

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'B' BENCH, LUCKNOW
BEFORE SH. KUL BHARAT, VICE PRESIDENT
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.644/LKW/2024

A.Y. 2017-18

Asstt. Commissioner of Income Tax, C.C.-1, Lucknow	vs.	M/s Ashray Ventures Private Limited, M-18, Gole Market, Mahanagar, Lucknow
		PAN: AAKCA3580E
(Appellant)		(Respondent)

Assessee by:	Sh. Rakesh Garg, Adv
Revenue by:	Sh. R.R.N. Shukla, Addl CIT DR
Date of hearing:	27.10.2025
Date of pronouncement:	20.01.2026

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the Revenue against the orders of the Id. CIT(A)-3, Lucknow dated 6.09.2024 wherein the Id. CIT(A) has allowed the appeals of the assessee against the assessment order passed by the Id. AO for the A.Y. 2017-18 under section 144 of the Income Tax Act, 1961. The grounds of appeal are as under:-

"1. Whether Id. CIT(A) has erred in law and on facts of the case by accepting additional evidence without supporting documentary evidences for sufficient cause, which is the condition prescribed under Rule 46A.

2. Whether Id. CIT(A) has erred in law and on facts of the case by deleting the addition made on account of unsecured loan without making proper enquiry."

2. The facts of the case are that a search and seizure operation under section 132 of the Income Tax Act was carried out on the business / residential premises of the assessee on 8.07.2016. Thereafter a notice under section 142(1) was issued upon the assessee requiring it to file a return of income. In response to the return filed, notice under section 143(2) and notices under section 142(1) was served

upon the assessee. The Id. AO records that there was no compliance to the said notices. Accordingly, after analyzing the return of income, since the Id. AO found that the assessee had non-current liabilities of Rs. 2,35,82,000/-, she issued a show cause notice to the assessee to explain the same. Once again, the said show cause notice was not complied with. Therefore, the Id. AO, by relying upon various case laws, assessed this amount as unexplained credit under section 68 of the Income Tax Act and brought the same to tax under section 115BBE.

3. Aggrieved with this assessment order, the assessee filed an appeal before the Id. CIT(A)-3, Lucknow. During the appellate proceedings, it was submitted that the addition was not based upon any incriminating material seized during the search and the assessee relied upon various case laws to show that in a search assessment, no addition could be made in this regard. It was further submitted that bifurcation of Non-Current Liabilities of Rs. 2,35,32,000/- was as under:-

- a. Rs. 15,00,000/- due to M/s Jupiter Tradelinks Pvt. Ltd.
- b. Rs. 1,58,25,000/- due to M/s Wealth Mantra Properties Ltd.
- c. Rs. 62,56,000/- is due to M/s Wealth Mantra Insurance Brokers Pvt. Ltd.

The assessee also furnished a copy of the balance-sheet as on 31.03.2016 to demonstrate that these said Non-Current Liabilities were long term borrowings and that the balance in the name of these three parties in the books of the assessee as on 31.03.2016 stood as under:-

- a. Rs. 16,00,000/- in the name of M/s Jupiter Tradelinks Pvt. Ltd.
- b. Rs. 90,00,000/- in the case of M/s Wealth Mantra Properties Ltd.
- c. Rs. 62,56,000/- in the case of M/s Wealth Mantra Insurance Brokers Pvt. Ltd.

It was submitted that the assessee was unable to provide confirmations from M/s Wealth Mantra Properties Ltd. and M/s Wealth Mantra Insurance Brokers Pvt. Ltd., as the offices of both companies had been seized by the Law Enforcement Authorities and the Directors were in judicial custody. However, it was submitted that the case law cited by the Id. AO were not applicable to the

assessee's case because the balances already stood in its books in the previous year except for a sum of Rs. 62,56,000/- in the name of M/s Wealth Mantra Insurance Brokers Pvt. Ltd.,. However, the assessee made a prayer before the ld. CIT(A) for the submission of additional evidence on the ground that the 03 Directors of the company had resigned during the period 4.05.2016 to 9.08.2017 and a new Director had been introduced on 1.09.2017. A copy of change of Directorship Form DIR 12 filed in the ROC was enclosed by way of proof. It was submitted that only two notices had been sent by the ld. AO on 28.09.2018 with a compliance date of 9.10.2018 and on 11.10.2018 with a compliance date of 22.10.2018. However, the email ID and the mobile number provided on the Income Tax Portal did not belong to the company. It belonged to the earlier consultant who had neither sent the reply to notices to the Assessing Officer nor informed the assessee. The copy of the profile on the Income Tax Portal was enclosed. It was further submitted that the postal address of the company had been changed on 10.05.2016 but the above changed address was neither updated on the Income Tax Portal nor incorporated in the income tax return by the previous counsel. A copy of INC 22 filed for change of address in ROC was enclosed. Finally, one of the Director Sh. Janardan Agarwal, who looked after the financial matters was unwell during the proceedings. It was submitted that the unsecured loans of Rs. 62,56,000/- had been taken by the company through banking channel / account payee cheque and therefore, it was prayed that additional documents / details may kindly be allowed to be submitted and utilized in deciding the appeal. These additional evidences were forwarded to the Assessing Officer and a remand report was sought. However, the ld. AO pointed out that the assessee was not entitled to submit the additional evidence in view of the provisions of Rule 46(A)(1). The ld. AO pointed out that the assessee had filed its ITR on 31.03.2018, which was after the change of Directors, therefore, the resignation of Directors could not be a sufficient cause. He further pointed out that sufficient time was given during assessment proceedings to the assessee to make compliance. During the assessment proceeding, 94 days were given to the assessee, but no compliance was made. As regards the failure to update the email ID and the mobile number, the

Assessing Officer pointed out that the Department was not responsible for the failure to do so and finally with regard to the change in postal addresses, it was also submitted that the Department was not responsible for the failure to update the same in the income tax records. The Id. AO, therefore, prayed that the application under Rule 46(A) could not be allowed. However, he did not make any submissions on the merits of the claim.

4. The Id. CIT(A) forwarded a copy of his remand report to the assessee for providing its comments. In response, the assessee submitted that during the remand proceedings, the assessee had filed confirmation from parties from whom the unsecured loan had been taken and the same had been accepted and not denied. It was further submitted that the balance-sheet in profit and loss account were in the possession of the Id. AO. However, he had still the added the entire amount of unsecured loan as on 31.03.2017 to the income of the assessee without considering the opening and closing balances of the unsecured loans. This showed that he had not applied his mind. On the issue of lack of opportunity, the assessee submitted that the assessee had only been given 10 days to make compliance to the first notice under section 143(2) and another 10 days for responding to the notice under section 142(1). He had only been given 07 days to respond to the show cause notice. It was also pointed out that none of these notices had been sent by physical mode or served by any official of the Income Tax Department, Central Circle and in view of the fact that the email ID, mobile numbers and the company's new addresses were important evidences which had not been considered by the Id. AO, the objection to the remand report was opposed.

5. The Id. CIT(A), after considering the comments of the Id. AO and the response of the assessee, admitted the additional evidences filed by the assessee. She pointed out that there was addition of only Rs.68,25,000/- during the year under consideration in respect of M/s Wealth Mantra Properties Ltd., while in the case of M/s Wealth Mantra Insurance Brokers Pvt. Ltd., the addition was of Rs. 62,56,000/-. She noted that it was quite clear that as per the provisions of section 68, opening balance of loan of the creditors could not be added back during the

year. Thus, he held that no addition was required in the matter of M/s Jupiter Tradelinks Pvt. Ltd,. In respect of M/s Wealth Mantra Properties Ltd., the ld. CIT(A) noted that the transactions made with the said company were duly reflected in its bank account; the assessee had furnished a copy of confirmation from M/s Killer Industries Limited (As M/s Wealth Mantra Properties Ltd. was then known); it had furnished a certificate of change of name issued by ROC, Kanpur and it had furnished a copy of the audit report of M/s Wealth Mantra Properties Ltd. to establish its creditworthiness. The assessee had also furnished copies of ledger account of M/s Wealth Mantra Insurance Brokers Pvt. Ltd., the transactions entered into with this company had been reflected in its' bank account; a copy of the confirmation from M/s Wealth Mantra Insurance Brokers Pvt. Ltd. have been furnished and audit report of M/s Wealth Mantra Insurance Brokers Pvt. Ltd., had been furnished to establish its creditworthiness. On this account, she held that the assessee had proved all the three ingredients of section 68 by furnishing the requisite documents and therefore, She was of the considered view that addition of Rs. 3,35,82,000/- made under section 68 of the Act by the ld. AO deserve to be deleted. Accordingly, She deleted the same.

6. The Revenue is aggrieved by this order of the ld. CIT(A) and has accordingly come before us in appeal. Sh. R.R.N. Shukla, ld. Addl CIT DR (hereinafter referred to as the ld. DR) submitted that during assessment proceedings, the assessee did not comply at all even after allowing sufficient opportunities and after proper services of notices. Therefore, during the course of appeal proceedings, the ld. AO had opposed the admission of additional evidence as the assessee did not fulfil the conditions laid down under Rule 46A. However, the ld. CIT(A) admitted the additional evidence without making a sufficient enquiry into the merits of the case and deleted the addition. The ld. CIT(A) admitted the additional evidence without seeking supporting evidences for non-compliance by the assessee. No medical document was submitted by the assessee in support of its contention that its Director, Sh. Janardan Agarwal was unwell during the course of assessment proceedings. Further, the assessee had simply

placed a blame on its counsel without any evidence for the same. Furthermore, it was submitted that a notice under section 142(1) had been issued to the assessee company asking it to file its return of income and ITR was filed by the assessee on 31.03.2018. Hence, the company did know very well that its case was under assessment. But thereafter, the assessee did not make any compliance. Even the questionnaire under section 142(1) was duly served on the assessee physically, through notice server. In view of these facts, ld. Sr. DR pointed out that the conditions laid down in Rule 46A for the admission of additional evidence were not satisfied, but the ld. CIT(A) had still gone ahead and admitted the additional evidence without pointing out where the ld. AO was wrong in raising his objection. Accordingly, it was prayed that the decision of the ld. CIT(A) being erroneous, her order should be overturned and the additions made by the ld. AO had to be confirmed. Responding to the said arguments, Sh. Rakesh Garg, Advocate (hereinafter referred to as the ld. AR) pointed out that the assessment had been made without any application of mind. He submitted that all loans reflected in the books of the assessee, except one, had been brought forward from earlier years. He submitted that out of the total balance of Rs. 2,35,82,000/-, loans amounting to Rs. 1,41,00,000/- were carried forward from the previous year and therefore, could not be added back under section 68 of the Act. With respect to the balances, the ld. CIT(A) had recorded a finding that these were in the nature of regular transactions, the lenders had confirmed the facts of the loans and the assessee had furnished all the documents before the ld. CIT(A) from which he had been able to satisfy him that all the three ingredients that were required to be proved, had been proved. He submitted that the ld. CIT(A) had forwarded the documents to the AO and asked for his comments, but the ld. AO had not commented upon these documents. He had only raised technical objections. Thus, the documents were unrefuted. When the ld. CIT(A) decided to reject the objections of the ld. AO, thereafter, there existed no grounds to sustain the addition in the hands of the assessee.

7. We have duly considered the facts and circumstances of the case. We noticed that it is a fact that the assessee had not made proper compliance during the course of the assessment proceedings. It has been stated by the ld. AO in the statement of facts filed alongwith this appeal and by the ld. DR during hearing, that despite physical service of the notice, compliances were not made and no evidence was filed to suggest that the assessee was constrained from making compliance on account of illness of the Director. It is for this reason that the ld. AO had opposed the admission of additional evidence by the ld. CIT(A). However, we note that the ld. CIT(A) has not framed a speaking order for admitting the additional evidences. In these circumstances, we hold that the order of the ld. CIT(A), to admit the additional evidence without disposing of the objections of the ld. AO, are not as per the scheme of the Act. Be that as it may, it is fairly clear that only those additions can be sustained in the hands of the assessee, which have been credited to the accounts in the current year and do not represent carry forward balances. Furthermore, only such additions could be made which are not backed up by documentary evidences that could explain the creditworthiness of the lender and the genuineness of the transaction. With these comments, we restore the matter back to the file of the ld. CIT(A) to first dispose the objections of the ld. AO with a speaking order and thereafter to obtain the comments of the AO with regard to the documents furnished by the assessee. The ld. CIT(A) may thereafter pass a fresh order in accordance with law, after considering the additional evidences furnished by the assessee and the comments of the ld. AO with regard to the same. As the matter is restored back to the file of the ld. CIT(A), the appeal of the Department is held to be allowed for statistical purposes.

8. In the result, the appeal of the Department is allowed for statistical purposes.

Order pronounced on 20.01.2026 in the Open Court.

Sd/-

**[KUL BHARAT]
VICE PRESIDENT**

DATED: 20/01/2026

Sd/-

**[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER**

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Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.