

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'A' BENCH, LUCKNOW
BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER
ITA No.256/LKW/2025
A.Y. 2013-14**

OPG Sons Properties Pvt. Ltd., 46 Parede, Jail Road, Sitapur-261001 PAN: AABC06982B (Appellant)	vs.	The Income Tax Officer, Sitapur-261001 (Respondent)
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Assessee by:	Sh. Rakesh Garg, Adv
Revenue by:	Sh. Amit Kumar, DR
Date of hearing:	14.01.2026
Date of pronouncement:	27.02.2026

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the assessee against the orders of the Id. CIT(A), NFAC under section 250 of the Income Tax Act, 1961 on 25.02.2025, wherein the Id. CIT(A) has dismissed the appeals of the assessee against the orders of the Id. AO that were passed under section 147 r.w.s. 144B of the Income Tax Act, 1961 for the A.Y. 2013-14 on 26.03.2022. The grounds of appeal are as under:-

"1. Because the Notice issued u/s 148, the reasons as recorded and the material/ information as relied upon all being self-contradictory, contrary to facts, without verification, the re-assessment framed thereafter is all without jurisdiction bad in law, the same be quashed.

2. Because there being no income having escaped assessment, the entire proceedings initiated u/s 148 and the reassessment framed thereafter being without jurisdiction the same is bad in law be quashed.

3. Because the approval given by the competent authority is purely mechanical without verification of facts, without application of mind, the entire proceedings initiated are bad in law, the reassessment framed be quashed.

4. Because the addition of Rs.2,61,53000/- made u/s 68 for reasons of failure to disclose the investment made in the property, being contrary to

the facts and to the provisions of the section itself, the addition made be deleted.

5. Because on a proper consideration of facts and circumstances of the case it would be found that the For-OPG SONS PROP, PVT. LTD. provisions of section 68 are not applicable to the facts of the case, the addition of Rs. 2,61,53,000/- made, be deleted.

6. Because there being no failure to disclose the actual Investment made in purchase of land building and plant, and all investment having being disclosed in the balance sheet which accounts have been audited, the addition of Rs.2,61,53,000/- made is unwarranted, bad in law be deleted.”

2. The facts of the case are that an information was flagged on the Insight Portal under CIB information module from the office of the DIT(I&CI), Lucknow regarding purchase of an immovable property for a consideration of Rs. 3,25,40,000/-. On perusal of the sources of this purchase, it was found that only Rs.40,00,000/- of the said investment was verifiable in the form of the unsecured loan. Thus, ld. AO, after perusing the income tax return, came to a conclusion that income amounting to Rs. 2,85,40,000/- had remained unexplained on account of this investment and for this reason, proceedings were initiated by issue of notice under section 148. No return was filed in response to this notice therefore, a further notice under section 142(1) was issued. However, as no compliance was received, the same were sent to the verification unit for physical service. These were served through speed post on 24.02.2022 but the ld. AO records that no compliance was made to them. In his assessment order, the ld. AO records details of six notices that were sent to the assessee for making up compliance but records that all of them were not complied with. However, in response to the final show cause notice, the assessee did submit that the original return filed under section 139(1) may be treated as the return filed under section 148 of the Act. Therefore, a notice under section 143(2) was issued to the assessee. The assessee also furnished documents and a note in response to the total cost incurred for the purchase of factory, land and building amounting to Rs. 3,25,60,000/-, which it sought to prove through an elaborate bank statement. The assessee claimed to have taken loans from four parties amounting to Rs. 24.07 Lacs and it furnished the copies of ITR and computation of income of these parties. However, the ld. AO

notes that the assessee failed to submit the evidence with regard to the remaining sources of investment and therefore, after allowing for the sources of investment that were explained, he added the remaining amounts of Rs. 2,61,53,000/- back in the hands of the assessee under section 68 of the Income Tax Act and brought the same to tax under section 115BBE.

3. Aggrieved with this addition, the assessee filed an appeal before the NFAC. However, the Id. CIT(A) records the fact that five notices were issued to the assessee and while four of the notices resulted in adjournment applications, there was no response to the final notice that was issued. Accordingly, the Id. CIT(A) held that the assessee was not interested in pursuing the appeals and by placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. B.N. Bhattacharjee and Ors (1979) 118 ITR 461 (SC) and the decision of the Hon'ble Madhya Pradesh High Court in the case of Estate Of Late Tukojirao Holkar vs Commissioner Of Wealth-Tax (1997) 223 ITR 480 (MP), he dismissed the appeal of the assessee in limine for want of prosecution.

4. The assessee is aggrieved with this summary dismissal of his appeal and has accordingly come in appeal before us. Sh. Rakesh Garg, Advocate (hereinafter referred to as the Id. AR) appearing on behalf of the assessee submitted that there was no income that escaped assessment and therefore, the entire proceedings initiated under section 147 was without jurisdiction. It was pointed out that all the investment that had been made for the purchase of land and building with the plant was recorded in the books of accounts and debited under the head, "fixed assets". The audited accounts of the assessee company were already on record and the total investment of Rs. 3,25,40,000/- as made, was appearing on the debit side of the balance-sheet. The entire payment made for the purchase of land, building and plant was through proper banking channels and was debited in the books of accounts. No part of the investment made in the purchase of land, building and plant was unexplained expenditure or undisclosed. It was submitted that the assessee had sufficient funds and which appear under the share capital, loan and advances. The assessee had explained that the investment in purchase of property

was out of funds as per the books of accounts, and in support of the same had attached details of all loans and advances as appearing in the balance-sheet. The Id. AO had added a sum of Rs. 2,61,53,000/- on this account and the Id. CIT(A) had upheld the addition by dismissing the appeal ex parte. However, it was submitted that the statement of facts, the grounds of appeal and the assessment order were self-explanatory to show that the addition made by the AO under section 68 of the Act and as confirmed by the CIT, were contrary to the facts as narrated in the assessment order and contradictory to the provisions of law. It was further argued that the case had been opened for reason that the assessee had failed to disclose the investment but the addition had subsequently made on account of unexplained credit under section 68 of the Act. It was further submitted that section 68 could not be applicable for reason that the source of investment was not a cash credit and no addition could be made under this section until there was any difference in the value disclosed by the assessee in the books and as found by the DIT (I&CI). The Id. AR took us through the replies filed by the assessee before the AO, NFAC contained on pages 2 and 3 of the paper books. It was submitted that attached along with this reply was a confirmation certificate from M/s Agarwal Food Products regarding the debit balance in the account. Page 9 of the said paper book was highlighted which was a confirmation from M/s Agarwal Food Products that there was a debit balance of Rs. 1,53,17,392/- as on 31.03.2013. The Id. AR, thereafter invited our attention to the reply filed before the AO, NFAC on pages 4 to 8 of his paper book in which the entire details of the source for purchase of immovable property had been explained to the AO. It was therefore, submitted that the detailed submissions made by the assessee had not been rebutted or refuted at any stage by the AO or the Id. CIT(A) but had been brushed aside on the pretext that the assessee had failed to furnish some supporting documents. It was, therefore, prayed that the additions may be deleted or in the alternative restored back for the consideration of the lower authorities in view of the facts presented by the assessee.

5. On the other hand, Sh. Amit Kumar, Sr. DR (hereinafter referred to as the DR) submitted that perusal of both the assessment order and the CIT(A) order showed that the assessee had remained non-compliant during proceedings. Whenever the assessee made an investment or credited some amount into his accounts, the primary onus lay upon the assessee to explain the same with evidences. As the assessee had failed to explain the same with evidences and in fact not complied at all before the Id. CIT(A), the Id. CIT(A) was justified in sustaining the additions that had been made by the AO for failure of the assessee to submit such evidences.

6. We have duly considered the facts and circumstances of the case. We note that the Id. CIT(A) has dismissed the case of the assessee for default but he has not pronounced any decision on merit. We are of the view that once the assessee had filed the appeal and submitted statement of facts, the Id. CIT(A) was obliged to decide the issue on merits as there is no compulsion for an assessee to submit further documentation in pursuance of its appeal. Thus, the Id. CIT(A) was free to decide the issue on merits on the basis of the submissions already made by the assessee either in the statement of facts or before the Assessing Officer and for this purpose, he could have called for a remand report for the Assessing Officer, if required. After considering the submissions made by the assessee before the AO and the fact that the Id. CIT(A) has not adjudicated on the merits of the case, we deem it appropriate, in the interest of justice, to restore the matter back to the file of the Id. CIT(A) so as to enable him to decide the issue on merits. The Id. CIT(A) may afford the assessee an opportunity to make its submissions alongwith the necessary evidences and thereafter pass an order in accordance with law. We would like to further caution the assessee that failure to make compliance to the notices issued by the Id. CIT(A), could be viewed as a failure to explain the investments and be held against the assessee in future proceedings. Accordingly, the assessee is advised to diligently reply to the notices issued by the Id. CIT(A) to facilitate him in ascertaining the true facts of the case. As the matter stands

restored to the file of the ld. CIT(A), the appeal of the assessee is held to be allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 27.02.2026 in the Open Court.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED: 27/02/2026

Sh

Sd/-
[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.