

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 2213/MUM/2025
Assessment Year: 2011-12**

Mohit Bharatiya 1001/1101, Khushi Pride Belmendo, Opp Link Road Santacruz W, Vallabh Bhai Road, Mumbai - 400054. (PAN: ALCPK2213Q)	Vs.	Deputy Commissioner of Income tax - 4(3)(1), Mumbai
(Appellant)		(Respondent)

**ITA No. 3850/MUM/2025
Assessment Year: 2011-12**

Assistant Commissioner of Income tax - 4(3)(1), Mumbai	Vs.	Mohit Bharatiya 1001/1101, Khushi Pride Belmendo, Opp Link Road Santacruz W, Vallabh Bhai Road, Mumbai - 400054. (PAN: ALCPK2213Q)
(Appellant)		(Respondent)

Present for:

Assessee : Shri Satyaprakash Singh, CA
Revenue : Shri Satyaprakash R. Singh, CIT DR
and Shri Leyaqt Ali Aafaqui, Sr. AR

Date of Hearing : 07.08.2025
Date of Pronouncement : 24.09.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These two appeals are cross appeals filed by the assessee and revenue against the order of ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2024-

25/1075119403(1), dated 27.03.2025 passed against the assessment order by DCIT, 4(3)(1), Mumbai, u/s. 143(3) r.w.s. 147 of the Income-tax Act (hereinafter referred to as the "Act"), dated 27.12.2018 for Assessment Year 2011-12.

2. Grounds taken by assessee are reproduced as under:

1. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in confirming addition of Rs. 5,00,000/- on account of loan taken from Anoop Saxena. The appellant prays that the said addition may please be deleted.*
2. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in confirmation addition of Rs. 10,14,500/- on account of loan taken from Lucky Motors. The appellant prays that the said addition may please be deleted.*
3. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in confirming addition of Rs. 14,00,000/- on account of unsecured loan taken from Sanjeev Malhotra. The appellant prays that the said addition may please be deleted.*
4. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in making addition of Rs. 40,000/- on account of payment to LIC and Rs. 53,724/- on account of drawing. The appellant prays that the said addition may please be deleted.*

2.1 Grounds taken by the revenue are reproduced as under:

1. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs. 20,00,000/- by AO on account of unsecured loan taken from Arvind Parikh even though the assessee was not able to discharge its onus to prove the creditworthiness and genuineness of the loan transaction?*
2. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs. 13,71,59,121/- by AO on account of unsecured loan taken from Mumbadevi Bullion even though the assessee was not able to discharge its onus to prove the creditworthiness and genuineness of the loan transaction*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs. 30,00,000/- by AO on account of unsecured loan taken from Rakhi Parikh even though the assessee was not able to discharge its onus to prove the creditworthiness and genuineness of the loan transaction*
4. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition made u/s. 68 of the I.T Act on*

account of unsecured loans taken by the assessee merely on the basis of co-relating of the book entries of the balance sheet ignoring the specific finding of the Assessing Officer in the assessment order that substantial cash deposits were made in the bank account before issue of loan cheques, which does not prove the creditworthiness of the loan creditors and genuineness of the loan transaction.

3. Brief facts of the case are that assessee filed his return of income on 28.07.2011, reporting total income at Rs.71,22,216/-. Subsequently, on receipt of information from ADIT(Inv), Unit-2, Mumbai regarding suspicious transaction report received from Saraswat Co-operative Bank, enquiries were conducted in respect of bank account maintained by the assessee with the said bank. Based on the findings of this investigation, case of the assessee was taken up for reopening by issuing notice u/s.148 dated 27.03.2018. From the scrutiny of the entries in the said bank account, ld. Assessing Officer noted about the following credit entries for which explanations were called for.

S. No.	Name of the party	Amt (Rs.)
1	Shri Anoop Saxena	5,00,000
2	Shri Arvind Parikh	20,00,000
3	Lucky Motors	10,14,500
4	Mumbadevi Bullion	13,71,59,121
5	Rakhi Parikh	30,00,000
6	Sanjeev Malhotra	14,00,000
7	LIC of India	40,000
8	Drawings	53,724
	Total	14,51,67,345

3.1. Assessee furnished detailed explanations, explaining the nature and source of these entries and discharging the burden casted u/s.68 along with corroborative documentary evidences. However, ld. Assessing Officer did not find himself convinced with the submissions and made the addition of the above tabulated entries by applying

provisions of section 68, to complete the assessment at total assessed income of Rs.15,22,89,605/-. At the first appellate stage, assessee reiterated the submissions so made in the assessment proceedings. Assessee also filed certain additional evidences which were considered by Id. CIT(A) while adjudicating the appeal.

3.2. The details of the loan transactions undertaken by the assessee during the year under consideration is tabulated as under:

Sr No	Name	Address	PAN	Jurisdiction	Amount
1	Anoop Saxena	41, L. B Railway Staff Colony, Santacruz West Mumbai 400054	AFEP58656M	Income Tax Officer 42(2)(1), Mumbai	5,00,000
2	Arvind Kumar Purshottam Das Parekh	5117, Shobhana Building, Sion Main Road, Sion West, Mumbai 400022	AADPP0517E	Income Tax Officer 23(1)(6), Mumbai	20,00,000
3	Lucky Motors Prop Mr. Ikhalag Abdul Gaffar Davawalla	Flat No n2, Mansuri Mansion, 37th Road, Bandra West, Mumbai 400050	AAEPD1485C	Income Tax Officer 23(1)(1), Mumbai	10,14,500
4	Mumbadevi Bullion Prop Mr. Irtesh Jawaharlal Mishra	Office No 106, Diamond Plaza,, 84/85, Dhanji Street, Mumbai 400003	ASXPM8236D	Income Tax Officer 42(3)(3), Mumbai	13,71,59,121
5	Rakhi Kapil Parikh	5117, Shobhana Building, Sion Main Road, Sion West, Mumbai 400022	AAJPP6966H	Income Tax Officer 41(1)(4), Mumbai	30,00,000
6	Sanjev Malhotra	130-D,Kitchlu Nagar, Ludiana, Punjab 141001	ACHPM4381P	Income Tax Officer 7(1), Ludhiana	14,00,000
Grand Total					14,50,73,621

3.3. The documentary evidences which the assessee had furnished in support of the loan transactions is also tabulated below:

Sr.No.	Name of the party	Amount (Rs.)	Supporting documents for loans
1	Anoop Saxena	5,00,000	a) Copy of Income Tax Ack/Return
2	Arvind Parekh	20,00,000	
3	Lucky Motors Prop Mr. Ikhalag Abdul Gaffar Davawalla	10,14,500	b) Copy of Bank statement
4	Mumbadevi Bullion Prop Mr. Irtesh Jawaharlal Mishra	13,71,59,121	
5	Rakhi Kapil Parikh	30,00,000	c) Copy of Loan Confirmation
6	Sanjev Malhotra	14,00,000	
			d) Copy of Annual report in case of Mumbadevi Bullion

3.4. Out of the loan transactions with the above tabulated six parties, Id. CIT(A) granted relief to the assessee for three parties namely, Arvind Parekh, Mumbadevi Bullion and Rakhi Parikh for which revenue is in appeal. The Id. CIT(A) sustained the addition for the other three parties

namely, Anoop Saxena, Lucky Motors and Sanjev Malhotra for which the assessee is in appeal.

4. We first take up appeal filed by the revenue wherein relief granted for the three parties is under challenge. From the perusal of the order of ld. CIT(A), we take note of the observations and findings arrived at after elaborately taking into consideration the submissions and documentary evidence furnished by the assessee. Ld. CIT(A) noted that assessee had furnished confirmation letter, copy of bank account as well as income tax return of the lender party Arvind Parikh. Further, the amount borrowed by the assessee was repaid on 15.03.2011, i.e., within the same year. Ld. Assessing Officer sought explanation on source of source for the loan transaction for which ld. CIT(A) noted that such a requirement u/s. 68 is applicable with effect from 01.04.2013 and not relevant for the year under consideration.

4.1. In respect of the loan taken from Mumbadevi Bullion, it was pointed out that similar loan transaction by the assessee with this lender in AY 2010-11 and AY 2012-13 was added in the hands of the assessee which travelled in appeal before the Coordinate Bench of ITAT, Mumbai in ITA No. 801and 6384/Mum/2018 for AY 2010-11 and in ITA No. 4285/Mum/2019 for AY 2012-13, order pronounced on 28.09.2022. The Coordinate Bench while dealing with the addition made in respect of loan taken by the assessee from this party, held in favour of the assessee. Coordinate Bench in para 10 took note of the comments offered by ld. Assessing Officer in the remand report which is extracted below:

5.	Mumbadevi Bullion	9,46,69,537	On perusal of the confirmation, there is of an opening balance Rs.30,00,000/- and adjusting the transaction during the year, there is a closing balance of
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			Rs.9,76,69,537/-outstanding in the name of the assessee. Whereas, on perusal of the audited balance sheet, an amount of Rs.9,76,69,537/- is appearing in the name of the assessee under the head Loans & advances. The Capital of Shri Irtesh Jawaharlal Mishra is only Rs.9,37,327/- and the source of funds in the hands of Mumba Devi jewels (Irtesh Mishra) from which the loans has been given to the assessee is not clear.
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4.2. On the factual position, Coordinate Bench gave its observation and findings in para 15 with conclusion drawn in para 27. Both the paragraphs are extracted below for ready reference. It is noted that the six lenders in question noted in para 15 extracted above, one of the lender is Mumbadevi Bullion.

“15. Having heard both the parties and after giving thoughtful consideration to the facts of the case and upon examining the material on record, it is noted that the assessee had furnished name, complete address, PAN details, account confirmation and the financial statements of all the six (6) lenders in question. It is also not in dispute that the loans were transacted through banking channel and each of the loan creditor was assessed to income-tax. The Ld. AR showed us that, the financial statements of each loan creditor for the financial year 2009-10 reflected the transaction with the assessee. These facts are noted to have been acknowledged by the AO in his remand reports as well. It was further brought to our notice that the loans in question had been fully re-paid in subsequent FYs 2010-11 to 2013-14 and as such repayments were not doubted or questioned by the succeeding AOs.”

“27. For the elaborate reasons as discussed in the foregoing, we therefore hold that the additions made u/s 68 of the Act-in AY 2010-11 was untenable both on facts as well as in law and was, therefore, rightly deleted by the Ld. CIT(A). Accordingly, Ground No. 4 of the Revenue stands dismissed.”

4.3. In addition to the above favourable finding of the Coordinate Bench Id. CIT(A) also took note of the factual position about submission made by the assessee of confirmation of income tax return, bank statement, audited financial statements and audit report of the lender Mumbadevi Bullion. He analysed the balance sheet of the lender to take note of the credit worthiness for granting loan to the assessee. A doubt

was casted by ld. Assessing Officer about the source of cash deposits in the bank account of the lender for which ld. CIT(A) noted that these deposits of cash were from sales made by the lender which was minuscule to the total turnover of Rs. 77.49 crore with bank balance of Rs.21.95 crore at the year end. He further noted that ld. Assessing Officer did not choose to make any further enquiry or investigation in this regard to taint the loan transaction undertaken by the assessee. Thus, ld. CIT(A) deleted the addition so made in respect of loan from Mumbadevi Bullion.

4.4. For the transaction of loan with Rakhi Parikh, ld. CIT(A) noted about the doubt casted by ld. Assessing Officer of loan being taken without charging of any interest, was nothing but a baseless presumption and a mere suspicion. Assessee proved the onus casted u/s. 68 by furnishing all the relevant documentary evidences with which no discrepancy or deficiency was pointed out. Thus, ld. CIT(A) gave relief in respect of this addition.

5. Before us, assessee has placed on record two paper books, one containing 267 pages and the other 81 pages. These paper books contain the corroborative documentary evidences for each of the lender which were furnished before the authorities below, which have been perused. Before us, ld. CIT DR placed reliance on the order of Assessing Officer and repeated the stand taken by him in the impugned assessment. Ld. Counsel for the assessee emphasised on the fact that assessee had discharged his primary onus casted upon him u/s.68. The onus got shifted to the ld. Assessing Officer to disprove the material placed before him. Without doing so, addition made by ld. Assessing Officer is based on conjectures and surmises and therefore cannot be sustained. He further emphasised that ld. Assessing Officer has not

found fault in any of the details and documents submitted. According to him, documents furnished are to be prima facie considered as correct unless evidences are brought on record to falsify the claim made therein.

6. We have heard the rival contentions and perused the material on record and given our thoughtful considerations on the elaborate observations and findings given by Id. CIT(A) while giving relief to the assessee. Out of the three lender parties, transaction with Mumbadevi Bullion is squarely covered by the decision of the Coordinate Bench in assessee's own case in the preceding as well as subsequent assessment years for which nothing contrary was brought on record by the Revenue. We further note that Id. Assessing Officer without going through and discussing the details submitted by the assessee, failed to point out any discrepancies or insufficiency in the same.

6.1. We draw our force from the decision of the Hon'ble jurisdictional High Court of Bombay in the case of PCIT v. Paradise Inland Shipping Pvt. Ltd. [2017] 84 taxmann.com 58 (Bom) wherein it was held that once the assessee has produced documentary evidence to establish the existence of the lenders, the burden would shift on the revenue to establish their case. We also draw our force from the decision of Hon'ble Jurisdictional High Court of Bombay in the case of CIT vs. Orchid Industries Pvt. Ltd. 397 ITR 136 (Bom) wherein it was held that mere non-compliance of summon under section 131 would not disprove the transaction and other documents filed on record cannot be brushed aside by the Ld. Assessing Officer. The relevant extract from the said decision is reproduced as under:

"The Assessing Officer added Rs.95 lakhs as income under Section 68 of the Income Tax Act only on the ground that the parties to whom the share certificates were issued and who had paid the share money had not appeared before the

Assessing Officer and the summons could not be served on the addresses given as they were not traced and in respect of some of the parties who had appeared, it was observed that just before issuance of cheques, the amount was deposited in their account.

The Tribunal has considered that the Assessee has produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money It was also observed by the Tribunal that the Assessee has also produced the entire record regarding issuance of shares ie allotment of shares to these parties, their share application forms, allotment letters and share certificates, so also the books of account. The balance sheet and profit and loss account of these persons discloses that these persons had sufficient funds in their accounts for investing in the shares of the Assessee. In view of these voluminous documentary evidence, only because those persons had not appeared before the Assessing Officer would not negate the case of the Assessee. The judgment in case of Gagandeep Infrastructure (P.) Ltd. (supra) would be applicable in the facts and circumstances of the present case.”

6.2. Ld. Assessing Officer has not bothered to discuss or point out any defect or deficiency in the documents of the lenders, furnished by the assessee. These evidences furnished have been neither controverted by the ld. Assessing Officer during the assessment proceedings nor anything substantive brought on record to justify the addition made by him. Thus, going by the records placed by the assessee of all the lenders, it can be safely held that the assessee has discharged its initial burden and the burden shifted on the ld. Assessing Officer to enquire further into the matter which he failed to do so. It is also noted from their audited financial statement that all the lenders have sufficient own funds available with them to grant loans to the assessee.

6.3. It is relevant to quote the decision of Hon’ble jurisdictional High Court of Bombay in the case of *CIT v. Creative World Telefilms P. Ltd.* (2011) 333 ITR 100 (Bom) wherein it was held as under:

“In the case in hand, it was not disputed that the assessee had given the details of name and address of the shareholder, their PAN/GIR number and had also given the cheque number, name of the bank. It was expected on the part of the Assessing Officer to make proper investigation and reach the shareholders. The Assessing Officer did nothing except issuing summons which were ultimately returned back with an endorsement "not traceable". The Assessing Officer ought to have found out their details through PAN cards, bank account details or from

their bankers so as to reach the shareholders since all the relevant material details and particulars were given by the assessee to the Assessing Officer. In the above circumstances, the view taken by the Tribunal could not be faulted. No substantial question of law was involved in the appeal."

6.4. Similar view was taken by the Hon'ble High Court of Madras in the case of Pranav foundations Ltd. (2015) 229 Taxman 58 (Mad) wherein it was held as under:

"In view of the fact that all the four parties, who are subscribers of the shares, are limited companies and enquiries were made and received from the four companies and all the companies accepted their investment. Thus, the assessee has categorically established the nature and source of the said sum and discharged the onus that lies on it in terms of section 68. When the nature and source of the amount so invested is known, it cannot be said to undisclosed income. Therefore, the addition of such subscriptions as unexplained credit under section 68 is unwarranted."

6.5. Further, reliance is placed on the decision of Hon'ble Supreme Court in the case of CIT v. Orissa Corporation (P) Ltd. (1986) 159 ITR 78 (SC) wherein it was held as under:

"In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were the income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such could arise.

The High Court was, therefore, right in refusing to refer the questions sought for. Decision of the High Court affirmed."

7. Considering the facts and circumstances of the case as discussed above, details and documents placed, corroborating the claim of the assessee, judicial precedents referred above and detailed and meritorious findings arrived at by ld. CIT(A), we uphold the relief

granted by the ld. CIT(A) without any interference. Accordingly, grounds raised by the Revenue are dismissed.

8. In the result, appeal of the Revenue is dismissed.

9. In respect of the other three loan transactions which ld. CIT(A) upheld for the addition made by the ld. Assessing Officer and assessee is in appeal, on similar factual matrix whereby assessee had made an elaborate submission which is reproduced in the first appellate order itself, ld. CIT(A) observed that mere furnishing of confirmation does not prove identity. He further observes that mere furnishing of bank accounts does not prove genuineness of transaction. He noted that assessee did not file copy of return of the lender and therefore onus casted u/s.68 has not been discharged by the assessee. He made similar observations in the case of loan taken by the assessee from lender, Lucky Motors to sustain the addition. In respect of the third lender party, i.e., Sanjev Malhotra, from the perusal of the first appellate order we note that similar observations are made to uphold the addition. Both the parties, i.e., assessee and Revenue have made similar submissions before us as already narrated above while adjudicating appeal by the Revenue in respect of the other three lender parties. The same are not repeated to avoid duplicity.

10. We find that the observations made by the ld. CIT(A) while sustaining the addition in respect of three lender parties are contrary to his own observations and findings while giving relief in respect of addition made for the other three lender parties. In terms of the above narration, assessee has adequately discharged his onus casted u/s.68 by placing corroborative material on record with all the relevant explanation against which nothing contrary has been brought on

record. To repeat, authorities below have not pointed out any deficiency or discrepancy in the submissions so made by the assessee. Our observations and findings while adjudicating the appeal of the Revenue apply mutatis mutandis in respect of the three loan transactions for which assessee is in appeal. Accordingly, considering these facts, as well as details and documents furnished by the assessee and judicial precedents already referred above, we delete the addition made by the ld. Assessing Officer and sustained by the ld. CIT(A). Accordingly, grounds raised by the assessee are allowed. In the result, appeal of the assessee is allowed.

11. In the result, appeal of the Revenue is dismissed and appeal of the assessee is allowed.

Order is pronounced in the open court on 24 September, 2025

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 24 September, 2025

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
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BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai