

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member And
Shri Narendra Prasad Sinha, Accountant Member**

**ITA No: 1773/Ahd/2025
Assessment Year: 2023-24**

Ved Infra Manohar Farm, Opp. Shreenath Bunglows, Umiy Ahmedabad Highway Dehgam, Gandhinagar Gujarat-382305 PAN: AAQFV3785R (Appellant)	Vs	Income Tax Officer Ward-2, Gandhinagar (Respondent)
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**Assessee Represented: Shri Anil Brahmakshatriya, A.R.
Revenue Represented: Shri Abhijit, Sr. D.R.**

Date of hearing : 04-02-2026
Date of pronouncement : 06-02-2026

आदेश/ORDER

PER: T.R. SENTHIL KUMAR, JUDICIAL MEMBER

This appeal is filed by the Assessee as against appellate order dated 11-09-2025 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2023-24.

2. Brief facts of the case is that the assessee is a Partnership Firm engaged in the business of Builder and Developers. For the Asst. Year 2023-24, assessee filed its Return of Income on 11-09-2023 declaring total income of Rs.69,14,860/- and paid remuneration to partners of Rs.35,00,000/-. The return was taken for scrutiny assessment, the A.O. noticed that the assessee firm has given interest free loan of Rs.1,12,00,000/- to Praveenbhai R Khatri HUF. Hence a show cause notice was issued as to explain why proportionate interest paid by the firm should not be disallowed for non utilization of loan funds for business purposes. The assessee explained that interest free funds available of Rs.3,02,20,000/- being customer advance as well as Rs.8,03,91,852/- being sundry creditors both totaling to Rs.11,06,11,852/-. Since there is surplus funds available with the Firm, therefore there is no question charging proportionate interest.

3. The above reply was considered by the A.O. and held that the advance amounts received for flat booking cannot be accepted as interest free advance and the sundry creditors referred to are for materials purchased and labour employed which had also been reflected in the Work-In-Progress (WIP) meaning thereby that the amount had been utilized in the construction activity. Therefore it is clear that interest bearing funds had been diverted by the Firm for non-business activity. Therefore proportionate interest at 12% namely Rs. 13,44,000/- in respect of interest free loans/advance was added to the income of the assessee.

3.1. The assessing officer also made addition of Rs.2,14,000/- being unsecured loan from Ranjnaben A. Barot, since she is non-filer of Return, not proved genuineness of the transaction and creditworthiness of the party.

3.2. The assessee firm had earned book profit before remuneration to partners at Rs.1,04,14,857/-. As per Partnership Deed, the remuneration allowable to the partners will be maximum of 10% of book profit namely Rs.10,41,486/- only which is allowable to the working partners Shri Jaykumar Praveenbhai Khatri and Shri Praveenbhai Ratanshibhai Khatri. Whereas no remuneration was credited or paid to Shri Praveenbhai Ratanshibhai Khatri. Whereas Shri Jaykumar Praveenbhai Khatri is entitled for 4% of book profit namely Rs.4,16,594/- as per the Partnership Deed. The balance amount of Rs.30,83,406/- is added back to the total income of the assessee and also initiated penalty proceedings against the assessee firm.

4. Aggrieved against the assessment order, assessee filed an appeal before Ld. CIT(A) who confirmed all the three additions made by the assessing officer by observing as follows:

“5.2.1 The contention of appellant is unacceptable on merit. The appellant has not proved the nexus of so called interest free funds in advancing the loan to Pravinbhai R Khatri HUF. Advance received for flat booking cannot be accepted as interest free advance. Here, it is also pertinent to state that while explaining the working of WIP, the appellant had explained that the amount received from customers have been shown as work in progress. Thus, it is proved beyond doubt that the amount received from customer as advance booking has already been utilized in the construction activity. Similar story is also in respect of outstanding amounts in the name of sundry creditors. The sundry creditors as claimed by the appellant relate to material purchased and bills of labour employed and the corresponding funds have already been utilized in the construction

activity and also reflected in WIP. Now, the appellant has come forward with alternative explanation that interest free unsecured loans cover the interest free advance, which is also not acceptable. The appellant has not proved the direct nexus of so called interest free unsecured loan in advancing the loan to Praveenbhai R Khatri HUF. Here, it is also pertinent that amount of Rs. 81,71,351/- in the name of Shri Harsangbhai Rajendrakumar Dalwadi is outstanding since 01.04.2019, thus, how this loan taken earlier can be related to interest free advance given. Any prudent businessman raises the loan on the need of business requirement and always uses the same for the business activity. The appellant has not put forth any evidence which shows that the amount was parked by the loan creditors for securities of their money with the appellant. In fact, the amount of unsecured loan has been also utilized by the appellant in the construction activity. which is evident from inventories (work in progress) at Rs. 24,34,54,000/- as on 01.04.2022 (opening stock) and inventories (work in progress) at Rs. 24,48,51,000/-on 31.03.2023 (closing stock). Thus, so called interest free fund of Rs. 3,02,20,000/-being customer advance and Rs.8.03.91.852/-being sundry creditors could not cover the closing work in progress.

Thus, the explanation of appellant is not acceptable. The advance of Rs.1,12,00,000/- is not related to the business activity of the appellant and interest bearing funds has been diverted by the appellant for other than business activities. Accordingly, the addition made by AO is confirmed. Ground No.2 of appeal is dismissed.

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5.3.1 On perusal of the documents submitted by the appellant, it is noticed that ITR has not been provided as the creditor is stated to be not filing return of income which casts doubt on the creditworthiness of Ranjanaben Barot. Further, the bank statement from which loan was received belongs to her son Dharmeshkumar Barot, which clearly establishes that Ranjanaben in her own capacity does not have creditworthiness to lend money to appellant and she didn't advance any loan to the appellant. Therefore, the creditworthiness and genuineness in this case has not been proved. Accordingly, I am of the view that AO has rightly made addition u/s 68 of the Act. Ground No.3 of the appeal is dismissed.

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The appellant firm has earned book profit before remuneration to partner at Rs. 1,04,14,857/-. As per clause 13 of partnership deed the remuneration allowable to partner will be maximum of 10% of book profit e. i. Rs. 10,41,486/- only. The remuneration is allowable to Shri Jaykumar Praveenbhai Khatri and Shri

Praveenbhai Ratanshibhai Khatri being working partners of the firm. No remuneration has been credited/ paid to Shri Praveenbhai Ratanshibhai Khatri. In view of the foregoing discussions, only Shri Jaykumar Praveenbhai Khatri is entitled for 4% of book profit Rs. 4,16,594/- (4% of 1,04,14,857)

Therefore, according to the provision of section 40(b) of the Act and clause 13 of partnership deed, the allowable remuneration comes to Rs. 4,16,594/- only whereas the appellant has claimed deduction of Rs. 35,00,000/-, which is not correct. Therefore, excess amount of Rs. 30,83,406/- has been rightly added to the total income of the appellant by the AO Accordingly, Ground No. 4 of appeal is dismissed."

5. Aggrieved against the appellate order, the assessee is in appeal before us raising the following Grounds of Appeal:

1. In law, on the facts and in the circumstances of the case, the impugned assessment order passed u/s.143(3) by the Assessing officer, National Faceless Assessment Unit, New Delhi and confirmed by ld. CIT(A) is against natural justice, bad in law and deserves to be cancelled.

2. On the facts and in the circumstances of the case, the ld. CIT(A) is not justified in confirming the disallowance of proportionate interest expenses of Rs. 13,44,000/- ignoring the fact that appellant had sufficient interest free funds & out of which, the interest free loan was given to Pravinbhai Khatri HUF. Therefore, the AO may kindly be directed to delete the addition of Rs.13,44,000/-.

3. On the facts and in the circumstances of the case, the ld. CIT(A) is not justified in confirming the addition of Rs. 2,14,000/- u/s 68 on the ground that creditor has not filed the return of income. The AO may kindly be directed to delete the addition of Rs. 2,14,000/-.

4. On the facts and in the circumstances of the case, the ld. CIT(A) is not justified in confirming the addition of Rs. 30,83,406/ on account of remuneration to partners disbelieving the Supplementary Partnership Deed (with amended clause) wherein all the partners are entitled for remuneration. The AO may kindly be directed to delete the addition of Rs. 30,83,406/-.

5. The appellant craves leave to add, alter, amend or withdraw any ground/s of appeal on or before hearing of the appeal.

6. Ld. Counsel appearing for the assessee reiterated the same arguments made before the lower authorities that the assessee had interest free funds of Rs.3.02 crores being customer advances paid for booking of flats as well as Rs.8.03 crores being sundry creditors. Ld. Counsel also submitted before us that the assessee is required to maintain three bank accounts as per RERA, one is customer collection account wherein 100% collection is to be deposited another account is detention account wherein 70% of the collections is to be deposited/transferred and the third one is free account wherein 30% can be transferred by the assessee. The assessee also produced before us ledger account of Praveenbhai R. Khatri HUF and Axis bank statement showing the loans given to him. A specific query was raised by the Bench whether these bank statements are already filed before the assessing officer for verification. Ld. Counsel submitted that he will certify the same in one day time. However the Ld. A.R. has not submitted any such certification till the date of passing of this order. Further when the AO raised this issue by issuing notice u/s. 142(1) dated 27-11-2024 and the reply filed by the assessee on 27-11-2025 are reproduced as follows:

"3.2.2 Vide notice issued u/s 142(1) on 27.11.2024, the assessee was asked to explain:

"Please explain the reason for giving loan of Rs. 11200000/- to Praveenbhai R Khatri HUF and show cause as to why proportionate interest paid by you during the year should not be disallowed as loan funds were not utilized for business purpose."

3.2.3 The assessee vide reply filed on 27.01.2025 stated that:

"In respect to the above observation, the undersigned assessee would like to submit that the firm has sufficient interest free fund out of which the

said amount can be treated as given. The interest free fund would be Rs.3,02,20,000, being customer advance as well as Rs. 8,03,91,852 being sundry creditors. The same is totaling to Rs. 11,06,11,852. In view of this, there is no case of so-called proportionate interest."

6.1. This clearly shows that the assessee has not filed these bank statements before the A.O. Further the lower authorities clearly held that the assessee has not proved that the direct nexus of so called interest free unsecured loan in advancing the loan to Praveenbhai R. Khatri HUF. Thus the arguments of the assessee without supporting evidence is not acceptable. Therefore the advance of Rs.1.12 crores is not related to the business activity of the appellant firm and the interest bearing funds has been diverted for other than the business activities. Therefore the interest expenses of Rs.13,44,000/- made by the A.O. does not require any interference. Thus Ground No. 1 raised by the assessee is hereby dismissed.

6.2. The assessee also relied upon the case following case laws:

- (i) ACIT Vs. Dr. Seethalakshmi (JP. ITAT) 173. Taxmann.com 351
- (ii) ACIT Vs. Haresh M Sakariya (Surat ITAT) 148. Taxmann.com 115
- (iii) United Agency Vs. ITO (Ahd.ITAT) 37. TTJ 374 [1990]

6.3. The case laws relied upon by the assessee are factually distinguishable and not applicable to the facts of the present case. Further the first citation 173 Taxmann.com 351 is relating to M/s. Ahluwalia Erectors & Fabrications Pvt. Ltd. Vs. ACIT and not as mentioned the Ld. A.R.

7. Ground No. 2: Addition of unsecured loan of Rs.2,14,000/- u/s. 68 from Ranjanaben A. Barot. Ld. Counsel submitted before us confirmation of accounts, PAN card and State Bank of India bank account in the name of Dharmeshkumar Ashokbhai Barot and stated that Rs. 2.14 lakhs was issued by Dharmeshkumar Ashokbhai Barot son of Ranjanaben A. Barot. Since the source is being explained the addition is liable to be deleted. This argument of the assessee is not acceptable since the assessee failed to establish the identity, creditworthiness of the transaction, therefore the addition made in the hands of the assessee is liable to be sustained. Thus Ground No. 2 raised by the assessee is hereby dismissed.

8. Ground No. 3: Addition of Rs.30,83,406/- on account of remuneration paid to all partners disbelieving the Supplementary Partnership Deed filed by the assessee. Ld. Counsel submitted copy of the Supplementary Partnership Deed executed on 1st April, 2022 which is placed at Page no. 93 of the Paper Book which authorized all the Partners to have eligible remuneration. The A.R. also relied upon following case laws in support of its claim:

- (i) J.C.Bhalla & Co. Vs.Addl.CIT 106 taxmann.com 13 (Delhi ITAT)
- (ii) Jetkool Exports India Vs. NEAC [2023] Taxcorp (AT) 104146 (Mumbai ITAT)
- (iii) ACIT Vs. Suman Construction 20 DTR 450 (Pune ITAT)
- (iv) ITO Vs. Pulimootti Silk House 19 SOT 4 (Cochin ITAT)
- (v) Youth Potent Potation Vs. ITO 174 taxmann.com 1067 (Kolkata ITAT)

9. We have perused the same which was considered by the Ld. A.O. and reproduced at Page No. 31 of the assessment order. This so called Supplementary Deed is in the letter head of the Assessee Firm but not in non-judicial stamp paper. Bottom of that letter makes it clear that “This copy is given to present before Assessing Officer, NFAC, New Delhi during the course of assessment proceedings for A.Y. 2023-24”. This letter also refers to Clause 14 of the Partnership Deed dated 10-05-2019 which reads as follows:

“14. That, every partner shall be bound to attend diligently to his duties in the conduct of the business of the firm and shall be just and faithful to the other partners at all times and shall give to the other partners full information and truthful explanation on all the matters relating to the affairs of the partnership and shall carry on the business for their mutual advantage.”

9.1. Whereas Clause 20 of the original Partnership Deed deals with the remuneration to the Partners, which reads as follows:

20. Out of the ‘booked profit’ defined as under the Income Tax Act under section 40(b), the remuneration to the extent of 10% of the profit at the rates given below shall be given to the partners of the firm.

	<i>SHARE (%)</i>
	<u><i>REMUNERATION</i></u>
1. Shri Manohar Arajan Patel	04.00%
2. Shri Pravin Ratanshibhai Khatri	<u>06.00%</u> 10.00%

Provided that the aggregate remuneration of the above partners in any year shall not exceed the amount arrived at as follows:

<i>(a) On the first Rs. 3,00,000 Of the book-profit in case of a loss</i>	<i>Rs. 1,50,000 or 90% of book profit whichever is more</i>
<i>(b) On the balance of the book profit</i>	<i>@ 60%</i>

That, in the event of the aggregate amount of the partners remuneration being restricted as aforesaid, the restricted amount of remuneration shall be payable to

the aforesaid partners in the ratio of the rates of their respective remuneration aforesaid.

(b) That, in the event of these being a loss (as against Book Profit) in any year, the amount of partners' remuneration shall be restricted to an aggregate of Rs. NIL and the said restricted amount of remuneration shall be payable to the aforesaid partners in the ratio of the rates of their respective remuneration aforesaid.

(c) For the purposes of the clause, Book Profit, shall have the same meaning as is given in Explanation-3 below section 40(b) of the Income-tax Act, 1961.

10. Thus the original Partnership Deed clearly states that the remuneration to the extent of 10% of the profit as defined u/s. 40(b) of the I.T. Act be paid to the managing partners. In the so called Supplementary Deed it refers to Clause 14 of the original Partnership Deed which clause has no relevance regarding the remuneration payable to the partners. Further the payment of Rs.35,00,000/- to all Partners is against the provisions of Section 40(b) of the Act, therefore the addition made by the Lower Authorities does not require any interference. Thus the submissions made by the counsel has no relevance and the case laws relied by him is also clearly distinguishable with the facts of the present case. In the result, ground no. 3 raised by the assessee is devoid of merits and liable to be dismissed.

11. In the result, the appeal filed by the Assessee is hereby dismissed.

Order pronounced in the open court on 06 -02-2026

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 06/02/2026

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद

Strengthened preparation & delivery of orders in the ITAT	
1) Date of dictation	04/02/2026
2) Date on which the typed draft is placed before the Dictating Member & Other Member	/02/2026
3) Date on which the approved draft comes to the Sr. P.S./P.S.	/02/2026
4) Date on which the fair order is placed before the Dictating Member for pronouncement	06 /02/2026
5) Date on which the fair order comes back to the Sr. P.S./P.S.	/02/2026
6) Date on which the file goes to the Bench Clerk	/02/2026
7) Date on which the file goes the Head Clerk	
8) Date on which the file goes to the Assistant Registrar for signature on the order	
9) Date of Dispatch of the order	