

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.1266/SRT/2024**

**Assessment Year: 2016-17**

**(Hybrid hearing)**

Vimalkumar Katrodiya 90, Mamta Park Society, Spinning Mill Kapodara, Varachha Road, Surat-395 006	Vajubhai <b>बनाम/ Vs.</b>	Assistant Commissioner of Income-tax, Circle-2(2), Surat, Aayakar Bhawan, Majura Gate- 395 001
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AQIPK 2458 C</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी /Respondent)</b>

निर्धारिती की ओर से /Appellant by	Shri Kamlesh Bhatt, CA
राजस्व की ओर से /Respondent by	Shri Aashish Pophare, CIT-DR
सुनवाई की तारीख/Date of Hearing	08/07/2025
उद्घोषणा की तारीख/Date of Pronouncement	26/09/2025

**आदेश / ORDER**

**PER BIJAYANANDA PRUSETH, AM:**

This appeal by the assessee emanates from order passed under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 17.10.2024 by the National Faceless Appeal Centre, Delhi/ Commissioner of Income-tax (Appeals), [in short, "NFAC/CIT(A)"] for assessment year (AY) 2016-17, which in turn assessment order passed by Assessing Officer (in short, "AO") u/s 144 of the Act on 29.11.2018.

2. The ground of appeal raised by the assessee is as under:

1. *In view of the facts and circumstances of the case the Ld. AO erred in making the addition of Rs.10,09,16,505/- u/s 68 and disallowing the sum of Rs.23,47,810 as alleged interest expenses and Hon'ble CIT(A)/NFAC, New Delhi erred in law and in facts, in dismissing the appeal and hence your appellant Prays that both the orders being unfair, illegal and in total disregard of the facts, be quashed."*

3. Facts of the case in brief are that the assessee filed his return of income for the assessment year 2016-17 declaring income of Rs.19,28,660/-. The case was selected for limited scrutiny under CASS. Thereafter, notice u/s 143(2) of the Act was issued and served upon the assessee but there was no compliance. Again, notices u/s 142(1) were issued; however, assessee did not comply with the said notices. The issues to be examined during scrutiny proceedings were: (i) whether income from real estate business was correctly offered to tax, (ii) whether sundry creditors were genuine and (iii) whether the interest expense was admissible or not. The AO has observed that the assessee had submitted only partial information in response to notice u/s 142(1) though it was asked to specifically provide details of sundry creditors. The assessee only submitted list of sundry creditors without address and in some cases, even PANs were also not given. The amount of sundry creditors was Rs.10,09,16,505/-. In absence of reply from the assessee, the nature and source of the credit remained unexplained. The assessee failed to establish the identity of the creditors, genuineness of the transactions and the capacity of the persons to give the credit. Hence, relying on the decision in cases of Sreelekha Banerjee vs. CIT (1963) 49 ITR 112, 117 (SC), Shanker Industries vs. CIT (1978) 114 ITR 681 (Cal) and Oriental Wires Industries Pvt. Ltd. vs. CIT (1981) 131 ITR 688

(Cal), the AO added Rs.10,09,16,505/- u/s 68 of the Act. The AO also added interest expense of Rs.23,47,810/- in absence of reply from the assessee. Thus, the total income was assessed u/s 144 of the Act at Rs.10,51,92,975/- as against returned income of Rs.19,28,660/-. Aggrieved by the addition made by the AO, assessee preferred appeal before CIT(A).

4. The CIT(A) issued as many as eight notices; however, there was no compliance to any notices. The CIT(A) had directed compliance on various dates starting from 25.01.2021 to 15.10.2024. The assessee sought adjournment on the dates of hearing fixed on 04.05.2023, 30.05.2023 and 01.12.2023. The request was accepted and case was re-fixed for hearing on 30.05.2023, 08.08.2023 and 12.07.2024, but there was no compliance. The CIT(A) also allowed further opportunity on 15.10.2024. However, the assessee did not comply with the said notices. This fact has been mentioned by the CIT(A) at para-5 of the appellate order. In view of the non-compliance and indifference of the assessee, the CIT(A) decided the appeal on the basis of materials available on record.

4.1 Regarding the conduct of the assessee, the CIT(A) referred to the following decisions: (i) CIT vs. B.N. Bhattacharjee & Others (1979) 10 CTR 354 (SC), (ii) Estate of Late Tukojirao Holkar vs. CWT (1979) 223 ITR 480 (MP), (iii) PCIT vs. NRA Iron & Steel Pvt. Ltd. in Civil Appeal No. 2019 (arising out of SLP (Civil) No.29855 of 2018), (iv) M/s Chemipol vs. Union of India [Central Excise Appeal No.62 of 2009], (v) Nandramdas Dwarkadaas AIR 1958 MP 260, (iv) Dr.

P. Nalla Thampy vs. Shankar (1984) SCC 63 (vii) New India Assurance vs. Srinivasan (2000) 3 SCC 242 and (viii) CIT vs. Gold Leaf Capital Corporation Ltd. (ITA No.798 of 2009) (Del). He observed that when the assessee is non-co-operative, it can be concluded that the assessee did not want to adduce evidence as it would expose falsity and non-genuineness of the claim. Therefore, the case was fit for dismissal. However, he has decided the appeal on the merits as well. He observed that the AO granted adequate opportunity but the assessee did not provide complete details such as the address and PAN of the sundry creditors. Due to non-furnishing of the relevant details, order was made u/s 144 of the Act by making addition of Rs.10,09,16,505/- and Rs.23,47,810/- on account of unexplained cash credit u/s 68 of the Act and disallowance of interest respectively. He further observed that the assessee has neither attached nor uploaded any submission nor submitted evidences/documents/explanation in support of the facts and grounds of appeal despite being given many opportunities. Hence, he upheld the addition made by the AO and dismissed the appeal.

5. Aggrieved by the order of Ld.CIT(A), appellant filed present appeal before the Tribunal. The Ld. AR submitted a paper book containing the audited accounts for AYs 2015-16 and 2016-17 and assessment orders for 2013-14 and 2015-16. The Ld. AR has enclosed summary of advances received from customers of Rs.10,05,97,727/- with PAN, complete details of unit allotted, cancellation, sale of unit along with the year in which sale was made and

transferred to profit and loss account, account confirmation of customers and copy of conveyance deeds executed. He requested to accept these details, which had not been submitted before the AO. He submitted that the sundry creditors are actually advances recovered from the customers for the proposed sale of the units to them. This is reflected at pages 38 of the paper book which is in the schedule forming part of balance-sheet as at 31.03.2015. He further submitted that the case of the assessee was scrutinized in the AY 2015-16 and only addition of Rs.1,56,352/- was made u/s 14A of the Act. The advances from customers in AY 2015-16 was Rs.11,33,20,400/-. He submitted that the details could not be submitted before the lower authorities due to circumstances beyond control of the assessee. He requested to set aside the matter to the AO for fresh assessment. He undertook to furnish all the details which may be required by the AO to complete the fresh assessment proceedings.

6. On the other hand, Ld. CIT-DR for the Revenue supported the order of the lower authorities. He submitted that both the AO and CIT(A) had given adequate and reasonable opportunities of hearing to the appellant but he did not file the requisite details for the reasons best known to him. There was huge sundry creditors of Rs.10,09,16,505/- in the balance-sheet of the appellant for the year under consideration. The assessee submitted only the list of sundry creditors without given any address or the PAN of the creditors. The CIT(A) also issued eight notices but there was no compliance. Hence, the

request of the assessee should not be accepted and if it is accepted, appropriate cost may be imposed on the appellant.

7. We have considered the submission of both the parties and have gone through order of lower authorities carefully. The Ld. AR of the assessee requested to set aside the order of CIT(A) and remit it back to the file of the AO for fresh assessment. He undertook to file all the details before the AO if another opportunity is granted to the appellant. The Ld. CIT-DR submitted that the appellant was totally negligent and not co-operative before the lower authorities. However, he would have no objection if the matter is restored to the file of lower authority with appropriate cost. We find that both AO and CIT(A) have provided adequate and reasonable opportunity of being heard to the appellant. The CIT(A) had, in fact, accepted the request of adjournment of the appellant thrice and provided further opportunity of being heard. However, the appellant did not comply with the subsequent notices. The Ld. AR submitted that the case of the appellant was scrutinized in the immediately preceding assessment year where there was advance from customers of Rs.11,33,20,400/- under the head "current liabilities". The advance of the customers was Rs.10,05,97,727/- during the year under consideration. He requested that the matter may be set aside to the AO for verification and fresh assessment. We find that the appellant was negligent and totally non-co-operative before both AO and CIT(A). However, the contention of the Ld. AR of the appellant that the amount under the sundry creditors are actually

advances received from customers is supported by the audited accounts for the year under consideration (page 15 of the PB). The details of the customers who had given advances to the appellant had not been furnished to the AO or CIT(A), which is crucial to decide the impugned issue in the appeal. Rule 29A of the ITAT Rules, 1963 permits ITAT to admit the additional evidence for any substantial cause. The intention behind the Rule is that substantial justice should be done and the interest of justice should be the overriding consideration. Therefore, we deem it proper to set aside the matter to the file of AO for fresh assessment. However, we find that the appellant was negligent and not cooperative before the lower authorities despite being provided adequate and reasonable opportunities of being heard. The CIT-DR urged that appropriate cost may be imposed if the matter is to be set aside to the file of the AO. The matter was discussed in the proceedings before the Tribunal and the Ld. AR was asked by the Bench as to why cost of Rs.50,000/- shall not be imposed on the appellant, to which the Ld. AR had no objection. Under the peculiar factual background-+, we are of the considered view that that interest of justice would be met in case the AO re-examines the entire issue afresh subject to payment of cost amounting to **Rs.50,000/-** (Rupees fifty thousand only) by the appellant to the credit of the Prime Minister National Relief Fund within three weeks from receipt of this order. Subject to payment of the above cost, we set aside the order of Ld. CIT(A) and remit the matter back to the file of AO with a direction to pass *de novo* assessment order in accordance with

law after granting adequate opportunity of hearing to assessee. The assessee is directed to be more vigilant and to furnish all details and explanation as needed by AO by not seeking adjournment without valid reason. With this direction, the ground of appeal raised by the assessee is treated as allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963  
on 26/09/2025 in the open court.

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**न्यायिक सदस्य/JUDICIAL MEMBER**

**Sd/-**  
**(BIJAYANANDA PRUETH)**  
**लेखा सदस्य/ ACCOUNTANT MEMBER**

सूरत /Surat

दिनांक/ Date: 26/09/2025

Dkp Outsourcing Sr.P.S\*

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- **अपीलार्थी/** The Appellant
- **प्रत्यर्थी/** The Respondent
- **आयकर आयुक्त/** CIT
- **आयकर आयुक्त (अपील)/** The CIT(A)
- **विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/** DR, ITAT, SURAT
- **गार्ड फाईल/** Guard File

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By order/आदेश से,

**सहायक पंजीकार**  
**आयकर अपीलीय अधिकरण, सूरत**