

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, KOLKATA

**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.1592/Kol/2025
(Assessment Year 2017-18)**

**Deputy Commissioner of Income Tax,
Central Circle 4(3), Kolkata,
110, Shantipally, Kolkata – 700107Appellant**

vs.

**Vivek Gupta,
22, New Road Alipore,
Kolkata - 700027
[PAN: ADTPG3727C] Respondent**

**CO No.68/Kol/2025
(Arising out of ITA No. 1592/Kol/2025)
(Assessment Year 2017-18)**

**Vivek Gupta,
22, New Road Alipore,
Kolkata - 700027
[PAN: ADTPG3727C]Appellant**

vs.

**Deputy Commissioner of Income Tax,
Central Circle 4(3), Kolkata
Aayakar Bhawan Poorva,
110, Shanti Pally,
Kolkata – 700107 Respondent**

Appearances by:

Assessee represented by : Manish Tiwari, Advocate

Department represented by : S.B. Chakraborty, Addl. CIT, Sr. DR

Date of concluding the hearing : 02.12.2025

Date of pronouncing the order : 20.01.2026

ORDER

Per Rajesh Kumar, AM

The present appeal by the revenue and cross objection by the assessee arise from order dated 27.04.2025, passed u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”) by the Ld. Commissioner of Income Tax (Appeals), Kolkata-27[hereafter “the Ld. CIT(A)].

2. The only issue raised by the revenue in Ground No. 1 to 3 is against the deletion of addition of Rs. 25,00,000/- as made by the Assessing Officer u/s 68 of the Act in respect of unsecured loan as unexplained cash credit.

3. The facts in brief are that during the course of assessment proceedings, observed that the return of income was filed on 28.10.2017 declaring total income at Rs. 8,16,170/-. The return was processed u/s 143(1) of the Act. The assessee and his proprietorship concern M/s Vivek & Co. belong to Avima Group of Companies which is one of the major players in the field of trading of jute products. This group is also engaged in the business of trading of rice, plastic products, cashew nut, peas and other products. The Directorate of Investigation conducted survey operation of Avima Group u/s 133A of the Act on 04.11.2019 and the assessee was also covered in this survey action and documents including soft data in mobiles/computer were found, examined, inventorized and impounded bearing AEPL/01 to AEPL/04, AEPL/HD/01 to AEPL/HD/04 (computer hard disc). Based on the said documents, the AO reopened of the assessment despite the assessee objecting the said reopening. The AO noted that the assessee has raised two unsecured loans i) Rs. 10,00,000/- from Akshat Merchants Pvt. Ltd. and ii) Rs. 15,00,000/- from Ratnakar Dealers Pvt. Ltd. The AO treated the said loans as unexplained cash credit for the reason that the assessee failed to prove the three limbs of

section 68 of the Act and added the same to the income of the assessee u/s 68 of the Act as unexplained cash credit.

4. The Ld. CIT(A) in the appellate proceedings discussed in detailed the facts qua the said loans. The Ld. CIT(A) noted in para 6.2.2 that the AO has added these loans to the income of the assessee on the ground that the assessee failed to produce any details/documents in respect of the lending companies. The AO also noted that the source of funds of the lending companies were not substantiated by the assessee. The Ld. CIT(A) in para 6.2.3 noted that the AO failed to appreciate the fact that the statements as relied by the AO in the assessment proceedings was later retracted by the persons i.e. Shri Vishwanath Gupta and Shri Vivek Gupta (proprietor of M/s Vivek Gupta & Co.) on 28.11.2019 and 20.11.2019 respectively. The Ld. CIT(A) noted that no addition can be made on the basis of retracted statement and also that no addition can be made by relying upon the statement recorded during survey unless there is corroborative material. The Ld. CIT(A) while deleting the addition relied on the decision of CIT Vs. Khader Khan Son (2013) 352 ITR 480 (SC), wherein it has been held that statement recorded u/s 133A of the Act has no evidentiary value and no admission made during such statement cannot be basis of addition. Similarly, the Ld. CIT(A) relied on the decision of CIT, Delhi Vs. Ms. Mayawati, 338 ITR 563, dated 03.08.2011, wherein the Hon'ble Delhi High Court has held that the capacity of any person can not be judged on the basis monthly or annually income but the term capacity is by very wide term. The Hon'ble court has held that the addition cannot be made on the ground that the assessee has no fixed assets, low turnover and or low expenses and no operational income. The Ld. CIT(A) also noted the fact that in para 6.2.13 that the assessee has repaid the loan in the next financial year with due payment of interest after deduction of TDS at source by relying on the decision of Hon'ble Calcutta High Court in the case of PCIT Vs. Alom Excursions Ltd., [ITAT/268/2024), wherein the

High court has deleted the addition made u/s 68 of the Act by taking note of the fact of repayment of loan. Similarly, issue has been laid down by the various other decisions of the Hon'ble Calcutta High Court which was discussed by Ld. CIT(A) as well as the decision of Hon'ble Gujarat High Court in the case of Pr.CIT vs. Ambe Trade Corp (P) Ltd.,(2022) 145 taxmann.com 27 (Guj).

5. After hearing the rival contention and perusing the material on record. We find that undisputedly the assessee had borrowed money as unsecured loans from two parties as stated hereinabove and has also filed necessary evidences before the AO as well as the Ld. CIT(A). The assessee has filed all the evidences before the AO as well as ld CIT(A) qua these loans. The fact is undisputed that the loans were repaid during next financial year and the interest was also discharged after deduction at source. Therefore, the addition made by the AO was rightly deleted by the Ld. CIT(A) by relying upon the decision of jurisdictional High Court as well as other High Courts. The case of assessee is squarely covered by the decisions of the Hon'ble Calcutta High court in number of cases namely PCIT-2, Kolkata Vs. Rahul Premier India Agency Private Limited in ITAT/133/2025, IA No.GA/2/2025 vide order dated 05.08.2025, PCIT Vs. M/s Narayan Tradecom Pvt. ltd. in ITAT/76/2025, IA No. GA/1/2025 dated 10.06.2025, PCIT Vs. Alom Extrusions Ltd. ITAT/268/2024, IA no. GA/1/2024, GA/2/2024 dated 17.12.2024, PCIT Vs. M/s Edmond Finvest Pvt. ltd., in ITAT/28/2024, GA/2/2024 dated 26.02.2024, PCIT Vs. Parwati Lakh Udyong, ITAT/2/2024, IA No.GA/1/2024 dated 19.02.2024. In all the above decisions the Hon'ble court has held that where the assessee has filed all the evidences qua the loan creditors before the ld. AO and loans are also repaid then the same cannot be added us/ 68 of the Act. Similarly, the case of assessee is squarely covered by the decision of the Hon'ble Gujarat High Court in the case of Ambe Tradecorp (P.) Ltd., reported in [2022] 145 taxmann.com 27 (Gujarat).

6. We also note that capacity of person cannot be judged on the basis of no fixed assets having low turnover and low operational income etc. and one should obtain 60-degree financial analysis before drawing adverse view against the assessee as has been held by Ld.CIT, Delhi Vs. Ms. Mayawati (supra) by Delhi High Court. Therefore, the Ld. CIT(A) has passed a reasonable and speaking order on this issue which we are inclined to uphold by dismissing Ground Nos. 1 to 3 in the Revenue's appeal.

7. The issue raised in Ground No. 4 is against deletion of the disallowance of Rs. 12,500/- by the Ld.CIT(A) as made by the AO u/s 69C of the Act towards commission expenditure for obtaining the bogus loans. This is being consequential to Ground No. 1 to 3 and accordingly, uphold the order of Ld. CIT(A) on this issue by dismissing Ground No. 4.

8. The issue raised in Ground No. 5 against the deletion of disallowance of Rs. 61,151/- made under section 36(1)(iii) of the Act on account of interest paid on alleged bogus loans. Since we have upheld the order of Ld. CIT(A) on the issue of unsecured loans in Ground No. 1 to 3, therefore, this Ground being consequential thereto and is accordingly dismissed by upholding the order of Ld.CIT(A).

9. The issue raised in Ground No. 6 and 7 are against the order of Ld.CIT(A) deletion the addition of Rs. 2,41,00,000/- as made by the AO and directing the AO to make addition of Rs. 19,28,000/- being 8% of the said amount by ignoring the fact that the AO has rightly invoked provision of section 69A of the Act. The assessee has also filed cross objection challenging the sustaining of addition of Rs. 19,28,000/- being 8% total transactions made by the foreign entities by ld CIT(A) without any basis

10. Brief facts of the case are that during the course of survey proceedings on the assessee, books of account of 8 offshore entities were found

in tally software. During the course of survey, Shri Nikhil Mishra, who was the Director of M/s One of the Global Entities and partner in other entities was found to be present there and his statement u/s 131 of the Act was recorded and he admitted that he was a dummy director of these two concerns and has carried out business as per the direction of Shri Vivek Gupta or Nabin Agarwal, CA of the Avima Group. The said statement of Shri Nikhil Mishra was confronted to Vivek Gupta to which he did not agree by stating that Shri Nikhil Mishra may not have understood the meaning of dummy director. Similarly, statement of Shri Nabin Agarwal was recorded and he was also asked to explain why the books of account of offshore entities were maintained at the office premises of Avima Group. He stated that he was maintaining the books of these entities at the instruction of Shri Vivek Gupta. Accordingly the AO treated Mr Gupta as a person who was controlling offshore entities and was owner of the eight offshore entities. Finally, the AO on the basis of record maintained by in the tally account came to the conclusion that income of these offshore entities was chargeable in the hands of the assessee. Finally, on the basis of materials/documents discovered during the course of survey and post-survey, statements of Shri Nikhil Mishra and Shri Nabin Agarwal and the proprietary concern of Vivek Gupta's wife M/s Kolkata Bardana Company who is not having any clients/party other than these 8 offshore entities, held that the assessee is the person deriving income through such entities and income is chargeable u/s 5(1) read with section 6(3) of the Act in the hands of the assessee only. Accordingly, Rs. 2,41,00,000/- was added u/s 69A of the Act as unexplained money.

11. In the appellate proceedings, the Ld. CIT(A) partly deleted the addition by treating the total amount of transactions as turnover of the assessee and by applying GP rate of 8% on the said transactions and there-

by deleting the addition to the extent of Rs. 2,21,72,000/- and sustaining the addition of Rs. 19,28,000/- by observing and held as under:

“7.2.1. I have gone through the assessment order as well as the submission of the assessee. On examining the same, it is observed that during the course of survey operation under section 133A of the Act dated 04.11.2019 books of accounts and other details of eight offshore entities were found in the business premises of the assessee Vivek Gupta. In course of survey operation, Shri Nikhil Mishra, Director of one concern under the name and style, M/s. Globex Commodities Pte. Ltd. based in Singapore and deposition of Siri Naveen Agarwal, CEO of Privi Exports Pvt. Ltd. was taken and he also admitted that Mr. Gupta is the main person of these 8 overseas companies and the appellant is the main controlling person of all these concerns. On the basis of this depositions, the AO concluded that the appellant is the main person of these overseas concerns namely Globex Commodities Pte Ltd. and King Commodities overseas concerns and added sum of Rs.2,41,00,000/- u/s 69A r.w.s. 115BBE of the Act.

7.2.2. It is pertinent to mention that while forming the said opinion that the assessee Shri. Vivek Gupta is the owner of these overseas concerns the AO had observed several incongruities against the said offshore concerns that the books were maintained in the business premises of the assessee in tally. Further, there were other findings in the said survey which clearly indicates that 'Place of effective management (POEM)' of these aforesaid two off-shore concerns are in India. Additionally, the AO had also inferred that the entity M/s Calcutta Bardana Co., where the wife of the assessee Mrs. Pritu Gupta was the proprietor of the aforesaid entity, was providing accounting services to these said offshore entities. However, the Mrs. Gupta did not have any qualification of Chartered Accounting Further, the AO had also observed that the directors of the said entities namely Mr. Nikhil Mishra and Mr. Naveen Agarwal had on oath given statement that they were dummy directors and just follows direction of the assessee. It is an admitted fact that they had retracted their statements later on. However, they had not given any satisfactory reply for their retraction of their statements. If they retracted the statement that the assessee is the sole owner and main operator of these offshore entities, it deems that they are the owners of these entities. If so, the status of such offshore entities becomes purely 'Resident of India. Hence, the contention of the assessee that these entities are not resident of India and having residential status of either Singapore or other respective countries is totally a concocted story The assessee had also contended that in their respective country they had paid their respective taxes. However, the assessee had remained silent on DTAA issue with these respective countries. Hence, the income of these entities is clearly taxable in India and specifically in the hands of the assessee as he is the sole operator of these entities.

7.2.3. It is imperative to mention that in course of survey proceedings conducted at the appellants premises on 04.11.2019 books of accounts of 8 offshore entities namely Mohamed Cheik Ibrahim Cheik (Privi Commodities), Globex Commodities Pte Ltd, King Commodities Benin Sarl (King Commodities), Niha Enterprises (King Dakar), King Burkina, GebabisSarl (Bissau Venture), Peniel Integrated Commodities Resources Ltd (King Nigeria), Burhani Trading Co. LLC were found in Tally software. Thereafter, the reliance made by the AO upon the statement of one Sri Nikhil Mishra, director of Globex Commodities Pte Ltd.

and partner in King Commodities recorded in the course of survey to allege that Nikhil Mishra was a dummy director working on the instruction of the appellant is proved to be true.

7.2.4. It is worth mentioning that the AO had also relied upon the DDIT (Inv) report to allege that the assessee was a common member in WhatsApp group labelled as "King - Cotonou wherein Nikhil Mishra, Naveen Agarwal and Vivek Gupta, appellant were the members. The assessee had contended that the AQ had not considered the explanation of the appellant wherein repeatedly explained that he was member of the group for co-ordinating and accounting real time information in connection to Kings Commodities, Benin Sarl. He also explained that the instructions mentioned in the group are to pay the parties relating to King Commodities after checking the outstanding balances. The appellant has also explained that the Chats were mostly in respect of accounting transactions relating to King Commodities Benin Sarl and all these transactions were duly reflected in the books of Kind Commodities Benin Sari. The assessee had also explained the transactions are mostly debtors' collection, creditors payments reference to amounts in local currency Benin i.e. West African CFA, Franc. However, the assessee had not denied the fact that the trace of different transactions made with these entities through a WhatsApp Group-namely King-Cotonou' as mentioned at para no.9.2. & 9.2.1 of the asst order are the undisclosed income of the said offshore entities which is liable to be charged in the hands of the assessee as the main operator and key person of the said entities.

7.2.5. Further, the assessee failed to prove that these transactions are not related to him. There is no doubt that these transactions are business transactions in respect of the said offshore entities. Hence, it is decided to tax the element of profit on the business transactions at 8% which comes to Rs. 19,28,000/- (Rs.2,41,00,000/- x 8% = Rs. 19,28,000/-). The AO is directed to delete the addition of Rs.2,21,72,000/- (Rs.2,41,00,000/- minus Rs. 19,28,000/- = Rs.2,21,72,000/-). Hence, the addition of Rs. 19,28,000/- is confirmed and the remaining addition of is deleted. Consequently, this ground of appeal raised by the assessee is partly allowed."

12. After hearing the rival contentions and perusing the materials available on record, we find that during the course of survey proceedings, the books of accounts of 8 offshore companies were found in the premises of the assessee in the tally software. Shri Nikhil Kumar Mishra, director of Globex Commodities Pte Ltd. was recorded u/s 131 of the Act. Similarly Shri Nabin Agarwal, CEO of Privi Exports Pvt Ltd. was recorded u/s 131 of the Act. We observe that in para 7.2.5 CIT(A) has himself concluded that these impugned transactions amounting to Rs. 2,41,00,000/- were business transactions of the said offshore entities. Therefore, having held so it not justified to estimate 8% of said amount as income of the assessee. We observe that the CIT(A) has placed too much reliance upon the

statements of Nikhil Mishra, director of Globex Commodities Pte Ltd. and the statement of Sri Naveen Agarwal CEO of Privi Exports Pvt. Ltd. obtained in course of Survey proceedings. Only on the basis of these depositions, the AO and CIT(A) has held the assessee to be beneficial owner of such entities. We also note that the assessee when confronted with these statements never admitted that the offshore entities were controlled or managed by him either before the survey party or in course of assessment proceedings. Besides, no materials were brought on record to disprove the arguments and documents furnished by the assessee.

13. We note that thus, the lower authorities have failed to take note that both Nikhil Mishra and Naveen Agarwal had retracted their statements immediately after the recording of statements in course of survey on 13.11.2019. The authorities below have clearly ignored the fact that these offshore entities were assessed to tax in the respective country and have paid respective taxes in their countries. We also note that the appellant in his statement gave complete details of all such 8 entities which contained full named, registered office addresses, date of transactions, name of directors and shareholders etc. The appellant also explained that these entities were doing transactions of purchase and sales and based on these accounts maintained, they filed their Income Tax Return in respective countries. However, the AO has not brought any material on record to rebut the explanation of the appellant which is incorrect or unacceptable. No enquiry whatsoever was conducted by the AO. In para 9.4.2, the AO has relied upon the DDIT (Inv) report to allege that the assessee was a common member in WhatsApp group labelled as "King Cotonou" wherein Nikhil Mishra, Naveen Agarwal and Vivek Gupta the appellant were the members. The AO has not considered the explanation of the appellant wherein he repeatedly explained that he was member of the group for co-ordinating and accounting details/information in connection to Kings Commodities, Benin Sarl. He also explained that the instructions

mentioned in the group are to pay the parties relating to King Commodities after checking the outstanding balances. The appellant has also explained that the Chats were mostly in respect of accounting transactions relating to King Commodities Benin Sarl and all these transactions were duly reflected in the books of Kind Commodities Benin Sarl. The appellant also explained the transactions are mostly debtors collection, creditors payments reference to amounts in local currency Benin i.e. West African CFA, Franc. However, the AO has ignored all the explanations completely. We note that the lower authorities were guided by the fact that Calcutta Bardana Co. whose proprietor is Mrs. Pritu Gupta is not providing accounting sources to entities other than the 8 entities and she is also not a qualified CA to maintain the books of accounts. The assessee from the date of survey as well as in course of assessment proceedings and appellate proceedings has been completely explaining that an Accounting Services agreement was entered into by M/s Calcutta Bardana Co and all the above-mentioned foreign entities on 1st July 2018 to maintain books of accounts of the foreign entities. The copies of accounting services agreements of Calcutta Bardana Co with the foreign entities are furnished before the authorities below. In consideration of the services, the foreign entities agreed to pay charges to M/s Calcutta Bardana Co by way of fee of USD 500 maintenance fees from the respective entities. The copies of bank statements of Calcutta Bardana Co, highlighting the receipt of the aforesaid fees from the respective foreign entities were furnished before the authorities below.

14. We also note that the lower authorities were also erred in considering that the assessee was a common member in WhatsApp group labelled as "King Cotonou wherein Nikhil Mishra, Naveen Agarwal and Vivek Gupta, appellant were the members. The authorities below have not considered the explanation of the assessee that he was member of the group for co-ordinating and accounting real time information in connection to Kings

Commodities, Benin Sarl. He also explained that the instructions mentioned in the group were to pay the parties relating to King Commodities after checking the outstanding balances. The appellant has also explained that the Chats were mostly in respect of accounting transactions relating to King Commodities Benin Sarl and all these transactions were duly reflected in the books of King Commodities Benin Sarl. The assessee had also explained the transactions were mostly debtors' collection, creditors payments reference to amounts in local currency Benin i.e. West African CFA, Franc. Ignoring these facts and without bringing any material on record and purely on the basis of suspicion, the AO and CIT(A) have concluded that place of business of these offshore concerns were in India and the assessee was the owner of said two concerns. In our considered opinion, the provisions of 69A of the Act are not applicable as section 69A deals with any money, bullion, jewellery or other valuable or sale which is not recorded in books of accounts and assessee is found to be owner of such money, bullion, jewellery etc for which assessee has no explanation or explanation is not to the satisfaction of AO only then 69A can be invoked. In the instant case there is no doubt that the offshore entities are separate legal entities in the respective countries with separate owner. These entities are separately assessed to tax in their respective countries. The assessee has explained his association before the Survey team, at the assessment stage as well as before the CIT(A). In fact CIT(A) has also in para 7.2.5 accepted that these transactions were business transactions of offshore entities and consequently we are of view that no addition u/s 69A can be made in the hands of the assessee in respect of these transactions as has been held in umpteen number of cases that suspicion however strong it maybe cannot take the place of evidence and therefore the addition cannot be made in the hands of assessee. Therefore we are inclined to set aside the order of Ld. CIT(A) on this issue and direct the AO to delete the entire addition. Consequently the revenue's ground No. 6 & 7 are dismissed and cross objection ground No. 2 is allowed

15. We are adjudicating the ground no. 1 of the cross objection which is against the re-opening of assessment and the same is left open to be decided later if the need arises for the same.

16. In result, appeal of the revenue is dismissed and cross objection is partly allowed.

Order pronounced on 20.01.2026

**Sd/
(Pradip Kumar Choubey)
Judicial Member**

**Sd/-
(Rajesh Kumar)
Accountant Member**

Dated: 20.01.2026
AK,Sr. P.S.

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches