

आयकर अपीलीय अधिकरण न्याय पीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

BEFORE SHRI AMIT SHUKLA, JM &
SHRI ARUN KHODPIA, AM

I.T.A. No. 5418/Mum/2025
(Assessment Year: 2014-15)

ACIT-15(1)(2), 126B, 1 st Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	Digitainment India Pvt. Ltd., Unit No. 311, Mahavir Industrial Estate, Off Mahakali Caves Road, Andheri (East), Mumbai-400093. PAN: AAECD5601P
Revenue -अपीलार्थी / Appellant	:	Assessee - प्रत्यर्थी / Respondent

Revenue by : Shri Annavarani Kosuri, Sr. DR

Assessee by : Shri Ravi Sawana & Ms. Neha
Sharma & Ms. Prativa Agarwal,
AR

Date of Hearing : 23.12.2025

Date of Pronouncement : 10.02.2026

ORDER

Per Arun Khodpia, AM:

This captioned appeal is preferred by the revenue against the order of Commissioner of Income Tax (Appeals)/ National Faceless Appeal Centre (NFAC), Delhi (in short “Ld. CIT(A)”), dated 11.06.2025, for the Assessment Year (AY) 2014-15, which in turn arises from the assessment under section 143(3) of the Income Tax Act, 1961 (the Act) dated 29.12.2016, passed by

ACIT-15(1)(2), Mumbai. The grounds of appeal raised by the revenue are as under:

“a) Whether, on the facts and in the circumstances of this case and in law, the Ld. CIT(A) erred by deleting the addition of Rs. 1,91,50,000/- made by the AO under Section 68 of the Income Tax Act, 1961. The assessee failed to discharge the onus of proving the genuineness and creditworthiness of the transaction.

b) Whether, on the facts and in the circumstances of this case and in law, the Ld. CIT(A) incorrectly held that the AO had not disputed the creditworthiness of Shri Sushil Kumar Agarwal. The AO's order clearly states that the creditworthiness of the individual to advance such a large sum was not proved. The CIT(A)'s finding is contrary to the facts on record.

c) Whether, on the facts and in the circumstances of this case and in law, the Ld. CIT(A) erred by accepting documents from the public domain as sufficient proof of creditworthiness. The assessee's failure to produce the individual, Shri Sushil Kumar Agarwal, and the unserved notice issued by the AO under Section 133(6) demonstrate that the assessee could not, and did not, prove the creditworthiness of the alleged creditor.

d) Whether, on the facts and in the circumstances of this case and in law, the Ld. CIT(A) failed to appreciate the various anomalies noted by the AO, such as the discrepancy between the amount shown as share application money by the assessee (Rs. 1,91,50,000/-) and the amount confirmed by the individual (Rs. 1,68,95,000/-). This discrepancy, along with the lack of proper documentation and the failure to produce the individual, proves that the transaction was not genuine.

e. Whether, on the facts and in the circumstances of this case and in law, the Ld. CIT(A)'s order is based on a perverse finding that the AO should have obtained the ITR of the said entity and details from other sources. The law places the onus on the assessee to prove the source and nature of the credit. The AO's duty is to scrutinize the explanation provided, and if it is found to be unsatisfactory, to make

the addition. The burden of proof does not shift to the AO to conduct an investigation on behalf of the assessee.”

2. The concise facts of the case are, the assessee company is engaged in the business of development, production, sales, distribution and promotion of digital content, movies, short films, songs, ad-films, documentaries, advertisement, music, games, applications, television serials and software. The return of income showing a loss of Rs. 33,02,880/- was filed by the assessee on 29.11.2014 for the relevant AY. Subsequently, the case was selected for scrutiny. Accordingly, the notice under section 143(2) of the Act was issued. During the assessment proceedings, it is observed by Id. AO that the assessee had shown Rs. 1,91,50,000/- under share application money pending allotment, the assessee was asked to furnish details of the same. In response, the assessee furnished the details that this amount was received from Shri Sushilkumar S Agarwal (hereinafter referred to as (“Mr. Agarwal”)), however due to a dispute with Mr. Agarwal, who had sent a legal notice to the assessee for not allotting the shares, which is evident from a letter dated 17.03.2016 received from Registrar of companies, Mumbai, having mention about the complaint made by Mr. Agarwal. In order to check the genuineness of claim of assessee, the AO initiated enquiry under section 133(6) of the Act on Mr. Agarwal, however the notice returned un-served by the postal authority. Another notice under section 133(6) was issued but there was no response by Mr. Agarwal. In the non-complying state of affairs by Mr. Agarwal the assessee company was asked to

produce the parties who have failed to respond the notices under 133(6) of the Act. The Id. AO further noted that submission was made in Tapal (post), whereby reply to notice under section 133(6) was made by Mr. Agarwal consisting therein copies of ITR-V of Mr. Agarwal for AY 2014-15, ledger of Digitainment (the assessee) in the books of Mr. Agarwal and further it is submitted by Mr. Agarwal that he has paid a some of Rs. 1,73,05,000/- towards share application money out of which he received shares amounting to Rs. 5,00,000/- and balance amount of Rs. 1,68,95,000/- was ultimately converted into loan account due to non-allocation/receipt of shares in stipulated time. The Id. AO further noted some more details about the increase in authorized share capital of the assessee company and further issuance of shares to other parties. It is observed by Id. AO that the assessee's books have shown an amount of Rs. 1,9,1,50,000/- under the share application money pending allotment, whereas Mr. Agarwal shown only Rs. 1,68,95,000/-, thus the genuineness of transaction is doubtful. Further the creditworthiness and financial capacity of Mr. Agarwal have not been proved by the assessee company, thus, the provisions of section 68 remain unsatisfied by the assessee. Accordingly, the total amount received from Mr. Agarwal during the year on account of share application money pending allotment (Rs. 191.50 Lac), as well as, share capital introduced (Rs. 5.00 Lac) totaling to Rs. 1,96,50,000/- was added to the taxable income of assessee under section 68 of the Act.

3. Being dissatisfied with the aforesaid addition by Id. AO the assessee preferred an appeal before the Id. CIT(A) wherein it is clarified by the assessee that the total amount of Rs. 1,96,50,000/- was received in two parts i.e. Rs. 1,73,95,000/- from Mr. Agarwal and remaining from Ultra Distributors Pvt. Ltd. for Rs. 22,55,000/- under the terms of Memorandum of Understanding (MOU) with M.V. Ultra Group on 21.08.2013, representing by Ultra Distributors Pvt. Ltd. and Mr. Agarwal. It is also clarified by the assessee before the Id. CIT(A) that Execution of the said MOU was accepted by the Ultra Group and further the Advocates of Ultra Groups has sent a notice to the assessee demanding the sum of Rs. 1,96,00,000/- along with interest @ 22%. Before the Id. CIT(A) assessee also furnished some additional evidences such as statement of Directorship held by Mr. Agarwal in various companies (downloaded from website of MCA/ROC), profile of Mr. Agarwal (source Indian Counsel of Impex Website and Ultra India Website), remuneration statement filed by Ultra Distributors Pvt. Ltd. on ROC Website, value of holding of Mr. Agarwal in M/s Ultra Distributors Pvt. Ltd. as on 31.03.2014 amounting to Rs. 16,80,37,337/-. After considering all this details and additional evidence submitted by the assessee before the Id. CIT(A) decided the appeal in favour of the assessee with the following findings:

“5. Decision

I have carefully perused grounds of appeal, statement of facts, assessment order, submissions made by the Appellant and other details/evidences on records.

5.1. Grounds 1 to 4

Vide these grounds, the Appellant has objected to the addition of Rs.1,96,50,000/- u/s 68 of the Act. In this regard, the Appellant has submitted that the said money was received by way of share application money from Shri Sushilkumar Agarwal and Ultra Group. The Appellant has, however, shown the entire amount against Mr Sushilkumar Agarwal as he is the MD of Ultra Group. This money was received vide two MOUs signed between the Appellant Shri Sushilkumar Agarwal and Ultra group. The Appellant has submitted all relevant details before the AO. The Appellant has further submitted that Shri Sushilkumar Agarwal has also not denied having advanced money to the Appellant. However, due to some disputes, only shares worth Rs.5,00,000/- were allotted to Shri Sushilkumar Agarwal. Remaining amount of Rs.1,91,50,000/- has been treated as share application money. The Appellant has, further, submitted that due to this ongoing disputes, Shri Sushilkumar Agarwal is not cooperating and has wrongly submitted before the AO that the said amount is in the nature of debt to the Appellant.

The Appellant has sought for admission of additional evidences to establish creditworthiness of Shri Sushilkumar Agarwal of Ultra Group. These documents are public documents obtained from ROC website (Ministry of Corporate Affairs).

5.1.1. *I have considered the submissions made by the Appellant. I have also perused the assessment order. The AO has made addition u/s 68 treating the amount of Rs.1,91,50,000/- as unaccounted money of the Appellant brought back into its books through MOUs entered into with Shri Sushil Kumar and Ultra Group. The AO seems to have come to this conclusion as there was no response from Shri Sushilkumar Agarwal against letter issued u/s 133(6) and also ledger account of the Appellant submitted by Shri Sushilkumar Agarwal was unsigned. Further, the submissions from Shri Sushilkumar Agarwal also showed that he has treated an amount of Rs.1,68,95,000/- as loan whereas, the Appellant is showing Rs.1,91,50,000/- as share application money. In view of these facts, the AO came to the conclusion that Rs.1,91,50,000/- received by the Appellant from Shri Sushilkumar Agarwal is unaccounted money of the Appellant and so added the same u/s 68 of the Act.*

On appreciation of the facts and findings of the AO, the undisputed fact that emerges is that there is a dispute between the Appellant and Shri Sushilkumar Agarwal. Therefore, submissions made by either of them cannot be taken at face value. However, I find that the AO seems to have failed to take note of complaint filed by Shri Sushilkumar Agarwal against the Appellant before MCA and the subsequent show cause issued by MCA to the Appellant. It is observed that Shri Sushilkumar Agarwal had filed a complaint before MCA against the Appellant on 28/01/2016. This complaint has been filed for non-

compliance by the Appellant u/s 42(6) of Companies Act 2013. Shri Sushilkumar Agarwal has stated in the said complaint that since the Appellant has not allotted shares, it is under obligation to repay the amount of Rs.1,68,95,000/-. In this regard, it is important to note that section 42(6) of Companies Act deals with timelines for allotment and repayment of application money in private placement. Thus, the above complaint of Shri Sushilkumar Agarwal makes it clear that the amount of Rs.1,68,95,000/- is not in the nature of debt but share application money advanced to the Appellant for allotment of shares. Thus, to that extent submissions made by the Appellant is correct.

*Now coming to the creditworthiness of Shri Sushilkumar Agarwal, MD of Ultra Group or the Ultra Group, the AO has not given any adverse findings. Shri Sushilkumar Agarwal had submitted his ITR-V for AY 2014-15 before the AO. The AO has not given any adverse finding on the same and, therefore, creditworthiness of Shri Sushilkumar Agarwal is not in doubt. It is a settled issue that in reference to section 68 of the Act, initial onus is on the assessee to establish identity, creditworthiness and genuineness of any transaction. Once the initial onus is discharged by the assessee, the onus shifts to the AO. In this case, the Appellant has submitted various documents like bank statements, copy of MOUs entered into with Shri Sushilkumar Agarwal and Ultra Group, all documents pertaining the ongoing litigations with Shri Sushilkumar Agarwal. These have not been doubted by the AO. Further, the AO was also having ITR-V of Shri Sushilkumar Agarwal for AY 2014-15. In background of these facts, in my considered opinion, the Appellant has discharged its onus in respect of all the three ingredients u/s 68 of the Act i.e. identity of the person, creditworthiness of the person and genuineness of the transaction. Therefore, the onus shifts to the AO to prove otherwise. In this regard, I find that the AO has failed to carry out any enquiries. A simple query from the website of ROC (MCA) would have given details of directorship holding of Shri Sushilkumar Agarwal. Further, the AO was having PAN of Shri Sushilkumar Agarwal. The AO could have obtained ITRs of Shri Sushilkumar Agarwal from concerned AO. The AO could have also obtained financial statements of Ultra Group companies from the website of ROC, since these are public documents. In view of the same, I hold that, in reference to section 68 of the Act, all the three ingredients (i.e. identity of the person, creditworthiness of the person and genuineness of the transactions) stand satisfied in respect of monies received by the Appellant from Shri Sushilkumar Agarwal and the Ultra Group (controlled by Shri Sushilkumar Agarwal). In view of the same, the addition of Rs.1,91,50,000/- made u/s 68 of the Act is directed to be deleted. **Grounds are allowed.***

As regards additional evidences submitted by the Appellant, I find the same to be public documents which, in anyways, could have been obtained by the AO from ROC website. However, the AO did not, as discussed above. These being public documents, I do not treat the same as additional evidences.

5.2. As regards Ground 5, it is observed that, though, the AO has considered the loss of Rs.33,02,84/- returned by the Appellant. However, while computing the taxable income of the Appellant, there is a calculation error as the same remained to be reduced from the addition of Rs.1,91,50,000/-. In any case, this has lost relevance since the addition of Rs.1,91,50,000/- has been directed to be deleted. Ground is, thus, allowed.”

4. As the addition made by ld. AO under section 68 was deleted by the ld. CIT(A), now the revenue is in appeal before us challenging the findings of First Appellate Authority (FAA).

5. At the outset, the ld. Sr. DR representing the revenue submitted that the ld. AO has issued notice under section 133(6) of the Act to the Investor Mr. Agarwal, however primarily no response was received but later the response was received *qua* the amount paid by him for Rs. 1,73,95,000/- but the remaining amount of Rs. 22,50,000/- was never explained before the ld. AO even the documents justifying the creditworthiness of the share applicant and his financial capacity were not produced before the ld. AO, various documents submitted before the ld. CIT(A), though are downloaded or procured from Public Domain, such additional evidences were never brought to the knowledge of the ld. AO, so as to examine the same and offer his comments. Under such circumstances the decision of ld. CIT(A) was not in accordance with the mandate of law, rather in contravention to the principles of natural justice. Further, the anomalies/discrepancies brought on record by ld. AO regarding share application money pending allotment for Rs. 1,91,50,000/-, whereas the

amount of Rs. 1,68,95,000/- was only confirmed by Mr. Agarwal, therefore such discrepancy was never addressed even before the Id. CIT(A). The MOU relied upon by the assessee was also first time furnished before the Id. CIT(A), which could not be a document in public domain.

6. In view of such facts and circumstances the decision of Id. CIT(A) narrating therein the perverse finding that the Id. AO should have obtained the ITR and other information of the entities from other sources, whereas the law had placed the onus on the assessee to prove the source and nature of the credit.

7. Per contra, the Id. Authorized Representative (AR) of the assessee submitted that all the necessary evidence were furnished before the Id. AO also, the Id. AO has never doubted the genuineness and creditworthiness of the transaction and investor. The assessee has furnished all the necessary evidences after extracting the same from external sources i.e. ROC and other relevant website, further the evidence available with the Id. AO in the form of ITR of Mr. Agarwal and his confirmations were never confronted to the assessee, so as to rebut with further evidences to explain the transaction. The additional evidence furnished before the Id. CIT(A) are all fetched from Public Domain which the Id. AO could have also obtained. The assessee has clearly established the genuineness of the transaction before the Id. CIT(A) that when the total amount of Rs. 1,96,50,000/- was received as per the MOU and such information is further fortified by the complain of Mr. Agarwal through ROC. Regarding

creditworthiness of Mr. Agarwal, assessee submitted the turnover of Ultra Group amounting to Rs. 25.74 crore in Financial Year (FY) 2013-14, showing a profit before tax of Rs. 1.67 crore, also Mr. Agarwal had drawn a salary of Rs. 72.00 Lac per annum from the said group as per the published balance-sheet of M/s Ultra Distributors Pvt. Ltd., which is available in the ROC website, therefore the creditworthiness of Mr. Agarwal cannot be doubted and the reason for non-allotment of share was also apparent being on account of dispute between the assessee and the investor.

8. It is submitted that, in view of such facts and circumstances the ld. CIT(A) has rightly appreciated the facts of the case and accordingly have deleted the addition of Rs. 1,91,50,000/-.

9. We have considered the rival submissions and perused the material available on record. On perusal of the facts of the present case, it is evident that certain information, which was sought by the ld. AO from the assessee regarding the investor Mr. Agarwal, under whose name an amount of Rs. 1,91,50,000/- was standing as liability, under the head Share application money pending for allotment, but could not be explained by the assessee in absence of corroborative evidence like confirmation, ITR and other financial details of the investors. The reason for non-furnishing of such documents was the dispute between the parties and the investor was not co-operative with the assessee, as apparent from the complaints made before the ROC. Copy of complain dated

17.03.2016 was furnished by the assessee before the ld. AO, wherein the amount disputed was shown at Rs. 1,68,95,000/- by Mr. Agarwal. Under such circumstances, it has been concluded that the said amount was unexplained within the meaning of section 68, *de-hors* the documents regarding creditworthiness of the investor Mr. Agarwal. Some additional evidences were furnished by the assessee before the ld. CIT(A) which comprises the details of Directorship held by Mr. Agarwal downloaded from ROC's website, copy of MOU dated 21.08.2013, copy of MOU dated 02.12.2013, copy of ledger of Mr. Agarwal in the books of assessee etc. All the aforesaid additional evidences were considered by the ld. CIT(A) being obtained from public domain, with the opinion that the ld. AO had not made any efforts to obtain the same, therefore the same are not treated as additional evidence. While gone through the observations of the ld. CIT(A) in the impugned order, we find that the additional evidences furnished by the assessee are downloaded from ROC or other website like Indian Counsel of Impex, Ultra Industries etc. could be considered as additional evidence available in Public Domain, however the copies of MOU which are the genesis of entire transactions for the investment by Mr. Agarwal and Ultra Distributors Pvt. Ltd. with the assessee, which were not from before the ld. AO neither the same by any stretch of imagination could be construed as documents available in Public Domain, therefore the observation of ld. CIT(A) fails on the test of logics and natural justice while such documents were never confronted to the ld. AO to revert with a remand

report *qua* such information. Further under various documents, it is claimed by Mr. Agarwal that his outstanding investment is Rs. 1,68,50,000/-, whereas the remaining investment of Rs. 22,50,000/- by M/s Ultra Distributors Pvt. Ltd. was never substantiated on the test stone of preconditions under section 68 of the Act. In view of such observations, though primarily, we are partly convinced with the finding of ld. CIT(A), to extent of unsettled amount of Rs. 1,68,50,000/- received from Mr. Agarwal, that the identity and creditworthiness of the investor found to be established through the additional evidences furnished before him but the same needs verification and examinations by the ld. AO. Regarding the amount received from M/s Ultra Distributors Pvt. Ltd. for Rs. 22,50,000/- was still not substantiated by way of any document before the ld. CIT(A), thus we are unable to subscribe and pursued, as to how the ld. CIT(A) was convinced about the amount received from M/s Ultra Distributors, with no finding for the said amount while directing to delete the addition.

10. In backdrop of aforesaid facts and circumstances and our observations, we are of the considered view that the additional documents furnished by the assessee before the ld. CIT(A), which were not entirely unearthed from the Public Domain, therefore, the observations of ld. CIT(A) finding fault in the actions of ld. AO was logically incorrect. Thus, it would be appropriate to restore this matter back to the file of ld. CIT(A) for fresh adjudication, by providing all the additional evidences to the ld. AO for examination and his

comments though a remand report and also to place his findings *qua* the amount of Rs. 22,50,000/- received from M/s Ultra Distributors Pvt. Ltd. in terms of provisions of section 68 of the Act, which he failed to address, but have directed to delete without any explanations supported with corroborative evidence.

11. Consequently, the grounds of appeal raised by the revenue are allowed for statistical purposes.

12. Resultantly, the appeal of revenue stands **allowed for statistical purposes**, in terms of our aforesaid observations.

Order pronounced in the open court on 10-02-2026.

Sd/-
(AMIT SHUKLA)
Judicial Member

Mumbai, Dated : 10-02-2026.

**SK, Sr. PS*

Sd/-
(ARUN KHODPIA)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai