IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

DR. B.R.R. KUMAR VICE PRESIDENT
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No.1963/AHD/2026
(Assessment Year: 2017-2018)

Nidra Hospitality Gujarat Private Limited
1275-1277, Four Points By Sheraton Ward No.02 ,Opposite Punjab National Bank Fateh Gunj, Vadodara-390002, Gujarat
[PAN: AAJCS8192H] ..... **Appellant**

Vs

Assistant Commissioner Of Income Tax Circle 2(1)(2), Vadodara
Aayakar Bhawan , Income Tax Office,
Race Course Circle,
Vadodara-390007, Gujarat ..... **Respondent**

Appearance

For the Appellant/Assessee	:	Shri Ranjan Chopra, AR
For the Respondent/Department	:	Shri Deependra Kumar, Sr. DR

Date

Conclusion of hearing	:	15.07.2026
Pronouncement of order	:	01.10.2026

O R D E R

Per Rahul Chaudhary, Judicial Member:

1. The present appeal has been preferred by the Assessee against the Order, dated 16/03/2026, passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the '**CIT(A)'**] whereby the Learned CIT(A) had partly allowed the appeal against the Assessment Order, dated 27/12/2019, passed under Section 143(3) of the Income Act, 1961 [hereinafter referred to as 'the **Act**'] for the Assessment Year 2017-2018.

2. The Assessee has raised following grounds of appeal:

1. That the Order of learned CIT(A),NFAC sustaining the order of the learned Assessing Officer is bad in law, contrary to the facts on record

and is liable to be quashed.

2. That the learned CIT(A)/NFAC as well as learned Assessing Officer have erred both in law and on facts in treating the loan of Rs. 2,67,00,000/- obtained from an NBFC as unexplained cash credit under Section 68 of the Income Tax Act, 1961, despite the fact that the appellant company had duly furnished the documentary evidences establishing the identity and creditworthiness of the lender and the genuineness of the transaction.

3. That the Ld. CIT(A) erred in concluding a lack of creditworthiness of the lender company merely on the basis of its returned loss for the year. The CIT(A) failed to appreciate the settled legal principle that creditworthiness must be assessed based on the availability of funds in the bank account at the time of the transaction, which was evident from the bank statements provided, and not on the basis of the lender's taxable income OR profitability.

4. That the Ld. CIT(A) erred in confirming the addition based on the observation of back-to-back fund transfers into the lender's account, without the AO conducting any further inquiry to establish that the funds ultimately emanated from the undisclosed sources of the appellant company. The addition has been sustained on mere suspicion and surmises without establishing any live nexus between the funds and the appellant.

5. That the Ld. CIT(A) failed to appreciate that the appellant cannot be called upon to prove the "source of the source" of the funds. The AO, having failed to disprove the evidence furnished by the appellant through an independent and meaningful inquiry, was not justified in shifting the burden back onto the appellant.

6. That the Ld. CIT(A) has erred in confirming the consequential disallowance of interest expenditure of Rs.3,06,832/-. Since the unsecured loan received is genuine, the interest paid thereon is an allowable business expenditure, and the disallowance is unwarranted. Without prejudice to the above, the disallowance of interest is purely consequential to the addition under Section 68, and if the said addition is deleted, the disallowance of interest must also be deleted.

7. The learned CIT(A) has erred on the facts and in the circumstances of the case and in law in confirming the action of the Assessing Officer by applying the enhanced rate of tax of 60 percent as per the amended

provisions of Section 115BBE of the Income-tax Act, 1961, on the income of Rs.2,70,06,832/- determined under Section 68 of the Act, failing to appreciate that amendment made must be construed as prospective in nature, applicable only from Assessment Year 2018-19 onwards.

3. The relevant facts in brief are that the Assessee filed its return of income for Assessment Year 2017-2018 declaring a total loss of INR.5,13,57,857/-. During scrutiny, the Assessing Officer \observed that the Assessee received an unsecured loan of INR.2,67,00,000/- from Carbel Mercantile Ltd. In response to query raised by the Assessing Officer in this regard, the Assessee furnished (a) the lender's PAN, (b) loan confirmation, (c) ITR acknowledgement, (d) audited financial statements, (e) HDFC Bank account statements, and (f) proof of interest payment after deduction of tax at source. The Assessing Officer, however, treated the loan as unexplained cash credit under Section 68 of the Act observing that the lender had returned loss and had received fund prior to granting loan.

4. The appeal preferred by the Assessee before Learned CIT(A) on this issue did not yield favourable result as the Learned CIT(A) confirmed the addition.

5. The Assessee is now in appeal before the Tribunal on the above issue.

6. Learned Authorised Representative for the Assessee appearing before this Tribunal submitted that the Assessee had fully discharged its initial onus in terms of Section 68 of the Act by producing primary documentary evidence establishing the identity and creditworthiness of the lender and the genuineness of the transaction. It was contended that the Assessing Officer neither conducted any independent inquiry under Section 133(6) or 131 of the Act, nor did the Assessing Officer bring on record any material to show that the

funds emanated from the Assessee. The bank statement clearly showed that interest bearing loan was taken through banking channel and interest payment was made after withholding tax at source. All the relevant disclosures were made in the Books of Accounts. The Assessing Officer has failed to point out any infirmity in the documents furnished by the Assessee. It was further submitted that for Assessment Year 2017-2018, the Assessee could not be put under the burden of proving source or source.

7. Conversely, the Learned Departmental Representative relied on the orders of the lower authorities. It was submitted that the lender company had returned a loss for the relevant year and that immediate before loan disbursement there was transfer of fund into the bank account of the lender.

8. We have considered the rival submissions and perused the material on record.

9. In the present case it is admitted position that the Assessee had placed on the assessment record (a) Copy of signed loan confirmation from M/s Carbel Mercantile Ltd., (b) Bank account statement of HDFC Bank (Safdarjung Branch, New Delhi) demonstrating banking channels for the transaction; (c) Income Tax Return Acknowledgement (ITR-V) of the lender company for Assessment Year 2017-18; (d) Audited Balance Sheet and Profit & Loss Account of M/s Carbel Mercantile Ltd for Financial Year 2016-2017 relevant to Assessment Year 2017-2018; (e) Proof of interest payment @ 11.25% after proper deduction and remittance of Tax Deducted at Source (TDS). Thus, all the primary documents (such as PAN, income tax return, confirmation, audited financials, and bank statements) were furnished by the Assessee during the assessment proceedings to establish identity and creditworthiness of the lender and the genuineness of the loan transaction. Thus, the Assessee had

discharged the primary onus in terms of Section 68 of the Act; and the onus was on the Assessing Officer to verify the details and bring cogent material to controvert the documentary evidence furnished by the Assessee. In the present case, the Assessing Officer conducted no independent inquiry whatsoever to disprove the documentary evidence submitted by the Assessee. It would be pertinent to note that the Assessee had disclosed the source of borrowed funds and the same was not doubted by the Assessing Officer. The Assessing Officer doubted the source of source as the Assessing Officer observed that funds were received by the lender (through banking channel) before remittance of the loan amount to the Assessee. We note that the present appeal pertains to Assessment Year 2017-2018. The statutory requirement to explain the 'source of source' in respect of loans or borrowings was inserted into the First Proviso to Section 68 by the Finance Act, 2022, with prospective effect from 01/04/2023 and therefore, amended provisions were not applicable for the Assessment Year 2017-2018. In the absence of any independent inquiry by the Assessing Officer and in view of the failure of the Revenue to bring on record to controvert the submission or documentary evidence furnished by the Assessee, the addition of INR.2,67,00,000/- made by the Assessing Officer under Section 68 of the Act cannot be sustained and the same is hereby deleted. As a result, the consequential disallowance of interest expenditure of INR.3,06,832/- under Section 69C is also deleted.

10. In view of the above, Ground No. 1 to 6 raised by the Assessee are allowed. Ground No. 7 pertaining to applicable rate of tax is treated as allowed for statistical purposes without retuning any findings on merits.

11. In the result, in terms of paragraph 8 above, the appeal preferred by the Assessee is allowed.

Order pronounced on 01.10.2026

Sd/-	**Sd/-**
(Dr. B.R.R. Kumar)	**(Rahul Chaudhary)**
Vice President	**Judicial Member**

दिनांकDated : 01.10.2026
अहमदाबाद Ahmedabad; **True Copy**
HC.PS

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1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
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