

INCOME-TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAIBEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI JAGDISH, ACCOUNTANT MEMBERI.T.A No.4860/Mum/2025
(Assessment Year: 2016-17)

M/s Krian Cinema Banquets Pvt Ltd, The View 102, 1 st Floor, Credit Mukta Building, Above Hardrock Café, Fun Republic Lane, Andheri (W), Mumbai-400 053 PAN : AAFCK9714R	vs	The ACIT 10(1)(2), Mumbai Aayakar Bhavan, M.K. Road, Mumbai-400 020
APPELLANT		RESPONDENT

Present for Assessee	Shri Nishit Gandhi
Present for Revenue	Shri Ritesh Misra, CIT DR

Date of hearing	23/12/2025
Date of pronouncement	06/01/2026

ORDER**Per: Shri Anikesh Banerjee, JM:**

The instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter called, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for Assessment Year 2016-17, date of order 07/07/2025. The impugned order was emanated from the order of the Ld. Assistant Commissioner of Income-tax, Circle-10(1)(2), Mumbai (hereinafter, 'Ld.AO'), passed under section 143(3) of the Act, date of order 19/12/2018.

2. The brief facts of the case are that the assessee filed its return of income declaring a loss of Rs.52,81,310/-. The return was processed under section 143(1) of the Act. Subsequently, the case was selected for scrutiny through CASS under the category of "Limited Scrutiny." The issue identified for examination was the receipt of a large share premium during the year, specifically to verify the applicability of section 56(2)(viib) of the Act, as reflected in Part A-BS of the return of income. In terms of CBDT Instruction No. 20/2015, the scope of enquiry was confined strictly to the limited scrutiny issues. During the impugned assessment year, the assessee issued shares to both resident and NRI subscribers and received share premium from such subscribers. In support of the transaction, the assessee submitted all relevant documents before the Ld. AO to establish the identity and creditworthiness of the subscribers and the genuineness of the transactions. With respect to valuation under section 56(2)(viib) of the Act, the assessee furnished a valuation report issued by a registered valuer. As regards the NRI subscribers, the assessee duly complied with RBI directions and FEMA regulations while accepting the share application money. Thereafter, shares were duly allotted to the subscribers. However, during the assessment proceedings, the Ld. AO treated the share capital amounting to Rs.2,00,01,000/- as a bogus transaction and added the same to the total income of the assessee under section 68 of the Act. Aggrieved by the said addition, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee raised both legal grounds as well as grounds on merits. It was contended that the scrutiny assessment was initiated only for verification under section 56(2)(viib) of the Act in respect of share premium, and that, without obtaining any approval from the higher authorities, the Ld. AO made an addition under section 68 of

the Act, which was beyond the scope of limited scrutiny. However, the Ld. CIT(A), in the first appellate proceedings, correlated the provisions of section 56(2)(viib) with section 68 of the Act and upheld the addition. Being aggrieved, the assessee has filed the present appeal before us.

3. The Ld. AR filed a paper book containing **pages 1 to 112**, which has been placed on record. The Ld. AR submitted that the additions were confirmed mainly in respect of share subscribers who were NRIs. It was contended that the Ld. CIT(A) wrongly presumed the absence of supporting evidence and confirmed the addition on that basis. According to the Ld. AR, the Ld. CIT(A) erroneously observed that the assessee failed to furnish corroborative evidence regarding the details of the share subscribers. He further pointed out that the Ld. CIT(A) made a specific allegation that since the company was incurring losses, it could not have charged share premium, which, according to him, amounted to a gross violation of section 56 of the Act. However, the Ld. CIT(A) did not reject the valuation report submitted by the assessee, which is placed at **APB pages 65 to 71**.

4. The Ld. AR further submitted that all relevant documents evidencing the genuineness of the transactions and the identity and creditworthiness of the subscribers were duly filed before the Ld. AO vide letter dated 10.08.2018, filed on 13.08.2018, and another letter dated 26.11.2018, filed on the same date. The relevant documents were duly submitted before the authorities, which are reproduced as under:–

Sr.No.	Particulars	Page No.
	<i>Details of Shareholders</i>	
<i>1.</i>	<i>Rajiv Khatwani</i>	
<i>a</i>	<i>Copy of PAN Card of Shareholder</i>	<i>72</i>
<i>b</i>	<i>Copy of ITR Acknowledgement of the shareholder company</i>	<i>74</i>
<i>c</i>	<i>Copy of Bank Statement Highlight the transaction</i>	<i>75</i>

<i>d</i>	<i>Copy of Ledger Confirmation</i>	<i>76 to 77</i>
2.	<i>Joti Anand</i>	
<i>a</i>	<i>Copy of PAN Card of Shareholder</i>	<i>78</i>
<i>b</i>	<i>Copy of Bank Statement Highlight the transaction</i>	<i>79</i>
<i>c</i>	<i>Copy of fund transfer application</i>	<i>80</i>
<i>d</i>	<i>Copy of Ledger Confirmation</i>	<i>81 to 82</i>
3	<i>Karan Anand</i>	
<i>a</i>	<i>Copy of PAN Card of Shareholder</i>	<i>83</i>
<i>b</i>	<i>Copy of Bank Statement Highlight the transaction</i>	<i>84</i>
<i>c</i>	<i>Copy of fund transfer application</i>	<i>85 to 86</i>
<i>d</i>	<i>Copy of Ledger Confirmation</i>	<i>87 to 88</i>
4	<i>Mohit Khatwani</i>	
<i>a</i>	<i>Copy of PAN Card of Shareholder</i>	<i>89</i>
<i>b</i>	<i>Copy of ITR Acknowledgement of the shareholder company</i>	<i>90</i>
<i>c</i>	<i>Copy of Bank Statement Highlight the transaction</i>	<i>91</i>
<i>d</i>	<i>Copy of fund transfer application</i>	<i>92 to 93</i>
<i>e</i>	<i>Copy of Ledger Confirmation</i>	<i>94 to 95</i>
5	<i>Copy of Written Submission submitted before the Ld.A.O.</i>	<i>96 to 100</i>
6	<i>Copy of Written Submission submitted before the Hon'ble CIT(A)</i>	<i>101 to 112</i>

5. The legal issue was duly argued by the Ld. AR. It was submitted that the assessee's case was selected for scrutiny exclusively for verification of the share premium received during the impugned assessment year and for examining the applicability of section 56(2)(viib) of the Act. However, without obtaining the mandatory approval of the higher authorities, the Ld. AO proceeded to make an addition under section 68 of the Act, which was beyond the scope of the limited scrutiny. It was further contended that no addition was warranted under section 56(2)(viib) of the Act, as the assessee had duly complied with the statutory requirements. The Ld. AR submitted that an identical issue has been squarely considered and decided in favour of the assessee by the co-ordinate Bench of the **ITAT, Delhi Bench "E"**, in the case of **DCIT v. Rakesh Arora, ITA No. 3610/Del/2025**, pronounced on **10.12.2025**. The relevant extract from the said decision is reproduced below:–

“10. Compliance to CBDT instructions is mandatory for field formations. In scrutiny proceedings, the conduct of an Assessing Officer is also governed by instructions of the CBDT issued on specific subjects. This proposition has been reiterated by judicial authorities in a catena of judgments including that of M/s Shivalik Educational and Placement Services (supra). In the absence of any distinguishment of facts, pointed out by Revenue, of the present case with those of Shivalik Educational and Placement Services (supra), and in respectful compliance as well as for the purposes of consistency, we are of the considered view that the learned AO was required to have first converted the present case to complete scrutiny category and then only proceeded to have made his enquiries and the corresponding addition. In the present case, as the same was not done we proceed to quash the addition made by the Ld. AO amounting to Rs.1,69,69,770/- u/s 2(22)(e) and Rs.4,65,85,000/- under section 69A of the Act. Ground of appeal no.1 and 2 raised by the Revenue are dismissed.”

6. The Ld. AR further respectfully relied on the order of the co-ordinate bench of ITAT, Delhi Bench “A” in the case of **ACIT vs B.K. Sales Corporation (2025) 176 taxmann.com 17 (Delhi – Trib.)**. The relevant paragraph 8 is extracted below:-

“8. We have noted that it is an evident fact on record that the Id AO has travelled beyond the limited scrutiny parameters for which the case was selected by making the impugned addition of Rs. 3,83,08,176/- u/s 36(1) (iii) of the Act. We have noted that in respectful compliance to the decision of the Hon'ble High Courts discussed supra the said addition was not legally permissible. Accordingly, we direct the Id AO to delete the impugned addition of Rs. Rs. 3,83,08,176/- u/s 36(1)(iii) of the Act. All the grounds of appeal raised by the revenue are therefore dismissed.”

7. The Ld.DR argued and stands in favour of the orders of revenue authorities. He invited our attention to assessment order para 4.7, which is extracted below:-

“4.7 In view of the findings given in the above paras, The sum of Rs.2,00,01,000/- claimed to be in the nature of share capital and premium but not substantiated as to source of its true nature is hereby brought to tax as unexplained cash credit in the hands of the assessee company u/s.68 of the Act and assessed accordingly. Further, since Sec. 68 is an independent section, loss of the assessee cannot be set off against the said head. Therefore, the assessee's loss of Rs 52,81,310/- is not allowed to be set off against the income Act.”

The Ld. DR further stated that the assessee is unable to establish the genuineness of the transaction and creditworthiness of the investors. So section 56(2)(viib) of the Act is not applicable and section 68 of the Act is directly applicable in assessee's case. He prayed for upholding the impugned addition.

8. We have heard the rival submissions and perused the documents available on record. During the course of hearing, arguments were advanced on two fronts, namely, on the legal issue as well as on merits. The scrutiny proceedings were initiated solely with respect to the acceptance of share premium and to examine the applicability of section 56(2)(viib) of the Act. The assessee had duly furnished all relevant documents before the Ld. AO as well as before the Ld. CIT(A), which are placed on record in the paper book. Since the investors were NRIs, the assessee submitted all relevant documents, including bank statements and ledger confirmations, before the authorities. The assessee has thus complied with the requirements of section 68 of the Act by establishing the identity of the subscribers, their creditworthiness, and the genuineness of the transactions.

So far as the legal issue is concerned, none of the revenue authorities could place on record any evidence to show that the Ld. AO had obtained the requisite approval from the competent authority for expanding the scope of

enquiry from section 56(2)(viib) of the Act to section 68 of the Act. In the absence of such approval, the addition made under section 68 of the Act is legally unsustainable. Accordingly, respectfully following the decisions of the co-ordinate Bench of the ITAT, Delhi Bench, in the cases of **Rakesh Arora** (supra) and **B.K. Sales Corporation** (supra), the assessment framed by the Ld. AO is quashed, and the addition of Rs.2,00,01,000/- is deleted.

As the issue has been decided on legal grounds, the remaining grounds raised by the assessee are rendered academic and are left open.

9. In the result, the appeal of the assessee bearing **ITA No.4860/Mum/2025** is allowed.

Order pronounced in the open court on 06/01/2026

Sd/-

(JAGDISH)
ACCOUNTANT MEMBER
Mumbai, Dt : 06/01/2026
Pk/-

Copy of the Order forwarded to:

1. अपीलार्थ/The Appellant ,
2. ितवादी/ The Respondent.
3. आयकरआयु CIT
4. िवभागीयितिनिध, आय.अपी.अिध., मुंबई/DR, ITAT, MUMBAI
5. गाडफाइल/Guard file.

//True Copy//

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

BY ORDER,

(Asstt. Registrar), ITAT, MUMBAI