Income Tax Appeals uphold the additions made by A.O, on the premises that advances and loans were not returned, without knowing the fact that appellant is facing the litigation in respect developed land in which these loans and advances were invested.*
- 3. The Learned Commissioner of Income Tax Appeals uphold the additions made by A.O without considering the confirmations and credentials of loans and advance payers.*

4. *The Learned Commissioner of Income Tax Appeals uphold the additions made by A.O without giving proper opportunity of being heard the appellant.*

5. *Appellant reserve the right to add, to alter, to amend and to delete any other grounds at the time of hearing.”*

3. Brief facts of the case are that assessee being an Auditor by profession has declared income from profession as an Auditor and Tax Consultant. Further, the assessee is also a proprietor of Sri Shivashakthi Liquors and also derives income from agricultural activities. The assessee filed his return of income for the A.Y.2017-18 on 29.10.2017 by declaring Net Taxable income of Rs.11,66,490/-. The assessee had also declared agriculture income of Rs.49,75,447/-. Thereafter the case of the assessee was selected for scrutiny and accordingly, notices under section 143(2) as well as 142(1) of the Act were issued. The Assessee furnished the submissions on various dates. The Ld. AO verified the submissions as made by the assessee and observed that the assessee had not furnished the confirmations of the creditors along with their creditworthiness and genuineness of the transactions as detailed below: -

Loan Liability during the year		Current liability towards advance during the year	
Madesh	4,50,000	M. Nagendra	14,00,000
Mahadeswamy	1,60,000	M/s. Nichin Builders	98,50,000
Y.S. Dananjay	27,00,000	Lease Advance	25,00,000
Total	33,10,000	Total	1,37,50,000

4. Thus, the loan liability of Rs.33,10,000/- and the current liability of Rs.1,37,50,000/- aggregating to **Rs.1,70,60,000/-** recorded in the balance sheet was charged to tax as per the provisions of the Act, as the same is not being substantiated with

documentary evidences and accordingly computed the total assessed income at Rs.1,82,26,490/-.

5. Aggrieved by the order of the Ld. AO, assessee preferred an appeal before Id. CIT(A)/NFAC. The Id. CIT(A)/NFAC partly allowed the appeal of the assessee. The Id. CIT(A)/NFAC held that as the lease advance received amounting to Rs.25,00,000/- was already assessed to tax in A.Y.2014-15 with tax demand of Rs.8,32,080/- and thereby assessing this loan amount of Rs.25,00,000/- again in A.Y. 2017-18 would lead to double taxation and accordingly directed the Ld. AO to ascertain and satisfy himself that the same claim have been received in F.Y.2013-14 had been carried forward and appearing as the closing balance in F.Y.2016-17. Further, with respect to balance addition of Rs.1,45,60,000/- the Id. CIT(A)/NFAC confirmed the same as detailed below: -

Sl.No.	Particulars	Amount in Rs.
i.	Advance received from M/s. Nichin Builders	98,50,000
ii.	Advance received from M. Nagendra	14,00,000
iii.	Loan received from Madesh	4,50,000
iv.	Loan received from Mahadeswamy	1,60,000
v.	Loan Received from Y.S. Dananjay	27,00,000

6. Aggrieved by the order of the Id. CIT(A)/NFAC, the assessee has filed the present appeal before this Tribunal. The assessee has also filed paper book comprising therein 35 pages containing therein the written submissions as well as the following details: -

S.No.	Particulars
i.	Written Submissions
ii.	Copy of Information of Mr. M. Nagendra

S.No.	Particulars
iii.	Copy of order giving effect to CIT(A) order
iv.	Copy of Information of Mr. H.K. Madesha
v.	Copy of Information of Mr. Dhananjaya Y.S
vi.	Copy of Information of Mr. M. Mahadevaswamy
vii.	Copy of Rectification of mistakes under section 154 of the Act.
viii.	Copy of reply to notice dated 16.03.2020.

7. Before us, Ld.AR of the assessee vehemently submitted that ld. CIT(A)/NFAC erred in upholding the additions made by the AO on the ground that advances and loans were not returned back, without appreciating the fact that assessee is having the litigation with respect to development of land in which these loans and advances were invested. Further, Ld.AR of the assessee submitted that the Ld.CIT(A) did not consider the confirmation and credentials of loans and advances produced before him and passed an order without giving proper opportunity of being heard and prayed that one more opportunity may be granted before the Ld. AO to produce all these confirmations and credentials of the loan creditors to substantiate the claim of the assessee.

8. Ld.DR, on the other hand, supported the orders of the authorities below.

9. We have heard rival contentions and perused the material available on record. Assessee and Sri Gopal owned a land near Mysore wanted to develop the land and sell sites to make profit. Accordingly, they approached Mr. Tushar Prakash Chandraghatgi (M/s. Nichin Builders) during the F.Y. 2007-08. The assessee and Sri Gopal entered into a sale agreement on 21.11.2007 with Mr. Tushar Prakash Chandraghatgi (buyer). The assessee received his share of Rs.98,50,000/- as advance from Mr. Tushar Prakash Chandraghatgi. Since the assessee and Sri Gopal are into the

business of developing land into sites for sale, they were also developing this property which was agreed to sale to Mr. Tushar Prakash Chandraghatgi. As the dispute arose between Mr. Tushar Prakash Chandraghatgi and assessee, Mr. Tushar Prakash Chandraghatgi filed the suit before the Court of City Civil Judge Senior Division, Mysore on 26.03.2018 bearing O.S. 306/2018. It is submitted that the suit is still pending to be heard and meanwhile the Hon'ble Court ordered to maintain the status quo of the said property. Before us, the copy of the suit filed before the Court of City Civil Judge Senior Division, Mysore and the order of the status quo was submitted. Further, with regard to other loans and advances amounting to Rs.47,10,000/- the assessee produced the copy of confirmation letter along with ledger extract and submitted that these amounts were used for the development of land and the land so developed is under litigation. As a result, these amounts were not returned. Further, it is submitted that it is mutually agreed that once litigation is over, either amount along with the agreed portion of profit would be given or the site would be allotted depending upon the outcome of the litigation.

10. On going through the order of assessment, we take note of the fact that the Ld. AO on the ground that the assessee has not furnished the confirmation of the creditors along with their creditworthiness, genuineness of the transactions has added entire loan and current liability amounting to Rs.1,70,60,000/- as income of the assessee. On going through the order of the ld. CIT(A)/NFAC, we also take note of fact that ld. CIT(A)/NFAC confirmed the additions of the Ld. AO on the ground that assessee failed to establish the creditworthiness and genuineness of the transactions. This being so, in the interest of justice and fair play and as requested by Ld.AR of the assessee, we deem it fit and proper to remit this issue back to the file of Ld. AO to decide afresh after

taking into consideration the confirmation of accounts, ledger extract, order of Court of City Civil Judge Senior Division, Mysore, in accordance with law. Needless to say reasonable opportunity of being heard must be granted to the assessee. Assessee is also directed to produce / submit all the necessary documents / information / financials, to substantiate his claim. It is ordered accordingly.

11. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12th August, 2025

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 12th August, 2025.
Giridhar/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.