

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.328/DEL/2025
(Assessment Year: 2017-18)**

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| JCIT (OSD), Delhi. | vs. | Avon Meters Private Limited, D – 15, Focal Point, Derabassi, Mohali – 140507 (Punjab). (PAN : AABCA3428Q) |
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**ITA No.5794/DEL/2024
(Assessment Year: 2017-18)**

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| Avon Meters Private Limited, D – 15, Focal Point, Derabassi, Mohali – 140507 (Punjab). (PAN : AABCA3428Q) | vs. | JCIT (OSD), Delhi. |
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(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri K. Sampath, Advocate
Shri V Rajakumar. Advocate
REVENUE BY : Shri Ajay Kumar Arora, Sr. DR

Date of Hearing : 03.09.2025
Date of Order : 26.11.2025

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee and Revenue has filed cross appeals against the order of the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [“Ld. CIT(A)”, for short] dated 23.11.2024 for the Assessment Year 2017-18.

2. Brief facts of the case are, assessee filed its return of income on 26.10.2017 declaring total income of Rs.4,62,59,560/-. The return was selected for complete scrutiny under CASS for the reasons as under :-
- (a) Abnormal increase in cash deposits during demonetization period as compared to pre-demonetisation period.
 - (b) Lower amount disallowed u/s 40A(7) in Part A-OI of ITR in comparison to tax audit report.
 - (c) Custom duty paid as shown in the ITR is less than the Duty paid as per Export Import Data.
3. Accordingly, notices under section 143(2) and 142(1) of the Income-tax Act, 1961 (for short 'the Act') were issued and served on the assessee through ITBA Portal. The case of the assessee was transferred from Circle 3(1), Chandigarh to Circle 3(2), Delhi vide letter dated 04.12.2019.
4. The assessee provides Energy Metering Solutions to the State Electricity Boards with its products range of ISI Marked High Precision Electromechanical & Electronic Energy Meters. It is also an approved supplier of single phase and three phase static meters to Assam State Electricity Board for market sale. During assessment proceedings, the AO observed that assessee had deposited cash of Rs.53 lakhs during demonetization period i.e. from 09.11.2016 to 31.12.2016. The AO issued notice u/s 142(1) of the Act for explanation and supporting documents for the cash deposit as per the format given at page 2 to 8 of the assessment order. In response, assessee submitted vide its letter dated 17.12.2019

that it had withdrawn the cash from his bank account for disbursing salary as it does every month and after demonetization, the assessee had deposited cash in hand in SBN notes in a single transaction amounting to Rs.53 lakhs. After considering the above submissions, the AO observed that assessee has consistently withdrawn cash from its bank account and in accordance with various expenditures like salary & wages, staff welfare, vehicle repair and maintenance and freight inward & outward. The above pattern was noticed till the month of September 2016. In the month of October 2016, the assessee has withdrawn cash of Rs.55 lakhs from its bank account, however it had incurred only Rs.3,32,561/- as expenses in cash. After December 2016, the assessee again started the cash withdrawal from his bank and payment in cash out of withdrawn cash. The AO has reproduced cash withdrawal from bank and expenses in the form of statement at page 9 of the order. With the above information, AO noted that only in the month of November 2016 where assessee has withdrawn cash expenditure just before demonetization period. Accordingly, he rejected the submissions of the assessee and also assessee has not furnished details as asked by the AO in the format required by him. He further observed that assessee has not incurred any expenditure under the head salary & wages, staff welfare expenses and other related expenditure during this period. Since there was no

submission from the assessee and also he observed from the VAT return for the third quarter i.e. from October 2016 to December 2016, that assessee has purchases of Rs.47.02 crores and made sale of Rs.73.72 crores. Even though assessee has made good business, however it could not explain the massive fall in the month of October 2016. With the above observation, he sustained the cash deposited by the assessee during demonetization period u/s 68 of the Act.

5. During assessment proceedings, the AO observed that assessee has taken unsecured loan during the year under consideration. In response to the queries raised by the AO, the assessee submitted vide letter dated 22.12.2019 that it has taken unsecured loan of Rs.5,79,50,000/- from the following parties :-

| Sl.No. | Name of the party | Amount of loan taken during FY 2016-17 (in Rs.) |
|--------|---------------------------|---|
| 1 | Anil Gupta | 10,00,000/- |
| 2 | Ankit Goel | 3,00,000/- |
| 3. | Ankit Goel & Sons HUF | 8,50,000/- |
| 4. | Fortune Metals Ltd. | 2,00,00,000/- |
| 5. | Natwar Goyal | 14,00,000/- |
| 6. | Natwar Goyal & Sons (HUF) | 4,50,000/- |
| 7. | Nikhil Goel | 23,00,000/- |
| 8. | Nikhil Goel & Sons (HUF) | 8,50,000/- |
| 9. | Rukmani Devi | 1,70,00,000/- |
| 10. | Shakuntla Devi | 31,50,000/- |
| 11. | Shanti Sarup Jindal | 46,50,000/- |
| 12. | Yoginder Mohan Jindal | 60,00,000/- |
| Total | | 5,79,50,000/- |

6. The AO analyzed the details submitted by the assessee which includes ITRs of the lenders. Based on the income declared in the ITRs, the AO

observed that assessee has not proved the creditworthiness of the lenders, viz., Fortune Metals Ltd., Nikhil Goel, Rukmani Devi, Shakuntla Devi and Shanti Sarup Jindal. After analyzing the details submitted by the assessee relating to above 5 lenders and considering the reply of the assessee dated 26.12.2019, he observed that assessee has provided only acknowledgement of ITR and bank statement and no other details were provided like confirmations and loan agreements etc. He observed that the onus was on the assessee to offer an explanation where a sum credited in the books of account and also burden of the identity of source lies on the assessee and required to prove the genuineness of credit entry. Accordingly, he proceeded to make addition of Rs.4,71,00,000/- u/s 68 of the Act.

7. Further during assessment proceedings, the AO observed that assessee has taken unsecured loan of Rs.5,79,50,000/- and against these loans assessee had paid interest expenses of Rs.96,84,411/- @ 12% in the case of Nectar Lifesciences Ltd. and @ 9% in other cases. Since the assessee has not proved the creditworthiness and genuineness of the transaction from the 5 lenders as discussed above, he has disallowed the interest payment made to these parties to the extent of Rs8,71,051/- u/s 69C of the Act.
8. Further during assessment proceedings, AO observed that from the

outstanding balance of creditors since last three years and the same was not paid or returned back till date, therefore, assessee was asked why the above said amount should not be treated as income as per the provisions of section 41(1) of the Act. When the assessee was asked to submit the details, in response assessee has submitted details of 42 parties outstanding to the extent of Rs.80,08,429/-. Since not satisfied with the justification submitted by the assessee, AO proceeded to make the addition u/s 41(1) r.w.s. 28(iv) of the Act.

9. During assessment proceedings, the AO analyzed the Profit & Loss account and observed that there is substantial increase in the sale of goods during the year compared to previous year. He observed that the cost of material consumed was increased by 68.70% compared to previous assessment year. In this regard, assessee was asked to explain the above difference. In response, assessee has submitted that its business is mainly tender based and every customer requires different customized products and to comply with the tender obligations, it has to deliver the customized product accordingly. Therefore, the cost of material consumed changed frequently according to the features, specification and other requirements by the Electricity Boards. Further assessee was asked to submit the details of consumption and details of purchases party-wise. The assessee has submitted the details of purchases which are reproduced at page 33 of

the assessment order. AO in order to verify the purchases issued 133(6) notices to the parties to furnish the details of sales made to the assessee company. However, no information/confirmation was received from the above said parties. He observed that 7 parties to whom notice u/s 133(6) of the Act were issued, in the details, PAN numbers were wrongly mentioned by the assessee company for four suppliers, the details are reproduced at page 34 of the assessment order. Since the assessee could not furnish the confirmation from the above said parties, not submitted the invoices/ bills during assessment proceedings, also the PAN details provided are wrongly furnished, accordingly he proceeded to disallow the expenditure claimed by the assessee u/s 37(1) of the Act to the extent of Rs.7,62,75,655/-.

10. Aggrieved with the above order, assessee preferred an appeal before the NFAC, Delhi and filed grounds of appeal, additional evidences, detailed submissions which are reproduced by the Id. CIT(A) in the impugned order. The matter was remanded to the AO and received the remand report. Assessee also filed rejoinder to the remand report. After considering the assessment order, remand report and rejoinder to the remand report, Id. CIT (A) deleted the additions made by the AO with regard to cash credit of Rs.4.71 crores from 5 lenders and he has discussed each cash credit from lenders as under :-

(i) FORTUNE METALS LTD.

After considering the remand report and rejoinder, ld. CIT (A) deleted the cash credit by observing as under :-

“I have gone through the remand report of the AO and the rejoinder of the appellant. The remand report of the AO is repetitive with no additional reasons brought out on record with regard to this creditor or other loan creditors. The reason given by the AO that "the contention of the assessee (of having availed loans from the creditors) cannot be accepted as the assessee has failed to prove why the lender has chosen to give loan to assessee company instead of deposit in any Bank" and" there are no evidence on record, which shows that the assessee was prevented from furnishing these documents before the AO during the assessment proceedings" cannot be considered to be good and adequate reasons to disbelieve the credits and the appellant has to be taken as having proved the credit in accordance with the requirements of law, in the absence of the AO having not brought on record any other material to disprove the assertions of the appellant.

For these reasons, the loan credit of Rs.2,00,00,000/- from M/s Fortune Metals Ltd assessed as unexplained credit u/s 68 is directed to be deleted.”

(ii) NIKIHL GOEL

Ld. CIT (A) deleted the addition by observing as under:-

“I have gone through the remand report of the AO and the comprehensive rejoinder of the appellant already reproduced above while considering the cash credit of Rs.2 crores from MIs Fortune Metals Ltd. The remand report of the AO is repetitive with no additional reasons brought out on record with regard to this creditor or other loan creditors. The reason given by the AO that "the contention of the assessee (of having availed loans from the creditors) cannot be accepted as the assessee has failed to prove why the lender has chosen to give loan to assessee company instead of deposit in any Bank" and" there are no evidence on record, which shows that the assessee was prevented from furnishing these documents before the AO during the assessment proceedings" cannot be considered to be good and adequate reasons to disbelieve the credits and the appellant has to be taken as having proved the credit in accordance with the requirements of law, in the absence of the AO having not brought on record any other material to disprove the assertions of the appellant.

For these reasons, the loan credit of Shri Nikhil Goel Rs.23,00,000 assessed as unexplained credit u/s 68 is directed to be deleted.”

(iii) SMT. RUKMANI DEVI

Id. CIT(A) deleted the addition by observing as under :-

“I have gone through the remand report of the AO and the comprehensive rejoinder of the appellant already reproduced above while considering the cash credit of Rs.2 crores from M/s Fortune Metals Ltd. The remand report of the AO is repetitive with no additional reasons brought out on record with regard to this creditor or other loan creditors. The reason given by the AO that "the contention of the assessee (of having availed loans from the creditors) cannot be accepted as the assessee has failed to prove why the lender has chosen to give loan to assessee company instead of deposit in any Bank" and " there are no evidence on record, which shows that the assessee was prevented from' furnishing these documents before the AO during the assessment proceedings" cannot be considered to be good and adequate reasons to disbelieve the credits and the appellant has to be taken as having proved the credit in accordance with the requirements of law, in the absence of the AO having not brought on record any other material to disprove the assertions of the appellant. For these reasons, the loan credit of Smt. Rukmani Devi Rs.1,70,00,000 assessed as unexplained credit u/s 68 is directed to be deleted.”

(iv) SMT. SHAKUNTLA DEVI

With regard to Smt. Shakuntla Devi, Id. CIT (A) deleted the addition by observing as under :-

“ I have gone through the remand report of the AO and the comprehensive rejoinder of the appellant already reproduced above while considering the cash credit of RS.2 crores from MIs Fortune Metals Ltd. The remand report of the AO is repetitive with no additional reasons brought out on record with regard to this creditor or other loan creditors. The reason given by the AO that "the contention of the assessee (of having availed loans from the creditors) cannot be accepted as the assessee has failed to prove why the lender has chosen to give loan to assessee company instead of deposit in any Bank" and" there are no evidence on record, which shows that the assessee was prevented from furnishing these documents before the AO during the assessment proceedings" cannot be considered to be good and adequate reasons to disbelieve the credits and the appellant has to be taken as having proved the credit in accordance with the requirements of law, in the absence of the AO having not brought on record any other material to disprove " the assertions of the appellant.

For these reasons, the loan credit of Smt. Shakuntla Devi: Rs.31,50,000 assessed as unexplained credit u/s 68 Is directed to be deleted.”

(v) SMT. SHANTI SWAROOP

With regard to Shanti Swaroop, ld. CIT (A) deleted the addition as under:-

"I have gone through the remand report of the AO and the comprehensive rejoinder of the appellant already reproduced above while considering the cash credit of Rs.2 crores from M/s Fortune Metals Ltd. The remand report of the AO is repetitive with no additional reasons brought out on record with regard to this creditor or other loan creditors. The reason given by the AO that "the contention of the assessee (of having availed loans from the creditors) cannot be accepted as the assessee has failed to prove why the lender has chosen to give loan to assessee company instead of deposit in any Bank" and" there are no evidence on record, which shows that the assessee was prevented from furnishing these documents before the AO during the assessment proceedings" cannot be considered to be good and adequate reasons to disbelieve the credits and the appellant has to be taken as having proved the credit in accordance with the requirements of law, in the absence of the AO having not brought on record any other material to disprove the assertions of the appellant.

For these reasons, the loan credit of Smt. Shanti Sarup : Rs.46,50,000 assessed as unexplained credit u/s 68 is directed to be deleted."

11. Since the ld. CIT (A) deleted the cash credit from the above said parties, he also deleted the relevant interest disallowance made by the AO.
12. With regard to additions made by the AO u/s 41(1) of the Act, ld. CIT (A), after considering the detailed submissions, remand report and rejoinder to the remand report, deleted the addition by observing as under:-

" The AO himself has admitted that some of the creditors have been paid off even though for reasons best known did not quantify. The remand report in too many words did not support the impugned addition. On the contrary, the Appellant has proved that there are no creditors outstanding for more than 3 years as alleged by the AO which formed the basis for the AO to resort to remission of liability.

For these reasons, the AO is directed to delete the addition made. This ground is allowed.”

13. With regard to addition made u/s 37(1) of the Act, ld. CIT (A) deleted the same by observing as under :-

“10.4.4 Adjudication

The AO compared the increase in revenue vs increase in cost of consumption of raw materials and found that the increase in revenue was only 51.32 % whereas the increase in raw materials consumption was 68.70 %. Therefore, an addition has been made in respect of the purchases made from 7 selected parties to whom notices u/s 133(6) have been sent by the AO. The AO found that the PANs were not matching either in some of the parties. The confirmations were not forthcoming from the parties. Therefore, the AO disallowed the entire purchases from these parties.

In the remand report, the AO agreed that the discrepancy in the PAN was with reference to the status of the party(individual) and the confirmation had also been filed by the respective parties. Still he was persisting with the disallowance for the reason that there were no compelling reasons for the appellant not to have furnished the details during the assessment proceedings. And therefore, vehemently objected to the additional evidence brought on record not to be admitted.

Be that as it may, in this case already decision has been taken for good and sufficient reasons the additional evidence is eligible for admission and therefore in the light of the factual matrix prevalent post admission of additional evidence, the disallowance made cannot be sustained. The mere fact of increase in raw material cost with reference to increase in revenue has no correlation cannot be the sole reason for making the disallowance. To make a disallowance the AO has to bring on record multiple factors and assail the contention of the appellant that there cannot be a case for increase in consumption of raw materials.

The AO is directed to delete the disallowance.”

14. With regard to cash deposits made by the assessee during demonetization period, he sustained the addition by observing as under :-

“10.5.3 Adjudication:

The issue of deposit of Rs.53 lakhs in SBN in one instalment was sought to be explained with reference to the cash withdrawal of Rs.55 lakhs in October, 2016.

The AO had pointed out that taking into account the pattern of cash withdrawals and the disbursement of the same. in the earlier months and in the last quarter of the relevant period post demonetisation, the claim of the appellant that the cash withdrawn was not applied for the intended purposes as in earlier months (principally salaries and wages) and therefore was the source of deposit is not acceptable.

Per contra, the appellant had claimed that during the period of October to December 2016, the expenditures were paid off in cheques.

It is strange that the appellant had once again reverted to the old procedure of cash disbursements in the last quarter after setting forth a procedure of cheque payments. The claim that the payments were made in cheques by way of salary and wages using multiple instruments were not made out by the appellant.

Equally, the AO had brought on record the necessary evidence to prove that the appellant's claim of unspent cash withdrawals as source for the impugned deposit is not probable.

The said inference stands to reason and does not call for any interference. The addition is confirmed.”

15. Aggrieved with the above order, both assessee and Revenue are in appeal before us raising following grounds of appeal :-

“ASSESSEE’S APPEAL

Ld. CIT (Appeal) is not justified in law and facts and circumstances of the case in confirming disallowance of Rs.53,00,000/- cash deposited in Bank during demonetization period without appreciating facts on record.”

“REVENUE’S APPEAL

1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.4,71,00,000/- made on account of cash creditors u/s 68 of the Act by allowing the additional evidences in disregard to the Rule 46A of the I.T. Rules, 1962 as the case of the assessee company is not covered under any of the circumstances as enumerated in Rule 46A of the I.T. Rules, 1962.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.8,71,051/- made on account of interest disallowed u/s 69C of the Act by allowing the additional evidences in disregard to the Rule 46A-of the I.T. Rules, 1962 as the case of the assessee company is not covered under any of the circumstances as enumerated in Rule 46A of the I.T. Rules, 1962.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the Addition of Rs.80,08,429/- made u/s 41(1) r.w.s. 28(iv) of the of income tax Act by allowing the additional evidences in disregard to the Rule 46A of the I.T. Rules, 1962 as the case of the assessee company is not covered under any of the circumstances as enumerated in Rule 46A of the I.T. Rules, 1962.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.7,62,75,655/- made on account of disallowance of expenses u/s 37(1) of the Income Tax Act by allowing the additional evidences in disregard to the Rs.25216732 Rule 46A of the I.T. Rules, 1962 as the case of the assessee company is not covered under any of the circumstances as enumerated in Rule 46A of the I.T. Rules, 1962.

5. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the ratio of judgment of Hon'ble Allahabad High Court in the case of Bimal Kumar Anant Kuma Vs CIT. 288 ITR 278 wherein the Hon'ble Court has held that application under the rule 46A must be made for admission of additional evidences with reasons showing the purpose of the addition al evidences and also reasons for not producing it earlier.”

16. At the time of hearing, ld. AR of the assessee submitted that the assessee had deposited a sum of Rs. 53,00,000/- in bank during the demonetization period. The AO put the Assessee to question as to why the sum so deposited into the bank should not be added as an unexplained credit u/s. 68 of the Act. The Assessee answered by saying that it had withdrawn cash in the month of October 2016 for payment of salaries and wages which sum was retained by the Company and instead such salaries and wages were disbursed through cheques. On the onset of demonetization

the said amount was lodged back into the bank. The details with regard thereto are to be found in the words of the AO on pages 13 to 16 of the impugned order. When the Assessee took up this issue before the Ld. NFAC the addition as made by the AO was confirmed by the NFAC with the observation that the inferences drawn by the AO stood to reason and so did not merit any interference. The findings of the Ld. NFAC are to be found in para 10.5.3 on page 134 of the impugned order. It is respectfully submitted that the fact of withdrawal of cash in October 2016 for the disbursement of salaries and wages is reflected in the bank statement of the Company and also carried in its books of accounts. The fact of the payment of the salaries and wages in the preceding months in cash is not disputed by the Authorities below. Further the fact of redeposit of the cash into the bank by the Assessee during the demonetization period is not disputed. Nay that is the very reason for the addition proposed by the AO and confirmed by the Ld. NFAC. With the facts of the withdrawal and redeposit of cash and also the payment of salaries and wages in cash in the months preceding October 2016 being established with cogent and credible evidence, the Authorities below were wrong in disbelieving the explanations of the Assessee and in proposing the addition. The error on the part of the Authorities gets more pronounced on the face of the fact that the books of accounts of the

Assessee are audited with no qualification and the AO himself has not rejected the same.

- 16.1 Further, the Assessee does not claim that it owes anybody anything by way of that cash entry. For the mere reason that it is a credit entry no addition can be validly made unless, of course, it is a credit for cash i.e. by way of a loan obtained from someone. The book entries do not vouch for any such fact on the basis of evidence of facts on record such an addition could not have been made.
- 16.2 Further ld. AR submitted that section 68 of the Act is a deeming provision and has to be construed strictly. The conditionalities envisaged by the deeming provision have to be fulfilled in toto before the Section can be invoked for making any addition. The addition as proposed u/s. 68 of the Act is, therefore, erroneous on law as well.
17. On the other hand, ld. DR of the Revenue relied on the lower authorities.
18. Considered the rival submissions and material available on record. We observe that assessee has made deposit of Rs.53 lakhs in SBN in one installment during demonetization period. We observe that assessee has withdrawn cash every month during the year and the same cash was utilized to pay the salary and wages and other administration expenses. However, during the month of October and November, assessee has withdrawn the cash, however not utilized the above said cash during the

demonetization period. In this regard, it was submitted before us that assessee has withdrawn cash of Rs.55 lakhs during October, however unutilized cash was redeposited during demonetization period. It was submitted before the Id. CIT (A) that assessee has incurred the expenditure through cheque payments. Ld. CIT (A) observed that assessee has reverted back to the old system of cash withdrawal and incurred expenditure out of cash. Since the assessee could not explain through evidences to prove that unspent cash withdrawal as source for impugned addition is not probable. He accordingly dismissed the claim of the assessee. From the record, we observe that assessee has deposited SBN Notes during demonetization period in one-go. We observe that assessee has withdrawn cash in the month of October, 2016 and the same cash was not disbursed or utilized for making salary payment or incurring any expenditure. Considering the fact that the above cash withdrawn by the assessee are in SBN, therefore, assessee has redeposited the cash during demonetization period and it is not the case of the Revenue that assessee has not incurred any expenditure during demonetization period. There is no discussion on the part of the tax authorities about the payment of salary and other expenses in cheque mode or cheque payments. There is a direct link to the cash withdrawal by the assessee during October and redeposit of SBN in one-go in the month of November is very much

traceable. Therefore, we are inclined to accept the submissions of the assessee and the submissions of the assessee are corroborated with the audited financial statements, bank statement and cash book. Therefore, we are inclined to allow the ground raised by the assessee.

19. In the result, the appeal filed by the assessee is allowed.
20. With regard to Department's appeal, ld. DR of the Revenue submitted that assessee has received unsecured loan and filed only acknowledgement of ITR before the AO and brought to our notice findings of individual lenders in the impugned order, he objected to the findings of the ld. CIT (A) and further submitted that assessee has submitted additional evidences and AO was not given proper opportunity. With regard to additions u/s 41(1) and 37(1) of the Act, he brought to our notice findings of the Assessing Officer, accordingly, relied on the findings of the AO.
21. On the other hand, ld. AR of the assessee brought to our notice detailed findings of the ld. CIT (A) and submitted that the Revenue has raised Ground No.5 in the grounds of appeal, in this regard submitted that ld. CIT (A) has called for the remand report and based on that the case of the assessee was decided by the ld. CIT (A). Accordingly, he submitted that he relies on the findings of the ld. CIT (A) and also filed written submissions.

22. Considered the rival submissions and material available on record. We observed that in the Departmental appeal, the grounds taken are with a common objection and the same additions which were deleted by the Id. CIT (A) are assailed by the common argument that the Id. CIT (A) erred in deleting the addition by allowing the additional evidence in disregard of Rule 46A of the IT Rules, 1962. We further observe that the case of the assessee is not covered under any circumstance as enumerated in Rule 46A. We further observe this point is also specifically taken by way of Ground of Appeal No. 5 as extracted above. We further observe that it is the case of the Department, that in terms of the ruling and order of the Hon'ble Allahabad High Court in Bimal Kumar Anant Kumar vs. CIT (2007) 288 ITR 278, the application under Rule 46A had to be made for admission of additional evidence with reasons stating the purpose of filing additional evidence and also the reasons for not doing so earlier. We observe that Id. CIT (A) has dealt with this issue and recorded its conclusion on page 95 of the impugned order. We further observe that the additional evidence which was submitted by the assessee was necessitated by the fact that sufficient and adequate opportunity was not provided by the AO for producing the same before him and notice for so doing was given to the assessee only on 28.12.2019, the assessment itself was completed on 30.12.2019. Resultantly, we observe that the assessee

was not given sufficient opportunity for filing the details and the case is thus covered by clauses (b) and (c) of sub-rule 1 of Rule 46A. Further we observe that the objection to the admission of additional evidence has been taken despite the fact that the AO has been confronted with that material and in compliance to the directives of the Id. CIT (A), the AO has submitted a remand report too. In such circumstances, we observe that the decision of the Allahabad High Court, as cited in the Ground of appeal, is clearly distinguishable on facts. In the cited case, the Assessee therein had not filed the application for admission as envisaged under Rule 46A. Further we observe that the issue raised by the Department is fully covered by the decision of the Hon'ble jurisdictional High Court in the case of CIT vs. Virgin Securities & Credits (P) Ltd. (2011) 332 ITR 396, in favour of the assessee where the Hon'ble Court held that in case the additional evidence is confronted to the AO for obtaining a remand report and such report is submitted and considered in the Appellate order, the conditions envisaged u/r 46A are duly satisfied. We further observe that independent of the sub-rules 1, 2 and 3, sub-rule 4 of Rule 46A stands. According to this sub-rule 4, the Id. CIT (A) is free to entertain additional evidence whenever he finds that for substantial cause such consideration would enable him to dispose of the appeal. Accordingly, we hold that Ground No. 5 raised by the Revenue along with the first four

Grounds reflecting the common grievance are misconceived and misdirected and therefore rejected.

23. Further on merits, we observe that in respect of the Ground No.1 concerning addition u/s. 68 of the Act in a sum of Rs.4,71,00,000/- the assessee had submitted the identify, creditworthiness and genuineness of the transactions before the Id. CIT (A) and at remand proceedings, and the Id. CIT (A) found that the sole objection of the AO that the creditors could have deposited the loan amounts provided to the assessee in banks to earn interest did not hold any water for the reason that such a condition is not spelt by Section 68 of the Act. We further observe that Id. CIT (A) has deleted the addition as per the observations to be found in page 98 of the impugned order by passing a speaking order and accordingly we uphold the same.
24. Further we observe that Ground No. 2 is related to Ground No.1 and the disallowance of interest made by the AO u/s. 69C of the Act in a sum of Rs.8,71,051/- on the loan added u/s. 68 of the Act. As we have upheld the order of the Id. CIT (A) on Ground No.1, hence we uphold the order of the Id. CIT (A) on ground no.2 also.
25. Further with regard to Ground No. 3 in respect of addition of Rs.80,08,429/- made u/s. 41(1) of the Act, this addition is in respect of old credits in the books of accounts having a lifespan of more than three

years.. We observe that the factum of all the amounts constituting the addition for being more than three years old was not factually correct and it was only some of them which were more than three years old so as to bring them under the limitation period for repayments. We observe that even in those cases, it was found that in some of them, the amounts were being repaid to the respective parties. We observe that it is on that reasoning that the ld. CIT (A) deleted the addition. We observe that the action of ld. CIT (A) in so doing is supported by the decisions of apex Court in the CIT vs. Sugauli Sugar Mills (1989) 236 ITR 518(SC), CIT vs. Kesaria Tea Co. Ltd. (2002) 254 ITR 434 and Polyflex India (P) Ltd. vs. CIT (2002) 257 ITR 343 (SC). Further we observe that the common Ground in all the cited cases has been that limitation by itself cannot bring the amount under the purview of Sec. 41(1) of the Act, the amount in question has to be released or admission of write off in favour of the assessee by the creditor, then alone it could be said that the liability for the repayment of the amount had ceased. Accordingly, we are inclined not to disturb the findings of the ld. CIT (A) who has passed a reasoned order.

26. With regard to Ground No. 4 regarding addition made u/s. 37(1) of the Act by way of disallowance of expenses to the tune of Rs.7,62,75,655/-, we observe that ld. CIT (A) has dealt with this issue in detail. We

observe that the AO had conceded the error in making the addition in the remand report and in that background, the Id. CIT (A) ruled that the addition as made on this account was uncalled for. Accordingly, we do not wish to disturb the findings of the Id. CIT (A) on this issue and uphold the same. Hence Ground No.4 is deleted.

27. In the result, the appeal filed by the Department is dismissed.
28. To sum up : the appeal filed by the assessee is allowed and the appeal filed by the Department is dismissed.

Order pronounced in the open court on this 26th day of November, 2025.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 26.11.2025
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**