

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, B: NEW DELHI
BEFORE SHRI YOGESH KUMAR US, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.- 2275/Del/2023
[Assessment Year: 2021-22]**

Deputy Commissioner of Income Tax, Central Circle-1, ARTO Complex, 2 nd Floor, Sector-33, Noida, Uttar Pradesh-201301.	Vs	Elixir Buildcon Pvt. Ltd., Plot No. 15A, Elixir Business Park, Sector-127, Gautam Buddh Nagar, Noida, Uttar Pradesh-201301.
PAN- AACCE4746Q		
Revenue		Assessee

Assessee by	Shri Rupinder Kr. Aggarwal, Adv. & Ms. Vidhushi Aggarwal, Adv. & Ms. Suman Verma, Adv.
Revenue by	Shri Rajesh Kumar Dhanesta, Sr. DR

Date of Hearing	06.11.2025
Date of Pronouncement	28.01.2026

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal has been preferred by the Revenue against the order dated 30.05.2023 of the Commissioner of Income Tax (Appeals), Noida-3, [hereinafter referred to as the 'Ld. CIT(A)] pertaining to Assessment Year 2021-22 arising out of the Assessment order dated 21.12.2022 passed under Section 143(3) of the

Income-tax Act, 1961(hereinafter referred to as ‘the Act’) by the DCIT/ACIT, Central Circle, Noida (hereinafter referred to as ‘the AO’).

2. Brief facts of the case: During the year, the assessee had carried out activity of running a guest house and restaurant under the name & style of M/s Hide away suites at Elixir business park, 15A, Sector-127, Noida.

2.1 In the present case, the Assessing Officer made the following two additions:

- i. Addition of Rs. 47,50,000/- under section 68 of the Act in respect of unsecured loans received from M/s Cosmic Solution Pvt. Ltd.; and
- ii. Addition of ₹3,42,47,147/- on account of disallowance of “finance costs”.

2.2. With regard to addition at sr. no. 1, amounting to Rs. 47,50,000/- , the AO made the addition by recording his findings in paragraphs 4 to 4.1 of the assessment order, which are reproduced as under:

“4. During the year, the assessee has shown receipt of loan of Rs. 47,50,000/- from M/s Cosmic Solution Pvt. Ltd. vide notice u/s 142(1) issued to the assessee on 07.09.2022. The assessee was asked to furnish confirmation, ITR & Bank statement of lender. Vide reply dt. 21.09.2022, the assessee furnished the confirmation, ITR and bank statement of the lender. On perusal of the ITR of the lender entity for A.Y. 2021-22, it was seen that it is showing loss of Rs. 3,88,37,669/-, Even in ITR of A.Y. 2020-21, it has shown loss of Rs. 3,73,48,316/- . Hence, the creditworthiness of the lender is not proved.

4.1 In order to follow principles of natural justice a show cause notice was issued to the assessee on 24.11.2022 asking it to prove the creditworthiness of the lenders. Vide its reply furnished on 01.12.2022, the assessee has stated that the loss in ITR of the creditor is on account of legal claim of depreciation. Apart from this no other explanation has been furnished and the creditworthiness of lender has not been proved. Further, on perusal of the excerpt of bank statement of lender furnished by the assessee, it is seen that nowhere on the statement the name of the lender is mentioned.

“ Thus it can be seen that the assessee has failed to prove the creditworthiness of the lender despite providing sufficient opportunities. Thus the loan amount of Rs. 47,50,000/- received by assessee from M/s Cosmic Soft Solutions Pvt. Ltd. is treated as unexplained & added u/s 68 r.w.s. 115BBE of the I.T. Act, 1961. Penalty u/s 271AAC is initiated separately.”

3. Aggrieved with the said addition, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) deleted the said addition by making the following observations contained in para nos. 6.3 to 6.5 of his order which are reproduced as under:

“6.3 In the matter of addition of Rs. 47,50,000/- made u/s 68 of IT Act on account of loan taken from M/s. Cosmic Soft Solutions Pvt Ltd., Ld AO observes that during the year, the assessee has shown receipt of loan of Rs. 47,50,000/- from M/s Cosmic Solution Pvt. Ltd. She observes that during the assessment proceedings vide reply dt. 21.09.2022, the assessee furnished the confirmation, ITR and bank statement of the lender and on perusal of the ITR of the lender entity for A.Y. 2021-22, it was seen that it is showing loss of Rs. 3,88,37,669/- and also that even in ITR of AY. 2020-21, it has shown loss of Rs. 3,73,48,316/-, hence, the creditworthiness of the lender was considered as not proved. Ld. AO further states that the appellant clarified that loss of lender company in the year under consideration was due to claim of depreciation and the lender company actually did not lack the creditworthiness. Ld. AO observes that the appellant did not give any other explanation regarding to the creditworthiness. In view of this addition of Rs. 47,50,000/- was made u/s 68 of IT Act on account of unsecured loan taken from M/s. Cosmic Soft Solutions Pvt Ltd.

6.4. In this regard the appellant submits that in respect of the credit of Rs 47,50,000/- received from M/s Cosmic Soft Solution Pvt Ltd the appellant had fully discharged its onus to establish the identity of the creditor, its creditworthiness, its confirmation, and genuineness of the credit by bringing on record, the confirmation from the lender duly signed by them in original in respect of loan, a copy of Income Tax Return of the lender along with computation of income for the year under consideration, copy of relevant bank statement of lender showing the loan amount along with sources thereof, copy of Audit Report Profit & Loss and Balance Sheet, along with all schedules & annexures The appellant also placed on record all these evidences at pages 128-139 of paper book. The appellant submits that the creditor owns immovable office building at Elixir Business Park identified as Plot no. 15A, Sector-127, Noida and that as is clear from the balance sheet of the creditor as on 31.03.2021 placed on record book value of the property is Rs 61.54.20.013/-. The appellant further submitted that the business of lender company is to let out corporate offices constituted in this building with a rental value of Rs. 7,66,21,444/-, and the lender company offers the same as income in its return of income. The appellant further submits that from the financial

statements of the creditor brought on record it was pointed out that the rental received is being treated as business income and that major expenditure claimed by the creditor pertains to interest and depreciation. And from the financial statements of the creditor brought on record it was further pointed out that the creditor had declared a net profit of Rs. 1,89,44,949/-before the claim of depreciation amounting to Rs 2,72,66,380/- and that this legal claim does not affect the availability of sources with the company. Ld. AR submits that the balance sheet of the lender company has equity and liabilities of Rs. 80.09 crores and the same in itself is sufficient to prove creditworthiness.

6.5 From the facts of the case it has been found that the appellant has received unsecured loan amount of Rs. 47,50,000/- from M/s. Cosmic Soft Solutions Pvt Ltd. In the assessment proceeding, the appellant has furnished the confirmation, ITR and bank statement of the lender as well as complete audited balance sheet. Ld. AO concluded that the lender company lacks creditworthiness since it has loss in its profit and loss account However from the facts of the case, it has been found that the main reason of loss in the lender company is claim of depreciation and amortization expenses amounting to Rs. 2.72 crores. Further in the profit and loss account the lender company has revenue receipts of Rs. 9.02 crores in FY 2020-21 the same were Rs. 10.06 crores in FY 2019-20. Further from the balance sheet of lender company, it has been found that this has Equity and Liabilities of Rs. 80.09 crores and same is the asset base. Thus these evidences are enough to prove that the lender company has more than enough creditworthiness. From the facts, it is clear that all the three limbs of a genuine cash credit are duly proved in the matter of unsecured loan of Rs. 47,50,000/- taken from M/s. Cosmic Soft Solutions Pvt Ltd. hence addition made u/s 68 of IT Act cannot be sustained and therefore the same is hereby deleted and relief is allowed to the appellant. All the relevant grounds of appeal are adjudicated accordingly.”

4. Further, with regard to disallowance of interest of Rs. 3,42,47,147/- the AO made the above disallowance by issuing a show cause notice to the assessee, the relevant extract of which has been reproduced in the assessment order at para no.

5.2 is reproduced as under:

“ You have claimed finance cost of Rs. 3,42,47, 147/- as assured return to Anand Kumar. However, from your reply nature of these payments is not clear. In this please explain the nature & justification of these payments. Also in your reply you have stated that these costs were taken as WIP in earlier years. Then why these costs have been claimed as expense in this year. Also furnish copy of all agreements with Sh. Anand Kumar, bank statement through which the payment of Rs. 3,42,47,147/- has been made, ledger A/c also produce confirmation of Sh. Anand Kumar and his ITR & computation to show that the amount has been

shown by him as his income. Show cause why the expenses claimed of Rs.3, 42, 47, 147/- should not be disallowed.....”

4.1 The Ld. AO noted that the assessee submitted in response to the above show-cause notice that it was paying interest to the buyer on the advance given as short return payable and debited it as finance cost in respect of the flat booking by the lender Sri Anand Kumar to the assessee in respect of real estate project undertaken by him. However, the AO noted that the MOU submitted by the assessee did not mention any payment of advance by the buyer Sri Anand Kumar to the developer / assessee. The AO further noted that why 15% interest was paid by the assessee to the buyer on the sale consideration of the project was not clear. Further, in reply dated 01.12.2022, the AO noted that assessee had furnished the confirmation and Income Tax Return (ITR) of Shri Anand Kumar. The AO noted that, it was not clear as to whether Shri Anand Kumar had shown the receipt of the said sum in his ITR.

4.2 In order to further verify transaction, a summon u/s 131 of the Act was issued to Shri Anand Kumar by the AO to explain the above transaction and furnish its computation of income. Thereafter, on perusal of the reply and the balance sheet, the AO recorded his findings in para 5.7 to 5.10 of the assessment order, which are reproduced as under:

“5.7 In response, to summon, the authorized representative of Sh. Anand Kumar appeared and furnished his reply. On perusal of the balance sheet of proprietorship concern of Sh. Anand Kumar, it was seen that he has not shown any interest receivable from the assessee in his balance sheet. No other statement of affairs/balance sheet of Anand Kumar as an Individual was furnished. Whereas, the assessee has shown payable of assured return payable of Rs.9,33,23,477/- in its books. Further, the AR of the assessee could not explain the nature of this

5. Aggrieved with the said order, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) deleted the above disallowance, and the relevant extract of the order is reproduced as under:

“ ...Ld. AR submits that during the assessment proceedings the Ld. AO issued summons u/s 131 of IT Act to Sh. Anand Kumar, the buyer & required him to produce copy of ITR, computation of income. P & L A/c & balance sheet, further Sh. Anand Kumar was required to produce documentary evidence in respect of this transaction with the appellant company as well as his bank statement. He submits that the summons were complied with by Sh. Anand Kumar by filing requisite documents Ld. AR submits that during proceedings u/s 131 of IT Act, the AR of Sh. Anand Kumar was required to produce copy of agreements entered into by Sh. Anand Kumar with the appellant, however the same was not readily available with the AR of Sh. Anand Kumar because the same was not specifically required under the summons. He submits that the addition of Rs. 3,42,47,147/- has been made to the returned income of the appellant by disallowing claim of interest paid by the appellant and reasons for disallowing this claim are given as under

(i) Total amount payable in respect of this claim is Rs 3,42,47,147/- but during the year under consideration the appellant has paid only Rs. 1,27,37,656/- & balance has been claimed as payable

(ii) Total sum payable on this account as on 31.03.2021 in balance sheet is Rs.9,33,23,4771-

(ii) The appellant has claimed this expense without any revenue during the year

(iv) It could not be clarified that what was the precise nature of the payment & if this interest was on consideration or the advance given.

(v) The MOU does not mention about the advance given by the buyer to the appellant. (vi) It is not established that any advance was actually given by Anand Kumar, there is only mention of sale consideration.

Ld. AR submits that on the facts explained above it is clearly made out that the appellant required the finances to execute the project and that is why the project was sold in it's entirety even before the commencement of the same. The very crux of the MOU entered into by the appellant was to get the project financed. L.d. AR submits that the MOU dt. 03.10.2016 basically determined the fact that the appellant had taken the project and sold the same to the buyer, Sh. Anand Kumar for a consideration to be paid in advance which shall bear interest @15% PA, commencing from the date of receipt and terminating on handing over possession of the project. Crux of the MOU dt 03.10.2016, is the basic fact that the entire amount of settled sale consideration of Rs. 65,98.89,435/-, was to be paid by the buyer prior to the commencement of the project, as interest bearing advance @ 15% P.A. and such interest formulates revenue expenditure of the project and has been so claimed and allowed in earlier years. It is submission of Ld. AR that the appellant is following mercantile system of accountancy and revenue has been recognized by considering the advance received from the buyer as revenue receipts

(consideration) and payment of interest has been considered to be revenue expenditure, and it has been so accepted while framing assessments of earlier years, therefore it is irrelevant that during the year under consideration, the appellant has paid only Rs 1.27.37,656/- & balance has been claimed as payable, as well as that total sum payable in balance sheet is Rs 9,33,23,477/-. Ld. AR submits that this is just a method of accounting followed by the appellant and accepted by the department in all the past years. Ld AR submits that all the advances received from Sh. Anand Kumar, in respect of which interest has been paid, during the year under consideration, formulated part of sale consideration and same has dully been reported as revenue receipts in the earlier years and have been assessed in earlier years Therefore, the fact that during the year under consideration there is no receipt, cannot be the reason to disallow the claim during the year under consideration.

6.9 From the facts of the case, it has been found that Ld. AO has made disallowance of claim of finance cost amounting to Rs. 3,42,47,147/-, which was claimed as interest expense to Sh. Anand Kumar, who had purchased and financed the residential project. In this regard it has been found that the appellant was allotted a project of residential flats by Mathura Vrindavan Development Authority (MVDA) and the appellant entered into an MOU on 03.10.2016 with Sh. Anand Kumar for sale of the entire project for a total consideration of Rs. 65.98.89.435/- . In terms of this MOU, the project was to be financed by the buyer, Sh. Anand Kumar and interest @15% PA as per clause 5.1 of the MOU, was to be paid on the finances received by the appellant The appellant has filed copy of certificate from Sh. Anand Kumar confirming the facts that the income of Rs. 3,42,47,147/- has accrued in his account and the same has been declared as revenue receipt. Further the appellant has furnished copy of account of Sh. Anand Kumar showing various payments made during the year under consideration and copy of bank statement of Sh. Anand Kumar as well as bank statement of the appellant wherein payments made by the appellant have been credited. The appellant has also furnished copy of form 16A, in which TDS deducted and deposited in the Govt. account is also reflected. From the facts of the case, it has been found that the appellant required the finances to execute the project and that is why the project was sold in it's entirety even before the commencement of the same and in the MOU dt. 03.10.2016 the appellant had sold the project to the buyer, Sh. Anand Kumar for a consideration to be paid in advance which shall bear interest @15% P.A., commencing from the date of receipt and terminating on handing over possession of the project. As per MOU dt. 03.10.2016, the sale consideration of Rs. 65,98,89,435/-, was to be paid by the buyer prior to the commencement of the project, as interest bearing advance @ 15% P.A. and such interest formulates revenue expenditure of the project and has been so claimed and allowed in earlier years From the facts of the case, it has been found that the appellant is following mercantile system of accounting and revenue has been recognized by considering the advance received from the buyer as revenue receipts and payment of interest has been claimed as revenue expenditure, and the same was accepted by the department in the earlier years. Therefore it is irrelevant that during the year under consideration, the appellant has paid only Rs. 1,27,37,656/- & balance has been claimed as payable, as well as that total sum payable in balance sheet is Rs 9,33,23,477/- Therefore looking to the facts and circumstances of the case, the

disallowance of Rs 3,42,47,147/- is hereby deleted and relief is allowed to the appellant. All the grounds of appeal are adjudicated accordingly.”

(emphasis supplied by us)

6. Aggrieved with the said appellate order deleting both the above additions, the Department filed an appeal on the grounds of appeal as per form 36 filed by it before us, which are reproduced as under:

“1. On facts and circumstances of the case, the L.d. CIT(A)-III. Noida has erred in deleting the addition of Rs. 47,50,000/- made by the AO u/s 68 of the Income Tax Act. 1961, which the assessee had attempted to explain as an unsecured loan received from M/s. Cosmic Soft Solutions Pvt. Ltd.. without appreciating the fact that M/s. Cosmic Soft Solutions Pvt. Ltd. did not have the requisite creditworthiness and It has Incurred heavy losses during the year under consideration and even in the preceding year.

2. On facts and circumstances of the case. Ed CIT(A) has erred justifying the creditworthiness of the lender company Le. M/ Cosmic Soft Solutions Pvt. Ltd. only on the basis of singular aspect le loss is majorly on account of the depreciation and amortization expense claimed by the lender company, without having examined the creditworthiness of the lender company in the light of its holistic statement of affairs.

3 On facts and circumstances of the case. Ld. CIT(A) has erred in justifying the creditworthiness of the lender company i.e. Mis. Cosmic Soft Solutions Pvt. Ltd. only on the basis of singular aspect te loss is majorly on account of the depreciation and amortization expense claimed by the lender company, without appreciating the fact that the depreciation and amortization expenses have a bearing on the creditworthiness of the lender.

4. On facts and circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs. 3.42.47,147/-made on account of the disallowance of the "financial costs" claimed by the assessee, without appreciating the fact that during the course of assessment proceedings the assessee has not been able to establish the exact nature of these expenses and its allowability as business expenses.

5. On facts and circumstances of the case. Ld CIT(A) has erred in allowing the impugned expenses amounting to Rs. 3.42.47.147/- ignoring that the fact that the assessee had claimed these expenses without having any revenue during the year under consideration.

6. On facts and circumstances of the case, Ld. CIT(A) while allowing the impugned expenses has ignored the fact that the recipient of the said payment, Sh. Anand Kumar has only described the payment as "payment on assured return basis for an

amount worked out @15% p.a. on my aforesaid advances paid". Such a description given by the recipient does not clarify whether the said payment is of revenue in nature and allowable as business expense.

7. On facts and circumstances of the case, Ld. CIT(A) has erred in allowing the expenses ignoring the fact that the assessee during the year under consideration has not actually paid the same and these are reflected as payable in the financial statements of the assessee.

8. That the appellant craves leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."

6.1 Subsequently, the Department also filed an additional ground of appeal, vide letter dated 28.05.2025 which is reproduced as under:

" 1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in admitting and relying upon additional evidence furnished by the Assessing officer during the course of appellate proceedings without affording an opportunity of rebuttal or cross- examination to the appellant, in violation of Rule 46A of the Income Tax Rules, 1962, thereby rendering the appellate order bad in law and liable to be quashed."

7. The Ld. Sr. DR relied upon the assessment order and the additional ground of appeal filed by the assessee and submitted that the matter may be set aside to the file of the AO for denovo assessment. In this regard, the Ld. Sr. DR placed reliance of the order of the Co-ordinate Bench in the case of ITO vs. Bhai Manjit Singh in the ITA No. 1807/Del/2010 pertaining to A.Y. 2006-07 vide order dated 29.08.2012 in support of the additional ground filed by the Revenue.

8. The Sr. AR supported the order of the Ld. CIT(A).

9. We have heard the rival contentions and perused the material available on record. The Ld. CIT(A) deleted the addition of Rs. 47,50,000/- on account of

unsecured loans taken by the assessee from M/s Cosmic Soft Solution Pvt. Ltd. in view of the finding in para no. 6.3 to 6.5 of his order, which is reproduced in para no. 3 of this order. However, the Ld. CIT(A) did not give any finding on the observation of the AO that on perusal of the bank statement of the lender furnished by the assessee, the name of the lender was not mentioned. Further, the immediate source of funds in the hands of M/s Cosmic Soft Solution Pvt. Ltd. before advancing the loan to the assessee is also not on record and neither discussed by the AO or the Ld. CIT(A). These two aspects require factual verification by the AO.

9.1 The Ld. CIT(A) deleted the addition / disallowance of Rs. 3,42,47,147/- paid by the assessee company to Shri Anand Kumar for the reasons as extracted in para 5 of this order. The Ld. CIT(A) notes that the Ld. AR submitted before him that the MOU dt. 03.10.2016 basically determined the fact that the appellant had taken the project and sold the same to the buyer, Sh. Anand Kumar for a consideration to be paid in advance which shall bear interest @15% PA, commencing from the date of receipt and terminating on handing over possession of the project. Further, it was noted by the Ld. CIT(A) that that the appellant was allotted a project of residential flats by Mathura Vrindavan Development Authority (MVDA) and the appellant entered into an MOU on 03.10.2016 with Sh. Anand Kumar for sale of the entire project for a total consideration of Rs. 65,98,89,435/-, in terms of this MOU and the project was to be financed by the

buyer, Sh. Anand Kumar and interest @15% PA as per clause 5.1 of the MOU, was to be paid on the finances received by the appellant. However, it is an admitted fact by the assessee before the Ld. CIT(A) that during the assessment proceedings, as noted by the Ld. CIT(A) (as highlighted by us in para 5 of this order) that during assessment proceedings in response to summons u/s 131 of IT Act, the AR of Sh. Anand Kumar did not produce copy of agreements entered into by Sh. Anand Kumar with the assessee, as the same was not readily available with the AR of Sh. Anand Kumar because the same was not specifically required under the summons. Further, the facts are not coming out with clarity as to why when the assessee had sold the project to Shri Anand Kumar then why the sale consideration received by Shri Anand Kumar will be a financial support on which the assessee has to pay interest on such financial support. These aspects of the transactions require factual verification by the AO.

9.2 In view of the above observations, we do not uphold the decision of the Ld. CIT(A) in deleting the above additions, and we, set aside his order and restore the matter to the file of the AO for deciding the issues afresh, in accordance with law and after giving a reasonable opportunity of being heard to the assessee.

10. Therefore, ground nos. 1 to 7 of the appeal are allowed for statistical purposes. In view of the decision, the additional ground of appeal filed by the Revenue becomes academic and is not adjudicated.

11. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 28th January, 2026.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated: 28.01.2026.
Pooja

Copy forwarded to:

1. Assessee
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi,