

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND
SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

I.T.A. No.37/Alld/2020
Assessment year:2013-14

Divya Construction Co., Suriyawan, Bhadohi. PAN:AAJFM3190N (Appellant)	Vs.	DCIT, Circle-3, Mirzapur. (Respondent)
---	-----	---

Appellant by	Shri Praveen Godbole, C.A.
Respondent by	Shri A. K. Singh, Sr. D.R.

ORDER

PER ANADEE NATH MISSHRA, A.M.

(A) This appeal vide I.T.A. No.37/Alld/2020 has been filed by the assessee for assessment year 2013-14 against impugned appellate order dated 29/11/2019 of Commissioner of Income Tax (Appeals) ["CIT(A)" for short]. In this appeal, the assessee has originally raised the following grounds:

- "1. *That in any view of the matter the assessment made on an income of Rs.1,69,93,140/- by order dated 08/03/2016 passed u/s 143(3) of the Income Tax Act is bad both on the facts and in law.*

2. *That in any view of the matter the addition u/s 68 made by the Assessing Officer on protective basis and the learned CIT(A) was wrong in considering the addition on substantive basis.*
3. *That in any view of the matter the learned CIT(A) was not correct in making the addition on substantive basis without bringing any positive material on record nor any opportunity was provided to the assessee before forming an opinion hence the learned CIT(A) travelled beyond jurisdiction to decide the appeal hence the addition made is highly unjustified.*
4. *That in any view of the matter the addition of Rs.1,45,73,000/- as made by the CIT(A) on substantive basis is not correct when in the case of respective depositors proceeding u/s 148 was initiated and in their case after due verification Assessing Officer made the addition in the hands of depositors hence the addition made on substantive basis in the hands of assessee firm is highly unjustified.*
5. *That in any view of the matter the addition of Rs.8,73,653/- as made by applying net rate of 8% by Assessing Officer and his action as confirmed by CIT(A) is highly unjustified."*

(B) The assessee filed additional grounds of appeal as under:

// The appellant named above most respectfully submits as under:-

1. That in the aforesaid appeal the sole controversy revolves round as to whether the addition of loan amounting to Rs.1,45,73,000/- be assessed in the hands of the appellant firm on protective basis or should have been assessed on substantive basis in the hands of those persons who have provided the said loan to the appellant firm.

2. That during the course of argument of aforesaid appeal, the counsel of the appellant stressed the fact that when the assessment have already been completed in the hands of persons who have provided respective loan to the appellant firm on substantive basis, the question of protective assessment made in the hands of appellant do not survive and is liable to be struck down as it amounts to addition of same income in the respective two hands which the law does not permit.
3. That without expressing any opinion to the above arguments, the hearing of the case was adjourned for next date.
4. That thereafter the counsel of the appellant reinvestigated and reconsidered the entire facts of the case once again and then it was transpired to him that the addition of Rs.1,45,73,000/- confirmed by CIT(A) in the hands of appellant firm and converted to substantive assessment from protective assessment basis amounts to enhancement of income as well as the liability of tax the appellant which is wholly against the provision of law as contained in section 251(2) of the Income Tax Act, 1961 ("hereinafter is

referred to as the Act"). Accordingly, before making any such enhancement of the income or tax of the appellant he was legally entitled for a show cause notice which was not provided to them.

5. That the order of assessment passed by AO has attained finality as no action was taken by the department to dislodge the same and on the contrary, in appeal filed by the appellant for seeking relief against protective assessment, on the ground that since substantive assessment orders have already been passed in respective hands of loan providers and as such the protective assessment made in their hands be cancelled/deleted.
6. That instead of allowing any relief, the appellant has been put in a worse position by enhancing that their income as well as tax and that too without following proper procedure by law. Thus before making any enhancement as above, the appellant firm was entitled for a show cause notice as provided u/s 251(2) of the Act.
7. That while filing the appeal, inadvertently no grounds were raised by the appellant on the basis of aforesaid facts and law which infact goes to the root of the matter of the

jurisdiction of appellate authority while deciding the appeal. The aforesaid omission is not willful or deliberate and as such the following additional grounds of appeal are being taken herewith which may kindly be allowed and adjudicated otherwise the appellant would suffer great irreparable loss.

- (i) Because addition of Rs.1,45,73,000/- u/s 68 of the Act made by AO in the hands of appellant on protective basis do not survive in view of the facts that substantive assessment have already been completed in the hands of those persons who have provided loan to assessee firm. Under the law, same income cannot be taxed twice in the hands of two persons.
- (ii) Because the addition of disputed amount confirmed by the CIT(A) in the hands of appellant firm on substantive basis is wholly against provision law when CIT(A) was fully aware that substantive assessment have already been made and sustained in the hands of the loan providers to the appellant.
- (iii) Because confirming the addition of Rs.1,45,73,000/- in the hands of appellant firm on substantive basis leads to enhancement of income as well as tax, as the appellant was assessed on protective basis without there bring any demand of tax on the premises that substantive addition would be made somewhere else.

- (iv) Because before enhancing the income of the appellant, no notice as provided u/s 251(2) of the Act was served upon the appellant firm nor the appellant firm was aware of the same as well as nothing has been mentioned in the appellate order about it. Thus, the order passed by CIT(A) is wholly against the provision of law and is vitiated.
- (v) Because the order of assessment passed by AO attained finality as no action was taken by department to dislodge the same, Accordingly, it is not open to Id. CIT(A) to hold that the said order is incorrect or illegal.
- (vi) Because the appellant having gone in appeal to seek relief against protective assessment on the ground that since substantive assessments have already been completed in the hands of persons who have provided loan to the appellant, therefore the protective assessment be cancelled/deleted but without giving such relief to the appellant, they have been put to worse position by enhancing their liability of tax as well as income and that too without serving a proper notice of show cause as provided u/s 251(2) of the Act.

(B.1) No objection was raised by Revenue to admission of additional grounds.

(B.1.1) In view of the foregoing and considering the nature of the additional grounds, it is found that additional grounds of appeal are nothing but facts

of the case; or are of the nature that are inherent in grounds No. 2,3 and 4 taken by the assessee in original grounds of appeal filed along with Form-36. When an appellant finds grounds of appeal amending the original grounds of appeal (by way of additional grounds) but these grounds are inherent in the original grounds of appeal specifically raised (and not in a vague or ambiguous or unspecific ground taken in a general manner; such as ground -1 of the original grounds of appeal in the present case); then such additional grounds of appeal are essentially sub-grounds of the original ground(s) of appeal which further elaborate the original ground(s) of appeal taken specifically; and provide assistance to the Bench in proper adjudication. Therefore, liberal approach is to be adopted in its admission, especially when the respondent does not object. We, therefore, admit the grounds of appeal taken by the appellant under the description of 'Additional Grounds'.

(C) In this case assessment order dated 08/03/2016 was passed u/s 143(3) of the Act whereby the assessee's total income was assessed at Rs.1,69,93,140/- as against returned income of Rs.15,46,480/-. In the aforesaid assessment order, an addition of Rs.8,73,656/- was made to net profit of the assessee on estimation basis. Further addition of Rs.1,45,73,000/- was made u/s 68 of the Act, treating unsecured loans taken by the assessee from four persons as not genuine. The aforesaid four persons are Mr. Sachin Tiwari, Rohit Kumar Tripathi, Nitesh Kumar Tripathi and Ravindra Nath Tripathi from whom the assessee received loans amounting to Rs.31,55,000/-, Rs.32,20,000/-, Rs.26,98,000/- and Rs.55,00,000/- respectively. The aforesaid total addition of Rs.1,45,73,000/- was made in the hands of the assessee on protective basis. Further, information was passed by the Assessing Officer to concerned assessing authority of the aforesaid four persons to assess

respective amounts on substantive basis. The assessee filed appeal in the office of the learned CIT(A). Vide impugned appellate order dated 29/11/2019, the learned CIT(A) dismissed the assessee's appeal while the learned CIT(A) confirmed the aforesaid addition of Rs.8,73,656/- to the net profit of the assessee. He not only confirmed the addition totaling Rs.1,45,73,000/- but also changed the nature of the addition of aforesaid amount of Rs.1,45,73,000/- from protective basis to substantive basis. Aggrieved, the assessee has filed the present appeal in Income Tax Appellate Tribunal.

(D) In the course of appellate proceedings in Income Tax Appellate Tribunal, a paper book containing the following particulars was filed from the assessee's side:

Sl. No.	Particulars
1.	Short fact of the case before Hon`ble Bench
2.	Written submission filed before CIT(A)
3.	Copy of reasons recorded in the case of Sachin Tiwari along with copy of assessment order for A.Y.2012-13 where source of loan duly accepted in the hands of loan creditor.
4.	Copy of return receipt along with copy of account form books of assessee's firm and bank statement of Sachin Tiwari.
4.	Copy of reasons recorded in the case of Rohit Kumar Tripathi along with copy of assessment order for A.Y.2012-13 where source of loan duly accepted I the hand of loan creditor.
5.	Copy of return receipt along with copy of

	account from books assessee's firm and bank statement of Rohit Kumar Tripathi.
6.	Copy of reasons recorded in the case of Nitesh Kumar Tripathi along with copy of assessment order for A.Y 2012-13 where source of loan duly accepted in the hand of loan creditor.
7.	Copy of return receipt along with copy of account from books of assessee's firm and bank statement of Nitesh Kumar Tripathi.
8.	Copy of reasons recorded in the case of Ravindra Nath Tripathi along with copy of assessment order A.Y.2012-13 where source of loan duly accepted in the hand of loan creditor.
9.	Copy of return receipt along with copy of account from books of assess's firm and bank statement of Ravindra Nath Tripathi.
10.	Reply filed before assessing officer along with copy of return receipt along with computation and audit report for A.Y.2013-14.
11.	Copy of return receipt along with computation and audit report for A.Y.2012-13.
12.	Replies filed before assessing officer on different dates.
13.	Copy of Citations.

(D.1) Further, a separate paper book, containing the following particulars, with regard to the aforesaid additional grounds of appeal, referred to in foregoing paragraph no. (B) of this order was filed from the assessee's side:

Sl. No.	Particulars
1.	Short facts of the case.
2.	Copy of decision of Hon'ble ITAT Delhi Bench in the case of VKS Properties Pvt. Ltd.
3.	Copy of decision of Hon'ble ITAT Jaipur Bench in the case of DCIT v/s Pallavi Mishra.
4.	Copy of decision of Hon'ble ITAT Jaipur Bench in the case of Dinesh Kumar Chaurasia v/s ACIT.
5.	Copy of decision of Hon'ble ITAT Raipur Bench in the case of Jila Sahakari Kendriya Bank v/s DCIT.
6.	Copy of decision of Hon'ble ITAT Ahmedabad Bench in the case of Jivarajbhai Ramabhai Chaudhari v/s ITO.
7.	Copy of decision of Hon'ble ITAT Pune Bench in the case of Sachin Pandurang Alhat v/s ITO.

कार्यालय
आयुक्त (वि०प्र०)
अहमदाबाद

(D.2) The learned D.R. also filed a paper book, containing the following particulars:

S. No.	Description of Documents enclosed
1	<p><u>As per the AO's record of the firm for A.Y. 2013-14 (under appeal):</u></p> <ul style="list-style-type: none"> • "Processed summary" • Notice u/s 143(2) dated 21.09.2014 (un-responded) • Notice u/s 142(1) dated 06.01.2015 (un-responded) • Notice u/s 142(1) dated 26.05.2015 (un-responded) • Notice u/s 142(1) dated 07.07.2015 (un-responded) • Notice u/s 142(1) dated 05.08.2015 (un-responded) • Show cause notice u/s 274 r/w 271(1)(b) dated 05.08.2015 (un-responded) • Notice u/s 142(1) dated 21.12.2015 [Qu. no. 2/unsecured loans] <ul style="list-style-type: none"> ➤ Adjudgment application dated 23.12.2015 (allowed for 30.12.2015) and PoA • 1st response dated Nil (filed on 19.01.2016), alongwith- <ul style="list-style-type: none"> ➤ Balance sheet & P/L a/c for A.Y. 2012-13 (preceding year) ➤ ITR-V, Computation of income, Audit report, Balance sheet & P/L a/c for A.Y. 2013-14 (under appeal) ➤ 1st partial reply dated 13.01.2016 (filed on 19.01.2016) • 2nd reply dated 27.01.2016, alongwith <ul style="list-style-type: none"> ➤ ITR-V, account statements & bank a/c statements of all 4 loans creditors (namely- S/Shri Rohit Kumar Tripathi, Sachin Tiwari, Nitesh Kuamr Tripathi & Ravindra Nath Tripathi for A.Y. 2013-14) • Queried about said loans as per order sheet dated 27.01.2016 (pp 107) <ul style="list-style-type: none"> ➤ Adjudgment application dated 09.02.2016 (allowed for 16.02.2016)

	<ul style="list-style-type: none"> • 3rd reply dated 16.02.2016 alongwith- <ul style="list-style-type: none"> ➤ bank a/c statements of all 4 loans creditors (namely- S/Shri Rohit Kumar Tripathi, Sachin Tiwari, Nitesh Kuamr Tripathi & Ravindra Nath Tripathi for A.Y. 2012-13 (preceding year) • Asked to produce said loans creditors to explain source of amounts credited to their bank a/cs [as per order sheet dated 16.02.2016] (pp 107) <ul style="list-style-type: none"> ➤ Adjournment application filed on 23.02.2016 (allowed for 01.03.2016) • 4th /final reply dated 01.03.2016, <i>inter alia</i> stating as under:- <p>“.....परिवार के जिन लोगों से उधार लिया गया है उनके बैंक एकाउण्ट में किये गये लेन-देन का ब्यौरा अभी नहीं मिल पा रहा है जिसके कारण हम यह बता नहीं पा रहे हैं की Transfer/cheque, deposit किसके एकाउण्ट से आया है और उनका (source) क्या है। उपरोक्त विवरण परिवार में आपसी तनाव होने के कारण समय से नहीं मिल पा रहा है।... अतः आप से अनुरोध है कि (unsecured loan) को आयकर की धारा 68 के अन्तर्गत आय में सम्मिलित न करें।...”</p> <ul style="list-style-type: none"> ➤ The above final submission/reply was taken by the AO on record as per the order sheet entry dated 01.03.2016 as under:- (pp 108-109) <p>“.....Shri D.R. Maurya, FCA उपस्थित हुए एवं लिखित जवाब दाखित किया.....loans की entries substantiate न कर पाने से unsecured loans भी establish नहीं हो पा रहे हैं। तदनुरूप सुनवाई पूरी की गई।”</p> • Assessment order u/s 143(3) dated 08.03.2016 making addition of fresh unsecured loans of Rs. 1,45,73,000/- u/s 68 in the hands of the appellant firm <u>on protective basis</u> (the impugned order of the AO) • CIT(A)'s order dated 29.11.2019 confirming the impugned addition of Rs. 1,45,73,000/- u/s 68 in the hands of the appellant firm <u>on substantive basis</u> • AO's order sheets (04.09.2014 to 08.03.2016)
<p>2.</p>	<p>As per the appellant firm's record for A.Y. 2014-15 (the immediately succeeding year)</p> <ul style="list-style-type: none"> • Audit report e-filed (without annexing Balance sheet & P/L a/c) • ITR • Balance sheet as on 31.03.2014 a/w P/L a/c (physically filed in the assessment proceedings)

- Assessment order u/s 143(3) dated 21.11.2016, thereby making *inter alia* an addition of Rs. 16,00,000/- u/s 68 on a/c of unsecured loan (in the name of M/s Parijat Construction)
- CIT(A)'s order dated 18.03.2024 (appeal dismissed)
- ITAT's order in ITA No. 71/A/2024, dated 21.10.2024 [remanding back the matter to CIT(A)]

3. As per the loan creditors records for A.Y. 2012-13

Rohit Kumar Tripathi (ALKPT4161A)-

- "Processed summary"
- **ITR** (not filed u/s 139 but, **filed u/s 148 on 10.05.2017**)
- Notice u/s 148 dated 23.09.2016 (a/w reasons recorded & sanction therefor)
- Notice u/s 142(1) dated 17.03.2017
- 1st reply dated 11.05.2017 a/w PoA
- Notice u/s 143(2) dated 11.05.2017
- **2nd reply** dated 27.06.2017, alongwith 'details of **source of deposits** in bank a/c' and **Balance sheets** as on 31.03.2010, 31.03.2011 & 31.03.2012
- **3rd reply** dated 10.11.2017, alongwith details of loan creditors, sundry creditors, sales of material to the appellant firm & cash flow statement
- Replies of the 06 sundry creditors u/s 133(6)
- Reply (dated 13.12.2017) of the appellant firm
- Assessment order u/s 147/143(3) dated 26.12.2017 (thereby making an addition of only Rs. 7,64,817/-)
- AO's order sheet (28.07.2016 to 06.04.2018)

Sachin Tiwari (AIFPT2793J)

- "Processed summary"
- **ITR** (not filed u/s 139 but, **filed u/s 148 on 21.06.2017**)
- **Bank a/c** statement (a/c **opened on 24.03.2011**)
- Notice u/s 148 dated 23.09.2016 (a/w reasons recorded & sanction therefor)
- Notice u/s 142(1) dated 17.03.2017
- 1st reply dated 22.06.2017 a/w PoA
- Notice u/s 143(2) dated 23.06.2017
- **2nd reply** dated 27.06.2017, alongwith 'details of **source of deposits** in bank a/c' and **Balance sheets** as on 31.03.2010, 31.03.2011 & 31.03.2012
- **3rd reply** dated 10.11.2017, alongwith details of loan creditors, sundry creditors, sales of material to the appellant firm
- Replies of the 04 sundry creditors u/s 133(6)
- Reply (dated 13.12.2017) of the appellant firm
- Last/final reply dated 18.12.2017
- Assessment order u/s 147/143(3) dated 26.12.2017 (thereby

- making an addition of only Rs. 7,00,000/-)
- AO's order sheet (28.07.2016 to 06.04.2018)

Nitesh Kumar Tripathi (AIEPT4791M) s/o Ravindra Nath Tripathi

- "Processed summary"
- **Bank a/c** statement (a/c **opened on 11.02.2012**)
- Notice u/s 148 dated 23.09.2016
(a/w reasons recorded & sanction therefor)
- Notice u/s 142(1) dated 17.03.2017
- 1st reply dated 02.05.2017 a/w PoA & copy of **ITR u/s 139(4) filed on 31.03.2013** & computation of income
- Notice u/s 143(2) dated 11.05.2017
- **2nd reply** dated 27.06.2017, alongwith a '**revised computation of income**', 'details of **source of deposits** in bank a/c' and **Balance sheets** as on 31.03.2010, 31.03.2011 & 31.03.2012
- **3rd reply** dated 10.11.2017, alongwith 'cash flow statement' sales of material to the appellant firm, details of loan creditors, sundry creditors,
- Replies of the 04 sundry creditors u/s 133(6)
- Reply (dated 13.12.2017) of the appellant firm
- Last/final reply dated 18.12.2017
- Assessment order u/s 147/143(3) dated 26.12.2017 (thereby making an addition of only Rs. 6,50,000/-)
- AO's order sheet (28.07.2016 to 06.04.2018)

Ravindra Nath Tripathi (ADFPT2726J)

- "Processed summary"
- **ITR** (not filed u/s 139 but, **filed u/s 148 on 01.05.2017**)
- Notice u/s 148 dated 23.09.2016
(a/w reasons recorded & sanction therefor)
- Notice u/s 142(1) dated 17.03.2017
- 1st reply dated 02.05.2017 a/w PoA
- Notice u/s 143(2) dated 11.05.2017
- **2nd reply** dated 27.06.2017, alongwith 'details of **source of deposits** in bank a/c'
- **3rd reply** dated 10.11.2017, alongwith bank a/c statements, viz.-
 - **Oriental Bank of Commerce, Bhadohi** (a/c **opened on 20.01.2012**)
 - **SBI, Lucknow**
- **Last/final reply** filed on 18.12.2017, alongwith details of transactions with the appellant's firm
- Assessment order u/s 147/143(3) dated 26.12.2017 (thereby making an addition of only Rs. 4,00,000/-)
- AO's order sheet (28.07.2016 to 06.04.2018)

4. As per the loan creditors records for A.Y. 2013-14

Rohit Kumar Tripathi (ALKPT4161A)-

- ITR u/s 139(4) r/w 44AD filed on 26.03.2014
- **Assessment order** u/s 147 r.w.s. 144 & 144B dated 28.03.2022 (without making any addition)

Sachin Tiwari (AIFPT2793J)

- ITR u/s 139(4) r/w 44AD filed on 26.03.2014
- Assessment order u/s 147 r.w.s. 144B dated 23.03.2022 (thereby making addition of Rs. 31,55,000/- representing loan advanced to the appellant firm)
- CIT(A)'s order dated 02.05.2025 (thereby dismissing the appeal against assessment order)

Nitesh Kumar Tripathi (AIEPT4791M) s/o Ravindra Nath Tripathi

- ITR u/s 139(4) r/w 44AD filed on 26.03.2014
- Assessment order u/s 147 r.w.s. 144B dated 17.03.2022 (without making any addition)

Ravindra Nath Tripathi (ADFPT2726J)

- ITR (not filed u/s 139 but, **filed u/s 148 on 01.05.2017**)
- Assessment order u/s 147 r.w.s. 143(3) dated 26.12.2017 (without making any addition)
- Another notice u/s 148 dated 25.06.2021
- Order u/s 148A(d) [consequent to Hon'ble SC's order dated 04.05.2022] dated 22.07.2022 (thereby dropping the said proceedings)

(E) At the time of hearing, learned A.R. for the assessee drew our attention to written submissions, contained at page numbers A-D and 1-4 of the aforesaid paper book. He also drew our attention to decided precedents contained in the aforesaid paper book, as per following citations:

- (i) Smt. Ganigara Rekha Venugopal vs. ACIT [2023] 200 ITD 141/149 taxmann.com 186 (Bangalore-Trib)
- (ii) Northern Operating Services (P.) Ltd. vs. JCIT [2023] 200 ITD 145/149 taxmann.com 52 (Bangalore-Trib)
- (iii) Income Tax Officer vs. Swaran Fastners [2021] 89 ITR (Trib) 650 (Chandigarh)

- (iv) Income Tax Officer vs. Mega Collections (P.) Ltd. [2023] 201 ITD 404/151 taxmann.com 403 (Surat-Trib)
- (v) K.P. Manish Global Ingredients (P.) Ltd. vs. ACIT [2021] 191 ITD 548/131 taxmann.com 158 (Chennai-Trib)
- (vi) Virendra Natwarlal Jariwala vs. DCIT [2021] 191 ITD 555/131 taxmann.com 159 (Surat-Trib)

(E.1) As regards the additional grounds of appeal, learned A.R. for the assessee drew our attention to written submissions, contained in separate paper book, which is reproduced below for the ease of reference:

That the above noted appeal is fixed for hearing on 09.09.2025 and the present appeal paper book has been filed by the assessee as well as by the department. **In the present appeal the assessee has also filed additional ground dated 28.07.2025 which is the important ground and needs to be adjudicated.**

That in the present appeal the only dispute is with regard to addition of Rs.1,45,73,000/- made u/s 68 of the Act as well as addition on account of net profit Rs.8,73,655/-. The addition u/s 68 of the Act amounting to Rs.1,45,73,000/- was made in the hands of assessee firm on protective basis and direction was given by the then assessing officer to assess the same on substantive basis in the hands of loan creditors. Against the

assessment order first appeal was filed before CIT (Appeal) who vide order dated 29.11.2019 has considered the addition on substantive basis instead of protective basis as done by the assessing officer and the said finding was given by the learned CIT Appeal without following the proper procedure under the law.

That it is no doubt of fact that during the year the assessee has taken loan from various depositors through account payee cheques and not a single amount was taken in cash. The said amount was provided out of definite sources which was assessed accordingly by the assessing officer and speaking order was passed u/s 147/143(3) in the hands of all 4 loan creditors. The persons from whom loan was taken were the family members of partner of the firm. Thus the amount was correctly assessed in the hands of loan creditors. In this way when the assessments have already been completed in the hands of person who have provided loan to the appellant firm on substantive basis, then question of protective assessment in the hands of appellant do not survive as the same will lead to

taxing same income twice which is wholly against provision of law.

That the learned CIT (Appeal) while passing the order has considered the loan amount from different parties on substantive basis in the hands of firm without issuing notice u/s 251(2) of the Act which lead to enhancement of income when the addition already made in the hands of firm on protective basis. Thus the order passed by CIT Appeal is wholly against the provision of law and is vitiated. The order passed by assessing officer whereby income was assessed in the hands of firm on protective basis attained finality. Therefore it is not open for learned CIT (Appeal) to frame the order by taking otherwise view without following proper procedure under the law. In this regard the assesee rely on various decisions which are enclosed herewith.

That the department has filed to paper book dated 29.05.2025 and 03.06.2025 along with various decision from pages 375 to 601 which are prima-facie not applicable to the

present case since the facts are different from the cited decision.

It is therefore prayed that in the light of submission made above and the cited decision the addition as confirm by CIT Appeal on substantive basis does not stand in absence of proper procedure to be followed and since substantive addition has already be made in the hands of loan creditors hence addition made in the hands of assessee firm on protective basis is not correct and liable to be deleted.

(E.1.1 The learned D.R., as regards the aforesaid addition of Rs.8,73,656/- to net profit, placed reliance on the impugned order of the learned CIT(A) and on the assessment order. As regards the other addition totaling Rs.1,45,73,000/-, the learned D.R. supported the order of the learned CIT(A). He submitted that the Assessing Officer had erred in making the addition on protective basis in the absence of substantive assessment. He further submitted that this appeal pertains to assessment year 2013-14. The learned D.R, taking us through the paper book filed by him, highlighted that no addition of equivalent amount was made in the hands of the aforesaid four persons (namely Mr. Sachin Tiwari, Rohit Kumar Tripathi, Nitesh Kumar Tripathi and Ravindra Nath Tripathi) of corresponding amount in assessment year 2013-14. He further submitted that the learned CIT(A) did not enhance the quantum of addition but merely changed the nature of the addition from protective addition to substantive addition as regards the aforesaid amount of Rs.1,45,73,000/-. He also submitted that the learned CIT(A) was not required to issue show cause notice to the assessee for changing the nature of the addition (from protective to substantive) as there was no enhancement of income.

(E.2) In his rejoinder, learned A.R. for the assessee submitted that Revenue did not subject the assessment order passed by the Assessing Officer to revision proceedings u/s 263 of the Act. Therefore, he contended, the assessment order had attained finality qua the Revenue. He also submitted that substantive additions of the aforesaid amount totaling Rs.1,45,73,000/- were made in the hands of the aforesaid four persons (namely Mr. Sachin Tiwari, Rohit Kumar Tripathi, Nitesh Kumar Tripathi and Ravindra Nath

Tripathi) in assessment year 2012-13 instead of assessment year 2013-14 after due application of mind by the Assessing Officer. The aforesaid persons claimed before their respective Assessing Officers that the aforesaid amounts were brought forward from the earlier year (previous year relevant to assessment year 2012-13). The aforesaid four persons had explained to the Assessing Officer that the corresponding amounts were deposited in the respective bank accounts of the aforesaid four persons during financial year relevant to assessment year 2013-14. Therefore, the Assessing Officer, after due application of mind, had made the addition in assessment year 2012-13 instead of assessment year 2013-14. He contended that the addition in the hands of the aforesaid four persons in assessment year 2012-13 on substantive basis pertains to protective assessment of same amounts in the hands of the assessee in assessment year 2013-14. He further submitted that the aforesaid four persons have also paid the assessed tax pursuant to assessment orders; and that the assessment orders of the aforesaid four persons have also attained finality as these have not been subjected to revision proceedings u/s 263 or u/s 264 of I.T.Act; nor have they been subjected to reassessment proceedings u/s 147 of the I.T. Act.

(E.2.1) We have heard both sides. We have perused materials on record. Relevant facts are not in dispute. It is not in dispute that the aforesaid addition of Rs.1,45,73,000/- was made on protective basis in the assessment order and information was passed on to the Assessing Officers of the aforesaid four persons (namely Mr. Sachin Tiwari, Rohit Kumar Tripathi, Nitesh Kumar Tripathi and Ravindra Nath Tripathi) to make addition in the hands of the aforesaid four persons on substantive basis. Thus, it was well considered choice exercised by Revenue to assess the amounts in the hands of the aforesaid four persons on substantive basis,

after application of mind. It is not in dispute that the Assessing Officers of the aforesaid four persons, after due application of mind, chose to assess the aforesaid corresponding amount in the hands of aforesaid four persons in assessment year 2012-13 instead of assessment year 2013-14. Thus, it was also a well considered choice exercised by Revenue to assess the income in assessment year 2012-13 instead of in assessment year 2013-14; in the hands of the aforesaid four persons. Further, it is also not in dispute that no proceedings u/s 263 or u/s 264 or u/s 147 of the I.T. Act have been initiated by Revenue. Thus, it is held that the aforesaid choices made by Revenue have attained finality. It is also not in dispute that the aforesaid additions made in the hands of the aforesaid four persons in assessment year 2012-13 do correspond with the unsecured loans received by the assessee from them in assessment year 2013-14. It is also not in dispute that the additions in the hands of the aforesaid four persons in assessment year 2012-13 was made on substantive basis. Having assessed the amounts in the hands of the aforesaid four persons on substantive basis after well considered choices made by Revenue which attained finality, it is unreasonable, unjust and wholly unsustainable for Revenue to take the stand that the same amount should also be taxed on substantive basis in the hands of the assessee. The amount in question i.e. Rs.1,45,73,000/- cannot be taxed twice on substantive basis in different hands as it will amount to addition of the same income twice in the facts and circumstances of the present appeal. In view of the foregoing, the aforesaid addition of Rs.1,45,73,000/- is hereby deleted.

(F) As regards the addition of Rs.8,73,656/- to the net profit of the assessee, learned A.R. for the assessee failed to persuade us that the addition was excessive, unreasonable, unjust or against law. Therefore, the

addition of Rs.8,73,656/- made to the net profit of the assessee is confirmed.

In the result, the appeal of the assessee is partly allowed.

(Order pronounced in the open court on 24/09/2025)

Sd/.
(SUBHASH MALGURIA)
Judicial Member

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:24/09/2025
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. D.R., I.T.A.T., Allahabad