

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

BEFORE MS. KAVITHA RAJAGOPAL, JM  
AND  
SHRI MAKARAND VASANT MAHADEOKAR, AM

ITA No.1169/Mum/2026  
(Assessment Year: 2011-12)

<b>M/s. 31 Infotech Limited,</b> Tower No.5, 3 <sup>rd</sup> Floor, International Infotech Park, Vashi, Navi Mumbai – 400 703	Vs.	<b>DCIT, Circle 15(1)(2)</b> Aayakar Bhawan, Maharishi Karve Road, Mumbai – 400 020
<b>PAN:AAACI5250Q</b>		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

<b>Assessee by</b>	:	Shri Ved K. Jain, AR (Virtually Appeared)
<b>Respondent by</b>	:	Shri Ajay Chandra, CIT DR

<b>Date of Hearing</b>	:	24.03.2026
<b>Date of Pronouncement</b>	:	27.03.2026

**ORDER**

**Per Kavitha Rajagopal, JM:**

This appeal is filed by the assessee challenging the order of the Learned Commissioner of Income Tax (Appeals) [‘Ld. CIT(A)’ for short], National Faceless Appeal Centre (“NFAC” for short) passed u/s. 250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2011-12.

2. The assessee has raised the following grounds of appeal:

*“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (hereinafter referred to as CIT(A)) is bad both in the eyes of law and on facts.*

*2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in dismissing the appeal of the assessee as 'defective without providing reasonable opportunity of being heard to the assessee in violation of principle of natural justice.*



3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in passing the order exparte ignoring the written submissions filed on various dates by the assessee in response to the notices issued to the assessee.*

4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO despite the fact that assessment order passed by the AO under section 143(3)/144C of the Income Tax Act, 1961 is illegal, without jurisdiction and void as the same has been passed beyond the due date prescribed under the Income Tax Act, 1961.*

5. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the transfer pricing adjustment of Rs. 33,56,901/- made by the AO /TPO on account of interest chargeable on share application money pending allotment with AE recharacterizing the same as loan.*

(ii) *That the abovesaid addition has been confirmed despite the fact that the same has been made by the TPO/AO by applying 12% interest rate based on the Notification issued by MCA on 14.12.2011 plus mark-up of 3% for various kinds of risks, which is wholly without any basis and the same is wrong and contrary to the provisions of the Act and Rules.*

(iii) *That the abovesaid adjustment has been confirmed despite the fact that the Notification issued by MCA on 14.12.2011 relied upon by the AO is not applicable to the facts of the case of the assessee and hence cannot be applied to determine the arm's length price of the transaction.*

(iv) *Without prejudice to the above, the learned CIT(A) has erred both on facts and in law in ignoring the contention of the assessee that the interest rate on such transactions cannot be more than LIBOR rate in view of the judgment of various High Courts in this regard.*

6. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the adjustment of Rs. 15,91,70,392/- made by the TPO/AO on account of commission on corporate guarantee extended by the Assessee to the banks on behalf of the AE.*

(ii) *That the abovesaid adjustment has been confirmed ignoring the contention of the assessee that the transaction of corporate guarantee extended by the Assessee to its AE does not fall within the ambit of definition of International taxation under section 928 of the Income Tax Act, 1961*

(ii) *That the Learned CITIA) has erred in ignoring the contention of the assessee that the corporate guarantee for its AE is in the nature of shareholder activity and assessee was the ultimate beneficiary of the corporate guarantee and therefore, adjustment made by the AO is unsustainable,*



*(iv) Without prejudice to the above, the learned CIT(A) has erred in ignoring the contention of the assessee that the commission rate applied by the TPO IAO @ 3% per annum by adding 2% mark-up for various kinds of risk has no basis and is contrary to the provisions of Income Tax Act and Rules therein.*

*(v) Without prejudice to the above, the learned CIT(A) has erred in ignoring the contention of the assessee that the TPO/AO were erred in ignoring the internal comparable under the CUP Method brought on record by the assessee in this regard.*

*(vi) Without prejudice to the above, the learned CIT(A) has erred in ignoring the contention of the assessee that AO/TPO has made the computation errors while computing the adjustment on account of guarantee commission*

*7. (1) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the transfer pricing adjustment of Rs. 36,76,104/- made by the AO TPO by applying 15% interest on out-bound investment of Rs. 2,45,07,360/- by treating the same as deemed loan,*

*(i) That the abovesaid addition has been confirmed despite the fact that the same has been made by the TPO/ADO by applying 12% interest rate based on the Notification issued by MCA on 14.12.2011 plus mark-up of 3% for various kinds of risks, which is wholly without any basis and the same is wrong and contrary to the provisions of the Act and Rules.*

*(iii) That the learned CIT(A) has erred in confirming the action of the AO/TPO in holding that transaction of purchase of shares of Elegon Infotech Ltd. by the assessee is not arm's length price by rejecting the Valuation Reports which is contrary to the facts as well as provisions of the Act.*

*(iv) Without prejudice to the above, the learned CIT(A) has erred both on facts and in law in ignoring the contention of the assessee that the interest rate on such transactions cannot be more than LIBOR rate in view of the judgment of various High Courts in this regard.*

*8. (i) On the facts and circumstances of the case, the Learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs. 5,12,15,072/- made by the AD on account of preliminary expenses claimed under section 350 of the Income Tax Act, 1961.*

*(ii) That the abovesaid disallowance has been confirmed ignoring the detailed submissions and explanations submitted by the assessee in this regard.*

*(iii) Without prejudice to the above, the Learned CIT(A) has erred both on facts and law in confirming the action of the AO in ignoring the fact that AO ought to have allowed*



*expenses incurred as allowable revenue expenses under section 37(1) of the Income Tax Act, 1961.*

*9. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and law in confirming the disallowance of Rs. 12,50,000/- on account of compounding fees paid by the assessee for regularizing procedural lapse under FEMA Act, 1999 under section 37(1) of the Income Tax Act, 1961.*

*(ii) That the abovesaid addition has been confirmed despite the fact that compounding fees paid by the assessee was to regularize the procedural lapse and not for the offence which is prohibited under section 37(1) of the Income Tax Act, 1961 and therefore, the addition made by the AO is unsustainable.*

*10. (i) On the facts and circumstances of the case, the Learned CIT(A) has erred both on facts and law in confirming the disallowance of Rs. 3,32,30,759/- made by the AO under section 14A of the of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962.*

*(ii) That the abovesaid addition has been confirmed rejecting the contention of the assessee that when own funds are more than investments and no borrowed funds have been used by the assessee to make the investments, the disallowance made by the AO is uncalled for.*

*(iii) That the learned CIT(A) has erred in confirming the above disallowance made by the AO without recording any satisfaction that the suo-motto disallowance declared by the assessee under Sec. 14A was not correct.*

*(iv) Without prejudice to the above and in the alternative, the CIT(A) has erred both on facts and in law in confirming the disallowance ignoring the settled law that the total amount of disallowance under section 14A cannot exceed the amount of exempt income.*

*(v) That the above-said disallowance has been confirmed ignoring the detailed submissions and explanations along with the evidences brought on record by the assessee in this regard.*

*11. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and law in confirming the disallowance of Rs. 77,64,024/- made by the AO under section 36(1)(vii) of the Income Tax Act, 1961 on account of bad debts written off of dues receivable form Government companies.*

*(ii) That the abovesaid disallowance has been made despite the fact that the above amount is allowable expenditure under section 36(1)(vii) of the Income Tax Act.*

*12. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and law in confirming the action of the AO in not allowing the set off unabsorbed*

*depreciation brought forward from earlier years as per the provision of section 32(2) of the Income Tax Act, 1961 while computing the total income.*

*13. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and law in confirming the action of the AO in not allowing the depreciation eligible under section 32 of the Income Tax Act, 1961 on opening Written down value of the software expenses disallowed and treated as capital expenditure in earlier assessment years.*

*14. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and law in confirming the action of the AO in adjusting the amount of Rs. 1,60,03,486/- against the TDS credit without providing any reason or details in respect of the same.*

*15. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and law in confirming the action of the AO in not granting credit for TDS to the extent of Rs. 45,71,790/- (Rs. 23,77,02,715/- less Rs.23,31,30,925/-) claimed by the assessee.*

*16. On the facts and circumstances of the case, the Learned CIT(A) has erred both on facts and law in confirming the action of the AO in not granting the credit of Dividend Distribution Tax of Rs. 16,84,492/- paid by the assessee.*

**Addition while computing the income under the Provisions of 115JB of the Income Tax Act.**

*17. (i) On the facts and circumstances of the case, the Learned CIT(A) has erred both on facts and law in confirming the action of the AO in confirming the addition of Rs. 3,32,30,759/- under section 14A read with rule 8D while computing the book profit for the purpose of section 115JB of the Income Tax Act, 1961.*

*(ii) That the abovesald addition has been made by ignoring the settled position of law that the provision of section 14A, being the deeming provision, the same cannot be extended to the provision of section 115JB of the Income Tax Act.*

*18. That the assessee craves leave to add, amend or alter any of the grounds of appeal.”*

**3.** Brief facts of the case are that the assessee company had filed its return of income dated 30.11.2011 declaring total loss at Rs.11,02,86,282/- and had claimed a refund of Rs.13,55,621/- under the normal provisions of the Act and subsequently filed a revised return on 31.11.2012 declaring total loss of Rs.13,06,91,564/- and claimed a refund of Rs.2,22,65,558/-. The assessee's case was selected for scrutiny and notices u/s 143(2) and 142(1) of the Act were duly issued and served upon the assessee. The Learned Assessing



Officer (“Ld. AO” for short) passed the draft assessment order dated 28.03.2015, subsequent to which the final assessment order dated 12.05.2015 was passed u/s 143(3) r.w.s. 144C of the Act where the Ld. AO made various additions/disallowances thereby determining the total income at Rs.23,92,56,970/- under the normal provisions and Rs.111,41,72,813/- as book profit u/s 115JB of the Act.

4. Aggrieved, the assessee was in appeal before the first appellate authority who vide *ex-parte* order dated 15.12.2025 had dismissed the appeal filed by the assessee *in limine* for non-compliance.

5. Aggrieved, the assessee is in appeal before us, challenging the order of the Ld. CIT(A).

6. We have heard the rival submissions and perused the materials available on record. Before getting into the merits of the case, it is observed that the Ld. CIT(A) has passed an *ex-parte* order for the reason that the assessee has been non-complaint throughout the appellate proceeding without getting into the merits of the case.

7. The Learned Authorized Representative (“Ld. AR” for short) for the assessee contended that the assessee had filed all relevant documentary evidences which were not considered by the Ld. CIT(A) and brought out attention to the relevant details filed by the assessee during the first appellate proceeding. The Ld. AR prayed that the assessee be given one more opportunity to present its case before the first appellate authority.



8. On the above observation, we are of the considered opinion that the assessee has filed its written submission along with various documentary evidences before the Ld. CIT(A) which are also enclosed in the paper book filed before us. It is also observed that the assessee has been non-compliant to various notices issued by the Ld. CIT(A) on several dates. In order to extend the assessee with one more opportunity, we deem it fit to remand this issue back to the file of the Ld. CIT(A) for *denovo* adjudication by adhering to the principles of natural justice and in the interest of justice dispensation. The assessee is directed to comply with the proceeding before the first appellate authority without any undue delay from its side and the Ld. CIT(A) is also directed to adjudicate the issue *denovo*, based on the submission and documentary evidences, if any, filed by the assessee in accordance with the provisions of law and on the merits of the case.

9. In the result, the appeal filed by the assessee is hereby allowed for statistical purpose.

*Order pronounced in the open court on 27.03.2026*

**Sd/-**  
**(MAKARAND VASANT MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
**JUDICIAL MEMBER**

Mumbai; Dated: 27.03.2026

\* Kishore, Sr. P.S.

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai



ITA No.1169/Mum/2026  
M/s. 31 Infotech Limited

5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai

