

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

**BEFORE SHRI. LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND SHRI. KESHAV DUBEY, JUDICIAL MEMBER**

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| ITA No. 1551 and 1552/Bang/2025 |
| Assessment Years : 2013-14 and 2014-15 |

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| M/s. H & F Games Pvt. Ltd., Golden square,102, Eden Park, 20, Vittal Malya Road, Bengaluru — 560 001. PAN : AACCH 7856 A | Vs. | TheDeputy Commissioner of Income Tax, Central Circle - 1(2), Bangalore. |
| APPELLANT | | RESPONDENT |

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| Assessee by | : | Shri. Balram Rao, Adv |
| Revenue by | : | Shri. Balusamy N, Jt. CIT(DR)(ITAT), Bangalore. |

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| Date of hearing | : | 21.11.2025 |
| Date of Pronouncement | : | 28.11.2025 |

ORDER

Per Laxmi Prasad Sahu, Accountant Member :

These two appeals are filed by the assessee against the common order of the CIT(Appeals)-11, Bangalore, dated 20.06.2024 for the above assessment years on the following grounds of appeal:

Grounds of appeal for Assessment Year 2013-14:

The Appellant objects to the Assessment Order on the following grounds in so far as it is prejudicial to the Appellant as it is opposed to law and circumstances of the case

- 1. The notice issued u/s.148 is bad in law as the A.O. has not supplied Reasons recorded for re- opening of Assessment along with notice u/s.148.*
- 2. The Assessment order passed u/s.148 is bad in law as the A.O. has not recorded the satisfaction himself before issuing of notice*

- u/s.148. whether the income has escaped as contemplated u/s.147 rws 148.*
3. *The Assessment order passed u/s.147 r.w.s 144 is bad in law as the company was defunct as on the date of issue of notice (20.03.2020) for re - opening of assessment proceedings u/s. 147*
 4. *The AO was not correct in not accepting the Return of Income filed manually on 30.09.2020. though the same was acknowledged by his Office.*
 5. *The A.O. was not correct in making addition for entire cash deposits into bank account to the tune of Rs.51,09,000/- without considering the Appellant explanation for sources for the same.*
 6. *The A.O. was not correct in not considering the Interest on loan Rs. 77,14,000/-paid to lenders. which was claimed in Return of Income filed.*
 7. *The AO was not correct in not considering the interest on loan as allowable expenditure as the Appellant has identified the parties from whom loans has taken and also submitted their Name and PAN etc.*
 8. *The A.O. has failed to send letters for confirmation of loans taken from Lenders and also interest paid to them by invoking provisions of section 133(6), as all the lenders. Name and Address were provided during the course of Assessment Proceedings by the Appellant.*
 9. *The Appellant objects the levy of Interest u/s.234A and B consequential to the above additions.*
 10. *The Appellant craves leave to add, to alter. to amend or to delete any of the grounds that may be urged at the time of hearing of the Appeal.*
 11. *Wherefore on the above grounds and on such other grounds the Appellant prays the Appellate Authority to delete the additions as above and may pass such other as the Appellate Authority deems fit*

Grounds of appeal for Assessment Year 2014-15:

The Appellant objects to the Assessment Order on the following grounds in so far as it is prejudicial to the Appellant as it is opposed to law and circumstances of the case

1. *The notice issued u/s.148 is bad in law as the A.O. has not supplied Reasons recorded for re- opening of Assessment along with notice u/s.148.*
2. *The Assessment order passed u/s.148 is bad in law as the A.O. has not recorded the satisfaction himself before issuing of notice*

- u/s.148. Whether the income has escaped as contemplated u/s.147 rws 148.*
3. *Assessment order passed u/s.147 r.w.s 144 is bad in law as the company was defunct as on the date of issue of notice (20.03.2020) for re - opening of assessment proceedings u/s. 147*
 4. *The AO was not correct in not accepting the Return of Income filed manually on 30.09.2020 though the same was acknowledged by his Office.*
 5. *The A.O. was not correct in making addition for entire cash deposits into bank account to the tune of Rs.1,25,30,000/- without considering the Appellant explanation for sources for the same.*
 6. *The A.O. was not correct in not considering the Interest on loan Rs. 1,46,07,000/-paid to lenders, which was claimed in Return of Income filed.*
 7. *The AO was not correct in not considering the interest on loan as allowable expenditure as the Appellant has identified the parties from whom loans has taken and also submitted their Name and PAN etc.*
 8. *The A.O. has failed to send letters for confirmation of loans taken from Lenders and also interest paid to them by invoking provisions of section 133(6), as all the lenders, name and Address were provided during the course of Assessment Proceedings by the Appellant.*
 9. *The Appellant objects the levy of Interest u/s.234A and B consequential to the above additions.*
 10. *The Appellant craves leave to add, to alter, to amend or to delete any of the grounds that may be urged at the time of hearing of the Appeal.*

Wherefore on the above grounds and on such other grounds the Appellant prays the Appellate Authority to delete the additions as above and may pass such other as the Appellate Authority deems fit

2. At the outset of hearing, it was noticed that the appeal filed by the assessee before the Tribunal is delayed. In this regard, assessee has filed an application dated 07.10.2025 stating the reason for delay in filing appeal before the Tribunal. On going through the above application, we noted that the assessee had sufficient reason and reasonable cause for delay in filing appeal before the Tribunal. Therefore, relying on the judgment of the Hon'ble Supreme Court in the case of Collector of Land Acquisition Vs. MST Katiji

and Others, (1987) 2 SCC 107 : 1987 (2) SC, the delay in filing the appeal is condoned.

3. The grounds raised in these appeals are similar in both the appeals and were heard together. For the sake of convenience, we first take up ITA No.1551/Bang/2025 and its decision shall apply mutatis mutandis to the other appeals also except the figures reported in the order.

4. Briefly stated the facts of the case are that a survey was conducted at M/s. Xentrix Studios Pvt. Ltd. on 04.05.2017. A sworn statement was recorded from Shri D.S. Nandish u/s. 131 of the Act. Shri D.S. Nandish was questioned about the origins of cash deposits in various bank accounts associated with entities closely linked to him. He admitted his inability to explain the source of cash deposits and voluntarily offered to declare the unexplained cash as income for the respective years. The unaccounted cash deposits in the assessee company's account amounted to Rs.51,09,000/- for AY 2013-14 & Rs.1,25,30,000 for AY 2014-15.

5. A search was conducted on 28.8.2017 in the case of Mr. D.S. Nandish. During the course of statement u/s. 132(4), Mr. Nandish reaffirmed the statement recorded u/s. 131 of the Act, and agreed to disclose additional income towards unexplained cash deposits. A survey was conducted on 04.05.2017 in the case of Mr. D.S. Nandish. During the course of statement u/s. 131 of the Act, Mr. Nandish he agreed for offer additional income towards unexplained cash deposits. Accordingly, the AO made addition u/s. 68 of the Act. Further the AO noted from the financial statements submitted by the Director during the scrutiny proceedings that the assessee has sundry creditors in the balance sheet and assessee has paid interest on such creditors without deducting TDS and claimed expenditure on return filed manually on

30.09.2021. The assessee had not furnished the details of business activity being carried out and as to how the interest expenses is connected to the business operation of the assessee company. The assessee was asked to justify the loans and advances appearing in the balance sheet. But the assessee could not substantiate and interest paid on such creditors was disallowed u/s. 37 of the Act as claimed by the assessee in its return of income manually filed on 19.01.2021 which was treated as defective. The AO further noted that no TDS has been made on such interest.

6. During the course of appellate proceedings before the CIT(Appeals), the assessee raised various legal issues. The Id. First Appellate Authority (FAA) called for remand report and as per the remand report, copy of the reasons recorded were supplied to the assessee (with proper DIN]. He noted that there was proper approval granted u/s. 151 sought by the AO from the Pr.CIT before reopening the case which was also provided to the assessee. The Id. FAA dismissed the appeal of the assessee. Aggrieved from the above order, the assessee filed appeals before the ITAT.

7. The Id. counsel for the assessee reiterated the submissions made before the lower authorities and submitted that before reopening the case u/s. 147/148, proper approval was not obtained as mandated u/s. 151 of the Act. He further submitted that the AO has wrongly issued notice u/s. 148. He further submitted that as Mr. D.S. Nandish has stated in the sworn statement that the entire cash deposits in the assessee's bank account are deposited by him, hence it should be assessed in the hands of Mr. Nandish, not in the hands of the appellant company. The AO has made addition of entire cash deposits in the bank account whereas the net income should have been added. The entire cash deposits are not the income of the assessee. The assessee as paid interest on such loans taken and interest paid thereon has not been allowed.

The AO has wrongly applied section 68 of the Act and the mandatory condition of section 68 has not been fulfilled. The ld. counsel relied on the judgment of the co-ordinate bench in the case of N9 sports & leisure Holdings Pvt. Ltd. & Hungry and Foolish Intellectual Proprieties Pvt. Ltd. Vs. DCIT, CC (1)(2) in ITA Nos. 1568 to 1570/Bang/2024, ITA No. 1573 to 1575 / Bang/2024 for the AY 2013-14 to 2015-16 and submitted that the facts are identical in the case of the assessee.

8. On the other hand, the ld. DR relied on the order of the lower authorities and submitted that during the course of appellate proceedings, the entire objections raised by the assessee have been complied and copy of reasons recorded were submitted to the assessee. The notice has been issued u/s 148 on the basis of statements recorded during the survey proceedings which is very much clear from the copy of reasons recorded but not on the basis of search, therefore the arguments advanced by the ld. AR regarding its validity is not correct. The ld. CIT(A) has incorporated in his order the reasons recorded and copy of approval granted by the Pr.CIT u/s. 151 of the Act. He further submitted that the assessee did not filed its return of income in response to the notice u/s 148 and on 19.01.2019 after expiry of long time period as allowed in the notice therefore the AO has rightly treated the return as defective return and income. The AO was not bound to consider the income shown reported in manual return. The ld. DR relied on the order in the case of Singhad Education Society reported in [2017] 84 taxmann.com290 (SC) and the judgment in the case of Abhisar Buildwell (supra) at para No.3.1 (iii). He further submitted that the AO before reopening the case has followed the procedure in entirety. The DIN is also quoted in the respective documents. He further submitted that during the course of assessment proceedings, the assessee was unable to provide the details of cash deposits in terms of section 68 of the Act. He further submitted that in the case of interest payment, the

assessee has not deducted TDS and genuineness of the payment is also doubted. Therefore, the AO has also doubted the genuineness of expenditure incurred by the assessee for want of proper evidence. Therefore the AO has correctly disallowed interest expenditures as claimed in the ITR.

9. Considering the rival submissions, we noted that a survey was conducted in the case of in the case of M/s Xentrix Studios P Ltd on 03.05.2017 and statements were recorded u/s. 131 of the Act, of Mr. D.S. Nandish which was reaffirmed in the statement recorded u/s. 132(4). During the search proceedings it was found that he has deposited cash in various bank accounts. The AO on the basis of information recorded during the survey in the case of Shri D.S. Nandish the reasons have been recorded for issue of notice and sought approval from the. Pr.CIT which is incorporated by the CIT(A) in his order. The notice issued by the AO u/s. 148 is correct. For the sake of convenience, we are reproducing the reasons recorded in ITA No. 1551/Bang/2025;-

" Reasons for reopening of the Assessment in case of M/s H & F Games P Ltd for Asst Year 2013-14 u/s 147 of IT Act

1. Brief Details of the assessee: The assessee is not filling its return of income..

2. Brief Details of the information collected/received by the AO : Survey u/s 133A of the Income-tax Act, 1961 was carried out in the case of M/s Xentrix Studios P Ltd on 03.05.2017. During the survey, it was found that Shri D S Nandish had floated several companies/firms/business concerns and utilised the bank accounts of these entities for depositing unaccounted and unexplained cash. It was also found that none of these entities were carrying any business activities, nor maintaining any books of account for the transactions in bank accounts and also not filing their returns of income. Shri D S Nandish accepted in his statement that entire cash deposits in these bank accounts were made by him from his unaccounted sources of income. During survey, it was found that there were cash deposits of Rs.51,09,000/- in the bank account of M/s. H & F Games P. Ltd during the Fin Year 2012-13. In absence of any books of accounts, documentary evidence or explanation to

show the sources of unaccounted cash deposits, Mr D S Nandish admitted to disclose an additional income of Rs.51,09,000/- in the hands of M/s H&F Games P. Ltd.N 9 Sports & Leisure Holdings P Ltd in the capacity of promoter/director of the company.

3. Analysis of information collected/ received : From the above information received, it is clear that M/s H & F GAMES P Ltd was having other income for Asst Year 2013-14 and had not declared the same in its return of income.

4. Enquiries made by the AO as sequel to information collected /received : On verification from the ITD system, it is found that no return of income filed for Asst Year 2013-14 by the assessee company does not declared its true income.

5. Findings of the AO : It is found that the assessee is having bank account no. 842142234 with Axis Bank, Karthiknagar, Bangalore. It is also found that there were total cash deposits of Rs.51,09,000/- in bank account during the period 01.04.2012 to 31.03.2013. A copy of bank statement for the period 01.04.2012 to 31.03.2013 is on record. Further, it is seen that the assessee has made many transactions in its bank account but in absence of any balance sheet or P & L account filed by the assessee the same cannot be verified, it is clear that annual income for assessment year 2013-14 was more than taxable limit and the assessee was liable to file its return of income .

6. Basis of forming reason to believe and details of escapement of income : On going through the statements of Shri D S Nandish dated 03.05.2017 and 28.08.2017 and enquiries made thereafter, it is clear that the assessee company was having unexplained income of Rs.51,09,000/- chargeable to tax in A.Y. 2013-14 and has not filed its return of income. After due consideration of the facts of the case, I have reason to believe that income chargeable to tax has escaped assessment for Asst Year 2013-14.

7. Applicability of the provisions of section 147/151 to the facts of the case: In this case no return of income was filed for the Asst Year 2013-14 and no routine assessment was made and the only requirement to initiate proceedings u/s 147 is reason to believe which has been recorded above as per para 5 & 6.

It is pertinent to mention here that in this case the assessee has chosen not to file return of income for the year under consideration although the total income of the assessee had exceeded the maximum amount which is not chargeable to tax as discussed in paragraph 5 above and the assessee was assessable under the Act. In view of above the provision of clause (a) of Explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment. In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice u/s

148 has been obtained separately from Pr Commissioner of Income Tax as per the provisions of section 15 I of the Act."

10. The AO has also communicated copy of the reasons recorded with proper DIN to the assessee which is clear from the remand report submitted by the AO. The AO has made addition u/s. 68 of the Act for want of explanation in terms of section 68 of the Act. On going through the above reasons recorded, we noted that assessee has not maintained any books of account. Therefore, addition made u/s. 68 will not survive. The pre-condition for invoking section 68 is any amount credited in the books of account maintained for any previous year. For the sake of reference, we are reproducing section 68 of the Act:-

"68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

[Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:"

11. From the above section it is clear that the pre-condition to invoke section 68 is any sum found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof. The assessing officer is very much sure while recording

the reasons for reopening that the assessee has not maintained books of accounts. Here in the present case, it is clear that the AO himself is satisfied that no books of account was maintained by the assessee and therefore addition cannot be made u/s. 68. The coordinate bench of ITAT has explained the books of accounts in the case of DCIT vs GSNR Rice Industries S(P.) LTD reported in [2021] 128 taxmann.com 433 (Chennai - Trib.)/[2021] 90 ITR 114/213 TTJ 17. In this judgement it has been held as under:-

"From the definition of 'books' or 'books of account', it is abundantly clear that books of account means regular books of account maintained by the assessee for any previous year to record day to day transactions of its business including ledgers, day-books, cash books, account books and other books. The term other books does not mean to include some dumb documents like diary, note book or deleted entries of computer CPU. The term other books refers to any other books which are relevant and in consonance with ledgers, day-books, cash books, account books, etc. Therefore, in order to include any other books of account maintained by the assessee within the ambit of term 'other books', those books must be relevant in the business of the assessee to keep track of transactions. Hence, other books refers to in the ordinary course of any business of the assessee are stock books maintained in the ordinary course of business to record movement of stocks, books of account maintained for recording salary and wages as required under the Wages Act and other statutory books prescribed under any other law. But, it does not include diary, note book and some other dumb documents maintained by any person for any reason. Thus, diary, note book and retrieved data from computer CPU are not books or books of account as defined under section 2(12A) and hence, those diary, note book and retrieved data cannot be considered as books for invoking provisions of sections 68 and 69/69A/69C."

12. In the above judgement the books of accounts have been explained and it has been held that if there is no books of account maintained, addition cannot be made u/s. 68 of the Act. The above judgment is squarely applicable in the present case on hand. The cash law relied on by the ld. Counsel in the case of N9 Sports and Leisure Holdings Pvt/ Ltd. Vs DCIT CC 1 (2) & others cited supra are very much applicable to the case of the assessee. The ld. DR could

not controvert the above judgement. Further in these cases the cash was deposited by Shri D.S. Nandish. The Source of cash deposit is Shri D.S. Nandish, hence the source of deposit is explained. In view of this the grounds raised by the assessee for both the AYs are allowed.

13. In the result, the appeal of the assessee for AY 2013-14 & AY 2014-15 are allowed. A copy of the common order passed shall be kept in the respective case file.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(KESHAV DUBEY)
Judicial Member

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Bangalore.

Dated: 28.11.2025.

/NS/*

Copy to:

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|---------------|-------------------------|
| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.