

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER

ITA No. 4857/Mum/2025
Assessment Year : 2022-23

Income Tax Officer, 6 th Floor, Ashar IT Park, Thane, Maharashtra-400604.	vs.	Murlidhar M Pichad HUF, Flat No. 508, Bldg. 02, Gawand Baug Ashoka, Pokharan Road No. 2, Thane. Maharashtra-400601 PAN : AAIHM4676E
(Appellant)		(Respondent)

For Assessee :	Shri Gaurang Shah <i>(Virtually present)</i>
For Revenue :	Shri Umashankar Prasad, CIT-DR

Date of Hearing :	27-01-2026
Date of Pronouncement :	03-02-2026

ORDER

PER VIKRAM SINGH YADAV, A.M :

This is an appeal filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’], dated 19-05-2025, pertaining to Assessment Year (AY) 2022-23.

2. Briefly the facts of the case are that the assessee-HUF filed its return of income declaring total income of Rs. 7,05,100/- on 21-09-2022, which was selected for scrutiny and notices u/s. 143(2) and 142(1) of the Act were issued from time to time calling for the necessary details.

3. During the course of assessment proceedings, the AO observed that the assessee has taken unsecured loan during the year amounting to Rs. 14,36,50,497/- and the assessee was asked to prove the genuineness of these unsecured loans by submitting necessary documentation. However, in spite of opportunity being provided from time to time, the assessee failed to produce the necessary documentation and the said amount was brought to tax as 'unexplained cash credit' u/s. 68 of the Act. Further, the AO brought to tax a sum of Rs. 1,48,85,659/- as the assessee failed to explain the genuineness of the claim regarding Sundry Creditors reflected in the financial statements. The assessment proceedings were completed u/s. 143(3) r.w.s. 144B of the Act, vide order dt. 23-03-2024.

4. The assessee thereafter carried the matter in appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed necessary information/documentation and the addition so made by the AO was directed to be deleted by the Ld.CIT(A). Against the said order, the Revenue is in appeal before us.

5. During the course of hearing, the Ld.DR drawn our reference to the findings of the Ld.CIT(A) and submitted that the Ld.CIT(A) has allowed the appeal of the assessee on the basis of documentation furnished for the first time during the appellate proceedings without calling for the remand report from the AO or remitting the matter back to the file of the AO. In this regard, our reference was drawn to the findings of the Ld.CIT(A), which reads as under:

"5.3 Further, during the course of appeal proceedings, the AO has reiterated its reply and once again submitted all the supporting evidences to prove its claim. The relevant part of the reply of the appellant is as under:

"In this respect, please note that unsecured loan were taken from Karta of HUF i.e., Mr Murlidhar Pichad (Prop. Gajanan Automobiles) of Rs.5,59,77,432/- and wife of Karta i.e., Chandrabhaga Pichad of Rs.9,64,00,000/- for the purpose of construction of

warehouse situated at Valshind, Bhiwandi and copy of ledger confirmation was already submitted during the assessment proceeding however Ld. AO did not considered the same and also made addition without any further verification of the said transactions with the parties.

Please also note that the unsecured loan given by the said family members were out of loan availed from Cholamandalam Investment & Finance Co Ltd. ICICI Bank Ltd & Axis Bank Ltd and from own funds or short-term loans from relatives.

Further, for your kind reference appellant enclosing herewith the copy of ledger confirmation along with ITR Ack, Computation of total income and Balance Sheet along with audit report (wherever applicable) for AY 2022-23. Bank statement showing entries related to loan given to the appellant and Sanction letter/Statement of loan availed from NBFC and Banks by Mr Murlidhar Pichad and Mrs Chandrabhaga M. Pichad as per Annexure I."

5.4 As can be seen from the above reply of the appellant, the appellant has clearly stated that the unsecured loans were taken from the members of the appellant HUF including the karta of the HUF for the purpose of construction of a warehouse situated at Valshind, Bhiwandi. Further, the appellant has even went on to furnish the source for the unsecured loans given by the members of the appellant HUF and furnished the evidences in support of the same. Since the appellant had fulfilled all the 3 limbs of section 68 of the Act and proved the genuineness of the unsecured loans and thereby discharged the onus of burden of proof on him. Hence, the AO is directed to delete the addition of claim of unsecured loans of Rs. 14,36,50,497/-.

5.5 Further, with regard to addition of sundry creditors of Rs. 1,48,85,659/-, the appellant has made the following submission.

"In this respect please note that during the year under consideration the appellant given contract to construct warehouse on land situated at Valshind, Bhiwandi to M/s Pichad Builders & Developers Pvt Ltd and made total payment of Rs. 16,13,00,000/- and invoices issued by M/s Pichad Builders & Developers Pvt Ltd was of Rs. 14,64,07,261/- and net balance of M/s Pichad Builders & Developers Pvt Ltd was advance given of Rs. 1,48,92,739/-which was debit balance however Ld. AO wrongly considered the same as sundry creditors and therefore the same must be deleted and also Rs.7080/- was professional fees payable of consultant for GST return filing was also wrongly considered as cash credit u/s 68 of the act and In this respect appellant had already submitted the ledger confirmation/accounts along with books of account of appellant during the assessment proceeding further for your kind reference appellant enclosing herewith the copy of invoices issued by Pichad Builders & Developers Pvt Ltd along with ledger confirmation and Ledger account of M/s KVSS & Co as per Annexure II."

5.6 On perusal of the reply of the appellant along with relevant supporting evidences, it is observed that, the AO has made the addition without proper appreciation of facts. During the year under consideration the appellant

has given contract to construct warehouse on land situated at Valshind, Bhiwandi to M/s Pichad Builders & Developers Pvt Ltd and made total payment of Rs. 16,13,00,000/- and invoices issued by M/s Pichad Builders & Developers Pvt Ltd was of Rs. 14,64,07,261/- and net balance of M/s Pichad Builders & Developers Pvt Ltd was advance given of Rs.1,48,92,739/-which was debit balance. Hence the appellant has taken the same to the Balance Sheet as sundry creditor.

5.6.1 In this connection, the assessee has also produced the ledger account copy of the builders, invoices raised by the builder and also the bank account statement. The same were verified and was found to be in order. Hence, considering the facts and circumstances of the case, the AO is hereby directed to delete the addition made on account of sundry creditors of Rs. 1,48,85,659/-."

6. It was accordingly submitted that the matter may be remanded to the file of the AO for necessary examination and verification.

7. The Ld.AR has been heard, who has relied on the findings of the Ld.CIT(A) and it was submitted that the Ld.CIT(A) has already gone through the documentation and has deleted the addition and in view of the same, there is no necessity to remand the matter back to the file of the AO.

8. We have heard the rival contentions and perused the material available on record. We find that during the course of assessment proceedings, the assessee has merely stated that the loan has been taken from the Karta of the HUF and his wife for the purposes of construction of a warehouse. However, no supporting documentation was furnished during the course of assessment proceedings to corroborate the loan transactions. It is during the appellate proceedings that the assessee has submitted additional documentation as so referred in the impugned order and which has been taken into consideration by the Ld.CIT(A). Similar position is prevalent in respect of sundry creditors where additional documentation were submitted during the appellate proceedings. There is nothing on record either in the body of the impugned order or otherwise which has been brought to our notice that the remand report was called

for from the AO in relation to the additional evidences so submitted by the assessee and which have been admitted and considered by the Ld.CIT(A) while deciding the matter under appeal.

9. The law no doubt empowers the Ld.CIT(A) to admit the additional evidences during the appellate proceedings and the Ld.CIT(A) has the powers to admit the additional evidences, however the same is subject to fulfillment of conditions as so specified which prevented the assessee from furnishing such evidences before the Assessing officer and the Ld.CIT(A) has to record specific findings while admitting the additional evidence. Further, given that these additional evidences are sought to be submitted by the assessee for the first time during the appellate proceedings, the AO is also required to be provided an opportunity and his report should be called for as specifically provided in Rule 46A(3). Basis the assessee's application and after taking into consideration the remand report submitted by the AO, the Ld.CIT(A) can pass appropriate order u/s Rule 46A(2) either accepting or rejecting the additional evidences and thereafter, the matter can be proceeded within examining the merits of the case.

10. In the instant case, on perusal of the impugned order, it is not clear whether the assessee has moved any application under Rule 46A for admittance of additional evidences, whether any remand report was called for and submitted by the AO and how the conditions enabling the admittance of additional evidence were found to be satisfied by the Ld. CIT(A). We also couldn't find any specific findings of the Ld.CIT(A) for admission of additional evidences. During the course of hearing, the Ld.AR couldn't controvert the aforesaid factual position as emanating from the impugned appellate order or brought to our notice any documentation which proves otherwise. We thus, find that the whole procedure so laid down under Rule 46A for admission of additional evidence has been

completely side-stepped and not adhered to by the Ld.CIT(A) for reasons best known to him. In our considered opinion, the same is not just a technical breach but goes to very foundation and core of subject matter of dispute which require not just dispensation of justice but at the same time, fair opportunity to both the sides which has been statutorily mandated under the aforesaid Rules and which evidently has not been adhered to in the instant case. We therefore find merit in the contentions advanced by the Ld.CIT-DR that the Ld.CIT(A) was not justified in admitting the additional evidences without even confronting the AO regarding the additional evidences so sought to be submitted by the assessee for the first time during the appellate proceedings.

11. The matter is accordingly set aside to the file of the Ld.CIT(A) so that appropriate opportunity is provided to the AO to verify the additional evidences submitted by the assessee and to decide the matter afresh as per law after providing reasonable opportunity to the assessee.

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

Order pronounced in the open court on 03-02-2026

Sd/-
[MS. KAVITHA RAJAGOPAL]
JUDICIAL MEMBER

Sd/-
[VIKRAM SINGH YADAV]
ACCOUNTANT MEMBER

Mumbai,
Dated: 03-02-2026

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai