

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
And
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No. 2102/M/2025
Assessment Year: 2013-14**

DCIT – 14(1)(1) , Mumbai Room No. 432, 4 th Floor, AayakarBhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Kukreja Builders Pvt. Ltd. 4 & 5 th Floor, Sai Commercial Building, Bks Devshi Marg., Govandi (E), Mumbai, Maharashtra– 400088 PAN: AACCK5040M
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ajay Singh & Shri Akshay
Pawar, Ld. A.R.
Revenue by : Shri Hemanshu Joshi, (SR. D.R.)
Date of Hearing : 12.12.2025
Date of Pronouncement : 13.02.2026

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 25.01.2025, impugned herein, passed by the National Faceless Appeal Centre (NFAC)/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2013-14.

2. In the instant case, the Assessee during the A.Y. under consideration had declared its total income as Rs. 2,20,00,580/- by filing its Return of Income, which was initially processed under Section 143 of the Act.

3. The Assessing Officer, later on as per information received from the DGIT (Inv.), Mumbai regarding the beneficiaries of accommodation entries provided by Shri Praveen Jain through various Companies and Firms controlled, managed and operated by him and his associates, observed that the Assessee Company has also received an amount of **Rs. 3,80,00,000/- in total**, by way of Share Application Money, during the financial year under consideration, from the following parties:

Sr. No.	Name of the Bogus Concern Operated by Praveen Kumar Jain	PAN of the Bogus Concern Operated by Praveen Kumar Jain	Amount of Transaction (in Rs.)
1	Falak Trading Co P.Ltd	AABCF5837A	5,000,000
2	Olive Overseas P Ltd (Realgold Trading Co P Ltd)	AACCR4512K	8,000,000
3	Olive Overseas P Ltd (Realgold Trading Co P Ltd)	AACCR4512K	5,000,000
4	Sumukh Commercial Pvt Ltd (Capetwon Mer. P Ltd)	AACCC7400M	5,000,000
5	Viraj Mercantile P Ltd	AADCV3852H	5,000,000
6	Duke Business P Ltd (JPK Trading I Pvt Ltd	AABCJ6245N	5,000,000
7	Olive Overseas P Ltd (Realgold Trading Co P Ltd)	AACCR4512K	2,500,000
8	Sumukh Commercial Pvt Ltd (Capetwon Mer. P Ltd)	AACCC7400M	2,500,000
	TOTAL:		38,000,000

4. Thus, on the aforesaid information, the case of Assessee was selected for scrutiny under CASS.

5. The Assessee was accordingly show caused, who during the course of assessment proceedings, accepted the transactions of Rs. 3,80,00,000/- in total from the following parties:

Sr. No.	Name of address of the party/parties	PAN	Amount accepted (in Rs.)
1	Falak Trading Co P Ltd -	AABCF5837A	5,000,000
2	Olive Overseas P Ltd (Realgold Trading Co P Ltd)	AACCR4512K	15,500,000
2	Sumukh Commercial Pvt Ltd (Capetwon Mer. P Ltd)	AACCC7400M	7,500,000
4	Viraj Mercantile P Ltd	AADCV3852H	5,000,000
5	Duke Business P Ltd (JPK Trading I Pvt Ltd	AABCJ6245N	5,000,000
	TOTAL:		38,000,000

6. The Assessing Officer, therefore asked the Assessee to furnish details of unsecured loans received during the year under consideration along with documents, satisfying the provisions of the Section 68 of the Act by providing ROI, Financial statements and extract of relevant bank entries of the parties, from whom the Assessee has received unsecured loan.

7. The Assessee in response to the aforesaid notices, vide letters dated 09.03.2016 & 18.03.2016 submitted, only partial and incomplete details, but not to the satisfaction of the Assessing Officer as observed by him and therefore, the Assessing Officer observed that the Assessee failed to submit full and true reply and satisfactorily explain the nature and source of the cash credits in its books of account and thus failed to prove the identity, creditworthiness and genuineness of the parties.

8. The Assessing Officer further observed that the Assessee vide letter dated 09.03.2016 has submitted only copy of the Audit report and copy of the ITR acknowledgment for A.Y. 2013-14.

9. The Assessing Officer, thereafter, in order to verify the creditworthiness of the creditors and genuineness of the transactions, issued summons under Section 131 of the Act dated 15.03.2016 to the Principal Officers of the above mentioned parties for giving evidences and producing personally, the books of accounts and other documents, specified in annexure enclosed therein.

10. The Assessing Officer also deputed Ward Inspector for service of aforesaid summons to the aforesaid parties and therefore, Ward Inspector vide letter dated 17.03.2016 reported that the parties namely M/s. Sumukh Commercial Pvt. Ltd. and M/s. Olive Overseas Pvt. Ltd., were not found at the given addresses. Further, the summons u/s. 131 of the Act dated 15.03.2016 issued to the following parties namely, M/s. Duke Business Pvt. Ltd., and M/s. Viraj Mercantile Pvt. Ltd., were duly served on the given parties on 17.03.2016.

11. The Assessing Officer further observed that nobody attended him on the given date, as per above issued summons. Further notices under Section 133(6) of the Act dated 15.03.2016, issued to M/s. Falak Trading Co. Pvt. Ltd. and M/s. Pragati Gems Pvt. Ltd., calling various details, were returned back by the Postal department.

12. Thereafter the Assessee, furnished its submissions dated 17.03.2016. The Assessing Officer though considered the aforesaid

submissions of the Assesse, however, found the same as untenable and unacceptable and on perusing the details filed by the Assessee, observed more or less as under:

“That the Assessee had obtained unsecured loan amounting to Rs. 38,000,000/- from the above mentioned parties and has been debiting interest on these outstanding loan during the year under consideration. However, on verification of Copy of returns of income and audit report of the parties from whom the Assessee has received unsecured loan, it is observed that they were filing returns of income with total income being much less than the amount of money than the transactions for the financial year 2012-13, relevant to A.Y. 2013-14.”

13. The Assessing Officer further observed that no bank statements of the above mentioned parties were filed by the Assessee Company despite being asked specifically. In the absence of such details filed, the credit worthiness of the abovementioned parties to lend such huge sums of money cannot be ascertained. Further, in the absence of bank statements supporting with cash flow statements of the transfers of funds to the Assessee Company cannot be claimed, as it is in line with the income declared by it in the ROI.

14. The Assessing Officer, further observed that the Assessee company has also not produced the parties from whom it has received unsecured loan, for verification, at his office, despite being directed to do so. Further, no valid justification has been provided, in response to show-cause notice issued “as to why alleged share application money should not be treated as unexplained cash-credit under Section 68 of the Act”.

15. The Assessing Officer thereafter, while relying on various judgments, observed as under:

" That the onus lies on the Assessee company to establish the identity, creditworthiness and genuineness of the parties from whom such a huge amount of unsecured loan has been borrowed, with necessary and sufficient documentary evidence. In absence of the same, it clearly suggests that the Assessee company deliberately avoided furnishing requisite details by not complying fully with the terms of the statutory notices issued, specific query raised vide order-sheet noting and show-cause issued to it. It is quite clear from the above discussion, that in the instant case, the Assessee Company has failed to discharge its burden of establishing the identity and creditworthiness of the alleged and genuineness of the such transactions, hence, the alleged receipt of the unsecured loan amounting to Rs. 38,000,000/- found credited in the books of accounts maintained by the Assessee company, is liable to be held as unexplained, as the nature and source, thereof has not been satisfactorily explained by the Assessee company.

16. Thus, the Assessing Officer, ultimately, made the addition of Rs. 3,80,00,000/- as unexplained cash credit, within the meaning of Section 68 of the Act and added the same to the total income of the Assessee.

17. The Assessing Officer, also made a disallowance of Rs. 32,588/- under Section 14A of the Act, read with Rule 8D of the Income Tax Rules, 1962 (in short Rules), as well as disallowance of Rs. 86,99,072/- being proportionate interest @ 15% on interest free loans and advances amounting to Rs. 57,993,185/-

18. The Assessee being aggrieved challenged the aforesaid additions/disallowances by filing 1st appeal before the Ld. Commissioner.

19. The Assessee before the Ld. Commissioner has claimed as under:

" 4.2 During the course of appellate proceedings, it is submitted by the appellant that the company has taken the alleged unsecured loan from the following parties –

1. Falak Trading Co P Ltd. AABCF5837A Rs. 50,00,000

2. Olive overseas P Ltd. AACCR4512K Rs. 1,55,00,000
3. Sumukh Commercial P Ltd. AACCC7400M Rs. 75,00,000
4. Viraj Mercantile P Ltd. AADCV3852H Rs. 50,00,000
5. Duke Business P Ltd. AABCJ6245N Rs. 50,00,000

4.2.1 It is further submitted that the appellant company has provided all the details before the Ld. AO to satisfy the identity, genuineness and creditworthiness of the parties by providing the following documents.

Name of Address of the party/parties	Remarks
Falak Trading Co. Pvt Ltd	<p>Submission dated 15.09.2015</p> <ul style="list-style-type: none"> - Details of Unsecured Loans - Copy of Confirmation Accounts for the period from 01.04.2012 to 31.03.2013 <p>Submission dated 13.01.2016</p> <ul style="list-style-type: none"> - Copy of Confirmation Accounts for the period from 01.04.2012 to 31.03.2013. - Copy of Ledger Account in the books of the appellant company for the period from 01.04.2012 to 31.03.2013 - Copy of relevant Bank Statement of the appellant company highlighting the transaction done with Falak Trading Co. Pvt Ltd <p>Submission dated 09.03.2016</p> <ul style="list-style-type: none"> - Copy of Acknowledgement of Income Tax Return for AY 2013-14 - Copy of Financial Statement for AY 2013-14 <p>Submission dated 17.03.2016</p> <ul style="list-style-type: none"> - Copy of Confirmation of Accounts for the period from 01.11.2013 to 31.03.2014
Olive Overseas P Ltd (Realty Id Trading Co. P Ltd)	<p>Submission dated 15.09.2015</p> <ul style="list-style-type: none"> - Details of Unsecured Loans - Copy of Confirmation Accounts for the period from 01.04.2012 to 31.03.2013 <p>Submission dated 13.01.2016</p> <ul style="list-style-type: none"> - Copy of Confirmation Accounts for the period from 01.04.2012 to 31.03.2013. - Copy of Ledger Account in the books of the appellant company for the period from 01.04.2012 to 31.03.2013

	<ul style="list-style-type: none"> - Copy of relevant Bank Statement of the appellant company highlighting the transaction done with Olive Overseas P Ltd <p>Submission dated 09.03.2016</p> <ul style="list-style-type: none"> - Copy of Acknowledgement of Income Tax Return for AY 2013-14. - Copy of Financial Statement for AY 2013-14 <p>Submission dated 17.03.2016</p> <ul style="list-style-type: none"> - Copy of Confirmation of Accounts for the period from 01.04.2013 to 31.03.2014
Sumukh Commercial Pvt Ltd (Capetown Mer P Ltd)	<p>Submission dated 15.09.2015</p> <ul style="list-style-type: none"> - Details of Unsecured Loans - Copy of Confirmation Accounts for the period from 01.04.2012 to 31.03.2013 <p>Submission dated 13.01.2016</p> <ul style="list-style-type: none"> - Copy of Confirmation Accounts for the period from 01.04.2012 to 31.03.2013. - Copy of Ledger Account in the books of the appellant company for the period from 01.04.2012 to 31.03.2013. - Copy of relevant Bank Statement of the appellant company highlighting the transaction done with Sumukh Commercial Pvt Ltd <p>Submission dated 09.03.2016</p> <ul style="list-style-type: none"> - Copy of Acknowledgement of Income Tax Return for AY 2013-14. - Copy of Financial Statement for AY 2013-14 <p>Submission dated 17.03.2016</p> <ul style="list-style-type: none"> - Copy of Confirmation of Accounts for the period from 01.04.2013 to 31.03.2014
Viraj Mercantile P Ltd	<p>Submission dated 15.09.2015</p> <ul style="list-style-type: none"> - Details of Unsecured Loans - Copy of Confirmation Accounts for the period from 01.04.2012 to

	<p>31.03.2013</p> <p>Submission dated 13.01.2016</p> <ul style="list-style-type: none"> - Copy of Confirmation Accounts for the period from 01.04.2012 to 31.03.2013. - Copy of Ledger Account in the books of the appellant company for the period from 01.04.2012 to 31.03.2013. - Copy of relevant Bank Statement of the appellant company highlighting the transaction done with Viraj Mercantile P Ltd <p>Submission dated 09.03.2016</p> <ul style="list-style-type: none"> - Copy of Acknowledgement of Income Tax Return for AY 2013-14. - Copy of Financial Statement for AY 2013-14 <p>Submission dated 17.03.2016</p> <ul style="list-style-type: none"> - Copy of Confirmation of Accounts for the period from 01.11.2013 to 31.03.2014
<p>Duke Business Pvt Ltd (PK Trading I Pvt Ltd)</p>	<p>Submission dated 15.09.2015</p> <ul style="list-style-type: none"> - Details of Unsecured Loan. - Copy of Confirmation Accounts for the period from 01.04.2012 to 31.03.2013 <p>Submission dated 13.01.2016</p> <ul style="list-style-type: none"> - Copy of Confirmation Accounts for the period from 01.04.2012 to 31.03.2013. - Copy of Ledger Account in the books of the appellant company for the period from 01.04.2012 to 31.03.2013 - Copy of relevant Bank Statement of the appellant company highlighting the transaction done with Duke Business Pvt Ltd <p>Submission dated 09.03.2016</p> <ul style="list-style-type: none"> - Copy of Acknowledgement of Income Tax Return for AY 2013-14.

	<ul style="list-style-type: none"> - Copy of Financial Statement for AY 2013-14
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4.2.2 During the course of present proceedings, the appellant had filed the following evidences -

1. Relevant Bank statement of Duke Business P Ltd. highlighting the transactions with the appellant company for A.Y. 2013-14 and AY 2014-15.
2. Relevant Bank statement of Falak Trading CO P Ltd. highlighting the transactions with the appellant company for A.Y. 2013-14 and AY 2014-15.
3. Relevant Bank statement of Olive Overseas P Ltd. highlighting the transactions with the appellant company for A.Y. 2013-14 and AY 2014-15.
4. Relevant Bank statement of Sumukh Commercial P Ltd. highlighting the transactions with the appellant company for A.Y. 2013-14 and AY 2014-15.
5. Relevant Bank statement of Viraj Mercantiles P Ltd. highlighting the transactions with the appellant company for A.Y. 2013-14 and AY 2014-15.
6. Copy of acknowledgement of income tax return and financial statement of Duke Business P Ltd. for A.Y 2014-15
7. Copy of acknowledgement of income tax return and financial statement of Falak Trading Co P Ltd. for AY 2014-15
8. Copy of acknowledgement of income tax return and financial statement of Olive Overseas P Ltd. for A.Y 2014-15
9. Copy of acknowledgement of income tax return and financial statement of Sumukh Commercial P Ltd or A.Y 2014-15
10. Copy of acknowledgement of income tax return and financial statement of Viraj Mercantiles P Ltd. for AY 2014-15

With regard to the above evidences, the main contention of Id.AO to prove the creditworthiness of the mentioned parties will be served and there would not be any reason left to make the addition of unexplained cash credit u/s. 68 of the IT Act, 1961."

20. The Ld. Commissioner by considering the grounds of appeal, statement of facts, Assessment Order and the submissions of the Assessee and also examining the facts of the case carefully and arguments of the A.O., particularly the allegation that the Assessee has brought its unaccounted income into the books as cash sales and counter submissions of the Assessee replying to each and every point raised by A.O., found the arguments of the Assessee, more convincing, supported with evidence in the form of books of accounts, including the purchase, stock register, sale bills, cash

book and reconciled bank entries, which were not disputed by the A.O.. The AO also neither pointed out any defect nor rejected the books of accounts.

21. The Ld. Commissioner also observed that the Assessee company has fully discharged the burden of proof and explained the source of unsecured loan by establishing the identity and credit worthiness of the parties and genuineness of the transaction by banking instruments, along with documentary evidence. In the assessment order, AO made the disallowance on account of unsecured loans merely in the absence of bank statements of the lenders which could not be submitted due to non-availability of bank statements with the Assessee company during the course of assessment proceedings. However, during the course of appellate proceedings, in support of unsecured loan creditors viz. Falak Trading Co. Pvt. Ltd., Olive Overseas Pvt. Ltd., Sumukh Commercial Pvt. Ltd., Viraj Mercantiles Pvt. Ltd. and Duke Business Pvt. Ltd., the Assessee had filed the confirmations, copy of ledger accounts, copy of relevant bank statements, copy of income tax returns and financial statements for AY 2013-14 of all the above loan creditors, highlighting the transactions.

22. With regard to the identity of the unsecured lender parties, the Ld. Commissioner observed that the Assessee has submitted the names, addresses, PANs and acknowledgment of Income Tax Return of the above parties. The documents proved the identity of the said parties. Further, the copy of the bank account statements and the financial statements of the money lender proves the genuineness and credit worthiness of the parties. Therefore, the addition made by the AO is hereby deleted.

23. With regard to disallowance of interest on loan of Rs.86,99,072/-, the Ld. Commissioner has observed that as per the assessment order, the Assessee has advanced loan amounting to Rs.5,79,93,815/- during the year, but has not charged any interest on the said loan. The Assessee has claimed interest expenses of **Rs.1,94,07,569/-** on secured and unsecured loan taken. The Assessing Officer somehow by taking proportionate interest being @ 15% on the interest free loans and advances amounting to Rs.5,79,93,815/-, in total, disallowed the amount of Rs.86,99,072/- out of such interest expenses under Section 36(1) (iii) of the Act and added back to the income of the Assessee. **The Ld. Commissioner ultimately deleted such addition of Rs.86,99,072/- as well.**

24. The Revenue being aggrieved, challenged the decision of the Ld. Commissioner in deleting the aforesaid additions by filing first appeal and raising following grounds:

Grounds of Appeal

1. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made u/s 68 of the Act on the basis of the details/clarification/evidences filed by the assessee during the CIT(A) proceedings, ignoring the section 46A of Income tax Rules, 1962, in which it is mandated that the Ld.CIT(A) must called remand report from the Assessing Officer, if any new details/clarification/evidence produced by the assessee during the CIT(A) proceedings.*

2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the deduction claimed u/s 36(1)(iii) of the Act, ignoring the fact that the assessee has advanced interest free loans to other entity, hence, proportionate interest on interest free loans liable to be disallowed.*

3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the deduction claimed u/s 36(1) (iii) of the Act, ignoring the decision of Hon'ble Madras High Court in the case of A Murali & Co.(P.) Ltd. Vs. ACIT, Company Circle-1(1) reported in [2013] 36 taxmann.com 126*

(Madras) wherein it was held that if the borrowed fund is not utilized for business purpose, then authorities are right in rejecting assessee's claim for deduction of interest on borrowed capital under section 36(1)(iii)."

25. Ground No. 1 pertains to the deletion of the addition made under Section 68 of the Act, on the basis of details/clarification/evidences filed by the Assessee during the first appellate proceedings before the Ld. Commissioner, ignoring the provisions of Rule 46 A of the Income Tax Rules, 1962, wherein it is mandated that the CIT (A) must call for remand report from the Assessing Officer, if any, in view of the details/clarification/evidences produced by the Assessee during the CIT (A) proceedings.

26. As observed above, the Assessee had taken unsecured loan of Rs.3,80,00,000/- in total from the parties mentioned above. Therefore, in order to examine the aforesaid transactions of Rs.3,80,00,000/-, the AO issued show cause notice to the Assessee, who in response to the same filed the relevant documents, which were not found sufficient by the AO. Further the notices/summons under Section 131 of the Act were issued to the aforesaid parties which remained uncomplied with. Further, the notices under Section 133(6) of the act were also issued to two parties i.e. M/s. Falak Trading Co. Pvt. Ltd. and M/s. Pragati Gems Pvt. Ltd., however, the same were returned back by the postal department.

27. Though the Assessee filed the copy of the returns of income and audit reports of the parties from whom the Assessee had received unsecured loan, however, the AO observed that total income of such companies being much less than the amount of money than the transactions for the financial year under consideration.

28. The Assessing Officer further emphasized that no bank statements of the above mentioned parties were being filed by the Assessee company despite being asked specifically. In the absence of any such details filed, the credit worthiness of the above parties to lend such huge sum of money cannot be ascertained. Further in absence of bank statement supporting with cash flow statement of transfer of funds to the Assessee company, cannot be claimed as it is in line with the income declared by it in the return of income.

29. The AO also observed that mere repeating transactions through banking channel without justifying the nature of the deposits with the regular ways of income, would not lead to conclusion and the credit worthiness. The Assessing Officer ultimately held that the Assessee has failed to establish the identity, credit worthiness of the parties and genuineness of the transactions and has therefore, failed to discharge its onus cast under Section 68 of the Act and therefore, the AO ultimately made the addition of Rs.3,80,00,000/- in total as unexplained cash credit under Section 68 of the Act and added back to the total income of the Assessee.

30. We observe from the paper book, page no. 217 to 218 that the Assessee by making request under Rule 46 A of the Rules, submitted following additional evidences:

"2.4.8 *In this regard, we would like to state that the appellant company is eligible to file Additional Evidence before your honour for the year under consideration. Therefore, it is submitted that the appellant company are enclosing the following Additional Evidences before your honour:*

- a) *Relevant Bank Statement of Duke Business Pvt Ltd highlighting the transaction with the appellant company for AY 2013-14 and AY 2014-15.*

- b) *Relevant Bank Statement of Falak Trading Co Pvt Ltd highlighting the transaction with the appellant company for AY 2013-14 and AY 2014-15.*
- c) *Relevant Bank Statement of Olive Overseas Pvt Ltd highlighting the transaction with the appellant company for AY 2013-14 and AY 2014-15.*
- d) *Relevant Bank Statement of Sumukh Commercial Pvt Ltd highlighting the transaction with the appellant company for AY 2013-14 and AY 2014-15.*
- e) *Relevant Bank Statement of Viraj Mercantiles Pvt Ltd highlighting the transaction with the appellant company for AY 2013-14 and AY 2014-15.*
- f) *Copy of Acknowledgement of Income Tax Return and Financial Statement of Duke Business Pvt Ltd for AY 2014-15.*
- g) *Copy of Acknowledgement of Income Tax Return and Financial Statement of Falak Trading Co Pvt Ltd for AY 2014-15.*
- h) *Copy of Acknowledgement of Income Tax Return and Financial Statement of Olive Overseas Pvt Ltd for AY 2014-15.*
- i) *Copy of Acknowledgement of Income Tax Return and Financial Statement of Sumukh Commercial Pvt Ltd for AY 2014-15.*
- j) *Copy of Acknowledgement of Income Tax Return and Financial Statement of Viraj Mercantiles Pvt Ltd for AY 2014-15."*

31. The Assessee in view of the aforesaid rule and documents, before the Ld. Commissioner has claimed that it has provided all the relevant details before the Assessing Officer to prove the identity and credit worthiness of the parties and genuineness of loan transactions. However, the Assessing Officer still made the addition merely in the absence of bank statements of the lenders, which could not be submitted due to non-availability of bank statement with the Assessee Company during the course of assessment proceedings and therefore, in view of the addition, the Assessee desired to produce additional evidences and grounds to be put forth, which were directly relevant to its case for deciding the aforesaid subject matter. The aforesaid facts were also acknowledged by the Ld. Commissioner in para No. 4.2.2 of the impugned order.

32. The Ld. Commissioner therefore, by considering the peculiar facts and circumstances that the Assessee before the Ld. Commissioner filed the relevant details including the confirmations from the parties, copy of returns of income and audit reports, ledger accounts of the lender parties, books of accounts including the purchases, stock register, sale bills, cash book and reconciled bank entries before the AO. Further, the Ld. Commissioner has also taken into consideration the peculiar fact that the Assessing Officer has not found out any single defect in the books of account and has also not rejected the same. The Ld. Commissioner further observed that during the course of appellate proceedings, in respect of unsecured loan creditors, the Assessee had filed the PANs, confirmations, copy of ledger accounts, copy of bank statements highlighting the transactions, copy of income tax returns and financial statements for the assessment year under consideration of all the above loan creditors, and therefore, the Assessee has established the identity and credit worthiness of the parties and genuineness of the transactions and ultimately, deleted the aforesaid addition.

33. The Revenue department, more or less has raised ground of appeal no.1, which pertains to non-granting of opportunity to the Assessing Officer for examining the additional evidences filed by the Assessee before the Ld. Commissioner, in the appellate proceedings.

34. No doubt, Rule 46 A prescribes certain conditions for allowing the additional evidences, such as where the Assessing Officer refused to admit evidences, which ought to have been admitted. Secondly, where the Assessee was prevented for sufficient cause from producing the evidences, which he was called upon to produce

by the Assessing Officer, or where the Assessee was prevented by sufficient cause from producing before the Assessing Officer any evidence, which is relevant to any ground of appeal or where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the Assessee to adduce evidences relevant to any ground of appeal. Rule further prescribes that no evidence shall be admitted under Sub-rule (1), unless the Ld. Commissioner records, in writing the reasons for its admission. Further, sub-rule (4) of Rule 46A prescribes that nothing contained in this Rule shall affect the power of the Ld. Commissioner to direct the production of any document or the examination of any witness to enable him to dispose of the appeal, or for any other substantial cause.

35. Herein, in the instant case, though the Assessee, before the Ld. Commissioner, in the written submission dated 19.12.2022, has mentioned that the bank statements of the lenders could not be submitted due to non-availability during the course of assessment proceedings and, therefore, the Assessee desired to produce additional evidences directly relevant to the decision of its case, however, it appears from the said claim that the Assessee has not made any specific prayer directly for admission of the additional evidences. The Ld. Commissioner also, in the impugned order, by referring to the aforesaid evidences, observed that the main contention of the Assessee is that purpose to prove the creditworthiness of the mentioned parties would be served and there would not be any reason left to make the addition on account of unexplained cash credit under Section 68 of the Act.

36. The Ld. Counsel, Shri Ajay Singh, though refuted the claim of the Revenue and the learned Assessing Officer, however, honestly claimed alternatively that the case may be remanded to the file of

the Assessing Officer for **the limited purpose of** examination and verification of the aforesaid additional evidences.

37. We observe that the Ld. Commissioner has not asked and/or directed the Assessee for production of any document or examination of any witness to enable him to dispose of the appeal or for any substantial cause, and therefore the exclusion clause available under sub-rule (4) of Rule 46A, would not be applicable in the instant case. Whatsoever it may be, it is a fact that the Assessing Officer has more or less made the addition mainly on account of non-submission of the relevant bank statements of the lender parties. As the Assessee has filed the aforesaid additional evidences before the Ld. Commissioner, who without giving any opportunity to the Assessing Officer to examine the said evidences and without passing a specific order qua admissions of the aforesaid additional evidences, entertained the same and thus, violated the provisions of Rule 46A of the Rules Hence, considering the peculiar facts and circumstances in totality, as the documents/evidences referred to above are essential for adjudication of the issue involved, and therefore, for just and proper decision of the case and substantial justice, we deem it appropriate to remand the instant issue to the file of the Assessing Officer, just for verification of the aforesaid additional evidences, without making any roving enquiry. Thus, it is ordered accordingly.

38. Coming to grounds no. 2 & 3, which pertains to proportionate disallowance of Rs.86,99,072/-, we observe that the Assessee before the Ld. Commissioner, has claimed that total advances given by the Assessee company was of Rs.2,79,05,485/- and out of said amount, the Assessee has given various deposits and advances towards the premises and therefore, the same cannot be considered for the purpose of interest free loans, as the same

were directly related to the business of the Assessee company. The Assessee further claimed that the Assessee company has sufficient own and interest free funds available to the tune of **Rs.37,74,59,171/-** as on 31.03.2013.

39. The Ld. Commissioner by considering such claim of the Assessee has observed that in the present case, the Assessee has advanced interest free loans towards the premises, etc. as the same were directly related to the business of the Assessee company and therefore, there is a strength in the argument of the Assessee. The AO has also not brought any facts on the record that the funds were diverted or not utilized for the purpose of business. Once the expenses were actually incurred wholly and exclusively for the purposes of business, the same cannot be disallowed on the plea of improper utilization of economic resources. A disallowance is warranted only, when any part of the liquid funds is utilized for non-business purposes, and that too on an estimated basis. In the instant case, the Assessing Officer has not pointed out any such deviation. **Therefore, the disallowance of expenditure of Rs.86,99,072/- is not justified and liable to be deleted.**

40. Thus, the Ld. Commissioner while relying on the judgments of the Hon'ble Apex Court in the case of *Hero Cycles (P) Ltd. vs. CIT (2015) 379 ITR 347 (SC)* and in the case of *S.A. Builders Ltd. vs. Commissioner of Income Tax (Appeals), Civil Appeal No. 5811 of 2006 [reported in (2007) 288 ITR 1 (SC)]* and considering the commercial expediency, deleted the aforesaid addition made on account of disallowance made qua expenditure of interest on loan.

41. We have given thoughtful consideration to the peculiar facts and circumstances of the case. Admittedly, the Ld. Commissioner while deleting the aforesaid addition of **Rs.86,99,072/-** not only

considered the peculiar facts and circumstances of the case in the context of such addition under consideration and the fact that the total advances given by the Assessee company was of Rs.27,90,54,085/- and out of which, the Assessee has given various deposits and advances towards premises, which cannot be considered for the purpose of interest free loans given, as the same were directly related to the business of the Assessee company but also taken into consideration the peculiar fact that the Assessee company had sufficient owned interest free funds available to the tune of Rs.37,74,59,171/- as on 31.03.2013. Further, the advancing interest free loans towards premises etc. were directly related to the business of the Assessee Company and once the expenses actually incurred, were wholly and exclusively for the purpose of business, the same cannot be disallowed on the plea of better utilization of economic resources. Further, the Ld. Commissioner has also observed that the AO has not brought any facts on record that the funds were diverted and not utilized for the purpose of business.

42. We further observed that the Ld. Commissioner, not only considered the peculiar facts and circumstances, but in fact also considered the judgments of the Hon'ble Apex Court referred to above, while adjudicating the issue under consideration. Even otherwise, we could not find any reason or material to contradict the findings of the Ld. Commissioner in deleting the aforesaid addition of **Rs.86,99,072/-** and **thus, the order of the Ld. Commissioner on this aspect/ground is upheld and grounds no. 2 & 3 raised by the Revenue are dismissed.**

43. In the result, the revenue's appeal is partly allowed in the above terms.

Order pronounced in the open court on 13.02.2026.

**Sd/-
(PRABHASH SHANKAR)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

Tarun Kushwaha
Sr. Private Secretary.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.