

**IN THE INCOME-TAX APPELLATE TRIBUNAL, MUMBAI "F" BENCH, MUMBAI
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
ITA No. 6005/MUM/2025(AY: 2017-18)**

Deputy Commissioner of Income Tax R. No. 126, Aayakar Bhawan, Maharhi Karve Marg, Mumbai-400020.	vs.	Mahindra and Mahindra Financial Services Limited Mahindra Towers, 4 th Floor, 570 P.B. Marg, Worli, Mumbai-400018.
PAN/GIR No: AAACM2931R		
(Appellant)		(Respondent)

Appellant by	Shri Kalpesh Unadkat
Respondent by	Shri Vivek Perampurna (CIT-DR)
Date of Hearing	06.01.2026
Date of Pronouncement	11.02.2026

ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal filed by the revenue emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'Act') by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre [in short, 'CIT(A)'], Delhi, dated 28.12.2019 for the assessment year 2017-18.

2. The grounds of appeal raised by the assessee are as under:

"1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not considering that even when non-convertible debenture (NCD) expenses have not been debited to the Profit & Loss A/c. but instead have been reduced from the Share Premium Reserve A/c."

2. *"Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in not considering that the expenses towards non-convertible debenture expenses was not debited from the P&L A/c. but in the computation of income, the assessee had reduced the said expenses from his income offered to tax."*

3. *"Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in not considering that the assessee reduced the non-convertible debenture expenditure from his capital reserves and treated the said expenditure to be of capital nature."*

2. *The Ld. CIT (A)'s order is contrary in law and on facts and deserves to be set aside.*

3. *The appellant prays that the order of Ld. CIT (A) on the above ground be set aside and that of the AO restored. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary at the time of hearing.*

3. Facts of the case in brief are that the assessee filed its original return of income on 30.11.2017 declaring total income at Rs.1052,73,86,870/-. Subsequently, the return was revised on 30.09.2019 declaring the same total income. The case was taken up for scrutiny and assessment order u/s 143(3) was passed on 28.12.2019 by making the following additions: (i) case credit u/s 68 – Rs.165,92,00,000/-, (ii) Disallowance of CSR expense – 14,56,00,000/- and (iii) Disallowance of expense on issue of NCD – 16,53,00,000/-. Total income was assessed at Rs.1249,74,86,870/- as against the return income of Rs.1052,73,86,870/-.

3.1 Aggrieved by the order of the AO, the assessee preferred appeal before the CIT(A) who has partly allowed the appeal. The CIT(A) has restored to the AO some issues for fresh examination and to pass a speaking order thereafter. In respect of disallowance of Rs.16.53 Crore claimed as expenditure incurred for the issuance

of NCD, the CIT(A) has deleted the addition. The relevant part is at pages 26 to 31 of the appellate order. The revenue has preferred appeal against the deletion of the above disallowance of NCD expenditure before the Tribunal.

3.2 During the year under consideration, the assessee has raised funds by way of redeemable non-convertible debenture (NCD). It had incurred expenditure of Rs.16.53 Cr. towards the NCD expenses, which was debited against the "Security Premium Reserve". The assessee had contended that the funds were raised to meet the working capital requirement of the assessee. These were one-time expenses, which were non-refundable, irrespective of the status of issuance and the same was purely revenue expenditure. Since the NCD expenses were not debited to the profit and loss account, the AO held the NCD expenses to be capital in nature and disallowed the same u/s 37 of the Act. In the appellate proceedings, the CIT(A) did not accept the view of the AO and held that expenditure incurred for obtaining a loan is not capital in nature, as no assets came into existence. Further, the fact that the funds raised through NCD are re-payable after several years, do not alter the character of the expenditure. He also observed that the accounting treatment cannot override the substantive nature of the transaction. While deciding the issue in favour of the assessee, the CIT(A) relied upon the decision of the ITAT in assessee's own case for AY 2009-10. He held that the

expenditure incurred for the issuance of NCD was revenue in nature and was allowable u/s 37(1) of the Act.

4. Aggrieved by the order of CIT(A), the revenue has filed the present appeal. The Ld. CIT (DR) has relied on the order of AO.

5. On the other hand, the Ld. AR of the assessee supported the order of the CIT(A). He has filed a paper-book and submitted that the Hon'ble Bombay High Court has upheld the decision of the Tribunal, which had decided similar issue in favour of the appellant. The Hon'ble Court also held that mere accounting entry would not decide the allowability of an expenditure. The Ld. AR submitted that the ITAT, Ahmedabad in case of Gruh Finance Ltd. vs. JCIT (ITA No.1298/Ahd/2009, dated 17.08.2016) held that the entire expenditure towards NCD would be allowed as deduction in the year in which it was incurred. In the said case the assessee had also reduced the expenditure from the share premium account. The Ld. AR submitted that the facts of the instant appeal are similar to the facts of the above decision. He has also relied on the following decisions: (i) PCIT vs. Mahindra & Mahindra Financial Service Ltd. (Appeal No.249 of 2017 dated 02.04.2019), (ii) ACIT vs. Mahindra & Mahindra Financial Services Ltd. (ITA No.3070/MUM/2013 dated 31.08.2015), (iii) Kedarnath Jute Mfg. Co. Ltd. vs. CIT, 82 ITR 363 (SC), (iv) Gruh Finance Ltd.(supra), (v) CIT vs. Secure Meters Ltd. (2008) 175 taxmann 567

(Raj.) and (vi) shanders Properties Pvt. Ltd. vs. ITO (ITA No. 531/Bang/2017, dated 26.05.2017.

6. We have heard both parties and perused the materials on record. We have also deliberated on the decisions relied upon by the Ld. AR. At the outset, the Ld. AR submitted that it is a repetitive issue and is covered by the order of the ITAT in appellant's own case in ITA No.3070/MUM/2013 (supra) and the order of Hon'ble Bombay High Court in ITA No.249 of 2017 (supra). The Ld. CIT(DR) has not controverted the assertion of the Ld. AR. We have gone through the orders of the Tribunal and the Hon'ble High Court. The relevant portion of the order of the Hon'ble High Court is reproduced below for ready reference:

"The Respondent Assessee has filed the return of income for the Assessment Year 2009-2010 in which a claim of expenditure of Rs.7.58 Crores (rounded of) was made under Section 37 of the Income Tax Act, 1961 ('the Act', for short). The Assessing Officer rejected the claim mainly on the ground that such expenditure was not reflected in the Assessee's account. The CIT (A) and the Tribunal granted the relief upon which this Appeal has been filed by the Revenue. The Tribunal, in the impugned Judgment, while confirming the decision of CIT (A), held and observed as under:

"We have considered the rival submissions and perused the material available on record. We note that the Assessing Officer is going by the accounting entries and in earlier year, the claim of the assessee was allowed while framing the assessment order u/s 143(3) of the Act. It is also noted that the Id. Commissioner of Income Tax (Appellate) duly considered the claim of the assessee and found that the nature of expenditure incurred is the same as was in the past. The assessee during the year modified its accounting of the said expenditure and amortised the amount in the books on the basis of duration for which the amount was borrowed. The case of the assessee is even otherwise

covered by the decision of the Tribunal in ACIT vs Tata Housing Developing Company Ltd. (2011) 45 SOT 9. The gist of which has been reproduced at page 15 of the impugned order. The details filed by the assessee clearly shows that the expenditure was incurred during the year and this fact has not been disputed by the Assessing Officer. In the past, identical claim was allowed as revenue expenditure by the Department, thus, without bringing any contrary material and also for the sake of consistency, no U-turn is permitted Even otherwise, the Assessing Officer has not pointed out any error in the accounting method of the assessee. The impugned amount has been claimed as expenditure in the current year u/s 37(1) of the Act. The totality of facts clearly indicates that it has to be allowed as revenue expenditure. We find no infirmity in the conclusion drawn by the Id. Commissioner of Income Tax (Appeals)"

We do not find any error in the view of the Tribunal. It is well-settled through series of Judgments of the Supreme Court, starting with the decision in the case of The Kedarnath Jute Mfg. Co. Ltd. vs. The Commissioner of Income Tax, (Central), Calcutta that mere accounting entry would not decide the taxability of a receipt."

7. It is clear from the above that the facts of the above decision are similar to the facts of the instant case. The revenue has not brought anything contrary on record. Hence, respectfully following the decision of Hon'ble Bombay High Court, the grounds of appeal by the revenue are rejected. Accordingly, the appeal of revenue is dismissed.

8. In the result, the appeal is dismissed.

Order is pronounced on 11.02.2026.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(BIJYANANDA PRUETH)
ACCOUNTANT MEMBER

*Aniket Chand; Sr. PS
MUMBAI

Date: 11.02.2026

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, MUMBAI
6. Guard File

By Order

Assistant Registrar
ITAT, MUMBAI