

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA**

**BEFORE SHRI RAJESH KUMAR, AM  
AND  
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No.185/KOL/2025  
(Assessment Year: 2017-18)**

**Anirudh Khemka**  
117, Block-F, New Alipore,  
Alipore, Kolkata-700053  
West Bengal

**(Appellant)**

**ITO, Ward 30(7)**  
Aayakar Bhawan (Dakshin), 2,  
Gariahat Road, Kolkata-700068,  
West Bengal

**(Respondent)**

**PAN No. AFOPK6596A**

**Assessee by** : S/Shri Giridhar Dhelia,  
Rajeeva Kumar, ARs  
**Revenue by** : Shri Manas Mondal, DR

**Date of hearing:** 15.10.2025  
**Date of pronouncement:** 19.11.2025

**ORDER**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 27.11.2024 for the AY 2017-18.

2. The only issue raised by the assessee is against the order of Id. CIT (A) confirming the addition of ₹1,59,90,557/- as made by the Id. AO u/s 68 of the Act in respect of unsecured loans taken by the assessee as well as interest paid thereon.

2.1. The facts in brief are that the assessee filed the return of income on 28.10.2017, declaring total income at ₹11,64,510/-. The case of the assessee was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS) and statutory notice u/s 143(2) and notice

u/s 142(1) of the Act along with questionnaire were issued and served upon the assessee. In compliance to the same the assessee submitted before the Id. AO the documents/ details comprising details of share transactions during the year comprising audited accounts, computations of income, bank accounts, detail of loans received, loan confirmations, etc. The assessee is partner in Manish Creations. The share of profit received from the firm is exempt from tax. The Id. AO observed from the balance sheet of the assessee that during the year the assessee has raised unsecured loans. The Id. AO in order to independently verify the transactions also issued notices u/s 133(6) of the Act to loan creditors who duly complied with submitting all the details before the Id. AO. Thereafter, the Id. AO issued summon u/s 131 of the Act to 21 creditors on test check basis and all were directed to appear in person along with ID proof, address, proof of loan conformation, balance sheet, profit and loss account, ITR and bank statement, etc. The assessee was also issued summon u/s 131 of the Act for personal appearance as well as ensuring the appearance of loan creditors. However, only two loan creditors responded to the summons. Thereafter, the Id. AO noted that no response to the summons were received from 14 creditors out of 21 parties. Accordingly, he tabulated these parties with various details such as opening outstandings, balances taken during the year, repaid, interest and TDS etc. Finally, he treated Rs. 1,39,96,169/- as unexplained cash credit u/s 68 of the Act, which was inclusive of interest paid on the said unsecured loans. The Id. AO again added the interest amounting to ₹19,94,388/- out of total interest paid of ₹1,16,28,393/- thereby making double addition.

2.2. In the appellate proceedings, the Id. CIT (A) dismissed the appeal of the assessee after taking into account the submission/

evidences filed during the Couse of appellate proceedings. The Id. CIT (A) confirmed the addition u/s 68 of the Act in respect of 14 loan creditors as made by the Id. AO u/s 68 of the Act without correctly appreciating the facts on records.

2.3. After hearing the rival contentions and perusing the materials available on record, we observe that during the year the assessee has reported the total amount of loan received as on 31.03.2017 at ₹9,48,31,452/-. The assessee also paid interest on these loans aggregating to ₹1,16,28,393/-, which was charged to the profit and loss account. We note that the AO during the course of assessment proceedings, called upon the assessee to file the various evidences/ documents to prove the identity, creditworthiness and genuineness of the transactions. Accordingly, the assessee furnished all the details before the Id. AO as well as the Id. CIT (A). We note that the notice u/s 133(6) of the Act were issued by the Id. AO to the loan creditors and only 14 creditors responded. Thereafter, the Id. AO issued summon u/s 131 of the Act which also remain non-complied. Finally, the Id. AO drew up a statement giving various details as to these loan creditors on page no. 3 of the assessmejnt order. We observe from the said table that the opening loans outstanding from these 14 creditors were ₹1,46,24,250/-. Pertinent to state that loans raised during the year were ₹44,16,425/-. Repayments during the year were ₹58,39,453/- and closing balance including interest was ₹1,39,96,169/-. We observe from the record before us that the Id. AO has added the entire amount of unsecured loans from 14 parties including the interest thereon by making an addition of ₹1,39,96,169. The above figure is inclusive of interest outstanding to the loan creditors. However, the Id. AO once again added the interest paid on the said loans of

₹19,94,388/- thereby making a double addition on account of interest on this loans.

2.4. Even if we consider the entire repayment of loan towards the opening loan balance outstanding even then the Id. AO has added ₹77,84,827/- out of the opening balance of unsecured loans from these parties. Moreover, as apparent from the records and the assessment order that the interest amounting to ₹19,94,388/- has been added twice, which also showed that there is no application of mind by the Id. AO as well as by the Id. CIT (A).

2.5. Even considering the evidences filed by the assessee in respect of these loan creditors, we note that the assessee has discharged its onus by filing all the evidences qua the loan creditors in which neither the Id. AO nor the Id. CIT (A) has pointed out any deficiency or defect. Therefore, the addition made u/s 68 of the Act cannot be sustained as the mere non-compliance to the notice u/s 133(6) of the Act or to the summons u/s 131 of the Act cannot be a ground for making addition u/s 68 of the Act. The assessee has filed all the evidences qua the loan creditors before the authorities below. The case of the assessee find support from the following decisions:-

- (i) CIT Vs. Orissa Corporation Pvt. Ltd. (1986) 159 ITR 78 (SC);
- (ii) CIT Vs. Orchid Industries Ltd. 397 ITR 136 (Bom);
- (iii) Crystal Networks Pvt. Ltd. Vs. CIT 353 ITR 171 (Kol);
- (iv) ITO Vs. M/s. Cygnus Developers India Pvt. Ltd.(ITA No. 282/Kol/2012) and
- (v) Joy Consolidated Pvt. Ltd. Vs. ITO (ITA No. 547/Kol/2020.

2.6. In the case of Orissa Corporation Ltd. (supra), Hon'ble Supreme Court has held as under:

*"That in this case the respondent had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under Section 131 at the instance of the respondent, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the respondent could not do anything further. In the premises, if the Tribunal came to the conclusion that the respondent had discharged the burden that lay on it, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such arose. The High Court was right in refusing to state a case."*

2.7. The Hon'ble Calcutta High Court in the case of Crystal Networks Pvt. Ltd. vs. CIT (supra ) has held that where all the evidences were filed by the assessee proving the identity and creditworthiness of the loan transactions , the fact that summon issued were returned unserved or no body complied with them is of little significance to prove the genuineness of the transactions and identity and creditworthiness of the creditors. The relevant portion of the decision is extracted below:

*"We find considerable force of the submissions of the learned Counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the Ld. CIT(A) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the product of the assessee or note. When it was found by the Ld. CIT(A) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact findings. Indeed the Tribunal did not really touch the aforesaid fact finding of the Ld. CIT(A) as rightly pointed out by the learned counsel. The Supreme Court has already stated as to what should be the duty of the learned Tribunal to decide in this situation. In the said judgment noted by us at page 463, the Supreme Court has observed as follows:*

*"The Income-Tax Appellate Tribunals performs a judicial function under the Indian Income-tax Act. It is invested with authority to determine finally all questions of fact. The Tribunal must, in deciding an appeal, consider with due care all the material facts and records its findings on all the contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law."*

*The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its findings on all contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law. It is also ruled in the said judgment at page 465 that if the Tribunal does not discharge the duty in the manner as above then it shall be assumed the judgment of the Tribunal suffers from manifest infirmity.*

*Taking inspiration from the Supreme Court observation we are constrained to hold in this matter that the Tribunal has not adjudicated upon the case of the assessee in the light of the evidence as found by the Ld. CIT(A). We also found no single word has been spared to up set the fact finding of the Ld. CIT(A) that there are materials to show the cash credit was received from various persons and supply as against cash credit also made.*

*Hence, the judgment and order of the Tribunal is not sustainable. Accordingly, the same is set aside. We restore the judgment and order of the Ld. CIT(A). The appeal is allowed."*

2.8. The case of is also covered by the decision of the coordinate bench by ITO Vs M/s Cygnus Developers India Pvt. Ltd. (supra) the operative part whereof is extracted below:

"8. We have heard the submissions of the learned D.R, who relied on the order of AO. The learned counsel for the assessee relied on the order of Ld. CIT(A) and further drew our attention to the decision of Hon'ble Allahabad High Court in the case of CIT vs. Raj Kumar Agarwal vide ITA No. 179/2008 dated 17.11.2009 wherein the Hon'ble Allahabad High Court took a view that non-production of the director of a Public Limited Company which is regularly assessed to Income tax having PAN, on the ground that the identity of the investor is not proved cannot be sustained. Attention was also to the similar ruling of the ITAT Kolkata bench in the case of ITO vs. Devinder Singh Shant in ITA No. 208/Kol/2009 vide order dated 17.04.2009.

9. We have considered the rival submissions. We are of the view that order of Ld. CIT(A) does not call for any interference. It may be seen from the grounds of appeal raised by the revenue that the revenue disputed only the proof of identity of share holder. In this regard it is seen that for AY 2004-05 Shree Shyam Trexim Pvt. Ltd. was assessed by ITO, Ward-9(4), Kolkata and the order of assessment u/s 143(3) dated 25.01.2006 is placed in the paper book. Similarly Navalco Commodities Pvt. Ltd. was assessed to tax u/s 143(3) for AY 2005-06 by ITO, Ward-9(4), Kolkata by order dated 20.03.2007. Similarly Jewellock Trexim Pvt. Ltd. was assessed to tax for AY 2005-06 by the very same ITO, Ward-9(3), Kolkata assessing the assessee. In the light of the

*above factual position which is not disputed by the revenue, it cannot be said that the identity of the share applicants remained not proved by the assessee. The decision of the Hon'ble Allahabad High Court as well as ITAT, Kolkata Bench on which reliance was placed by the learned counsel for the assessee also supports the view that for non-production of directors of the investor company for examination by the AO it cannot be held that the identity of a limited company has not been established. For the reasons given above we uphold the order of Ld. CIT(A) and dismiss the appeal of the revenue."*

2.9. Similar ratio has been laid down by the Hon'ble Mumbai High Court in the case of CIT Vs Orchid Industries (P) Ltd (supra) by holding that provisions of section 68 of the Act can not be invoked for the reasons that the person has not appeared before the AO where the assessee had produced on records documents to establish genuineness of the party such as PAN ,financial and bank statements showing share application money .

2.10. In the instant case before us also, the assessee has furnished all the evidences proving identity and creditworthiness of the loan creditors and genuineness of the transactions but AO has not commented on these evidences filed by the assessee. Under these facts and circumstances and considering underlying facts in the light of ratio laid down in the decisions as discussed above , we are inclined to set aside the order of Ld. CIT(A) by directing the AO to delete the addition.

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

Order pronounced in the open court on 19.11.2025.

Sd/-  
(PRADIP KUMAR CHOUBEY)  
(JUDICIAL MEMBER)

Sd/-  
(RAJESH KUMAR)  
(ACCOUNTANT MEMBER)

Kolkata, Dated:19.11.2025

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

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

True Copy//

BY ORDER,

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Kolkata