

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“J(SMC)” BENCH MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &  
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No. 3639/Mum/2025  
(Assessment Year: 2011-12)**

<b>Jigna Ashutosh Bhatt</b> I-1434, Govardhan Nagar Bldg. No. 4, Opp. Poincur Gymkhana, Kandivali (West), Mumbai-400 067	Vs.	<b>ITO Ward-32(2)(1)</b> Kautilya Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai-400 051
PAN/GIR No. AIYPB4411G		
(Applicant)		(Respondent)

Assessee by	Shri Ketan L. Vajani, Ld. AR
Revenue by	Shri Aditya Rai, Ld. DR

Date of Hearing	05.01.2026
Date of Pronouncement	06.01.2026

आदेश / ORDER

**PER MAKARAND VASANT MAHADEOKAR, AM:**

This appeal by the assessee is directed against the order dated 18.03.2025 passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as “CIT(A)”] under section 250 of the Income-tax Act, 1961 [hereinafter referred to as “the Act”], for

Assessment Year 2011–12. The said appellate order arises out of the assessment order dated 29.12.2018 passed by the Income Tax Officer, Ward 33(2)(1), Mumbai [hereinafter referred to as “Assessing Officer or AO”], under section 143(3) read with section 147 of the Act.

2. The brief facts of the case are that the assessee is an individual. The assessee filed her original return of income for Assessment Year 2011–12 on 27.09.2011, declaring total income of Rs. 55,695/-. Subsequently, the Assessing Officer initiated reassessment proceedings by issuing notice under section 148 of the Act on 29.03.2018, after recording reasons and obtaining sanction under the Act. The reopening was based on information received from the DDIT (Investigation), Mumbai, to the effect that one Shri Nilesh Bharani, partner of M/s Evergreen Enterprises, in his statement recorded under section 132(4) of the Act, had allegedly admitted that the assessee had taken a cash loan of Rs. 39,00,000/- during the financial year 2010–11 relevant to the assessment year under consideration. In response to the notice issued under section 148 of the Act, the assessee filed a return of income on 12.11.2018, declaring the same income as returned originally.

3. During the course of reassessment proceedings, the Assessing Officer issued a show cause notice dated 24.12.2018, enclosing a copy of the statement of Shri Nilesh Bharani recorded under section 132(4), and required the assessee to furnish confirmation, ledger account and ITR acknowledgement of M/s

Evergreen Enterprises, failing which the amount was proposed to be added as unexplained cash credit under section 68 of the Act. In response, the assessee, through her authorized representative, denied having obtained any cash loan from M/s Evergreen Enterprises. It was submitted that the statement relied upon by the Assessing Officer did not specifically name the assessee and opportunity of cross-examination of Shri Nilesh Bharani was not provided. It was also contended that no amount was found credited in the books of the assessee. The Assessing Officer was not convinced with the explanation furnished. According to the Assessing Officer, the assessee failed to establish the creditworthiness of the lender and the genuineness of the transaction. The Assessing Officer held that the assessee had obtained a cash loan of Rs. 39,00,000/- and treated the same as unexplained cash credit under section 68 of the Act. The reassessment was completed under section 143(3) read with section 147 of the Act vide order dated 29.12.2018, determining the total income of the assessee at Rs. 39,55,700/-. Penalty proceedings under sections 269SS, 269T and 271(1)(c) of the Act were also initiated.

4. Aggrieved by the reassessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee challenged the validity of the reassessment proceedings initiated under section 147 of the Act, contending that the reopening was based on borrowed satisfaction from the Investigation Wing and in the absence of any income escaping assessment. The addition

of Rs. 39,00,000/- made under section 68 of the Act on merits was also challenged.

5. The CIT(A), while observing that the assessee was non-compliant during the appellate proceedings, proceeded to decide the appeal on the basis of material available on record.

6. On the issue of validity of reopening, the CIT(A) held that the original return was processed under section 143(1) and the Assessing Officer was in possession of fresh tangible material received from the Investigation Wing. The CIT(A) observed that at the stage of reopening, the Assessing Officer was only required to form a prima facie “reason to believe” and sufficiency of such reasons could not be examined. Accordingly, the reassessment proceedings initiated under section 147 of the Act were upheld. The CIT(A) also rejected the assessee’s contention regarding denial of cross-examination and violation of principles of natural justice, holding that no prejudice was demonstrated to have been caused to the assessee. On the addition under section 68 of the Act, the CIT(A) concurred with the Assessing Officer and held that the assessee failed to discharge the onus of explaining the alleged cash loan. The addition of Rs. 39,00,000/- was thus confirmed.

7. Further aggrieved by the order of the CIT(A), the assessee is in appeal before us raising following grounds of appeal:

***I. Objection against confirming an invalid reassessment.***

***(a) On the facts and in the circumstances of the case, the Commissioner of Income-tax (Appeals) – NFAC, hereinafter***

referred to as the "CIT (A)", has erred in confirming the validity of the reassessment in her case without appreciating the fact that the initiation of the reassessment itself is without any justification.

- (b) Your appellant respectfully submits that the initiation of reassessment itself in her case is not valid and consequently all actions taken in pursuance of such invalid reassessment are void *ab initio*. The appellant respectfully submits that the reassessment in her case is not valid for the following reasons:
- i. That the reassessment in her case had been initiated merely on the basis of the borrowed satisfaction from the Investigation wing of the department, even without bothering to check the statement recorded by the investigation wing.
  - ii. That without prejudice to any other grounds, there cannot be any income escaping assessment on the facts of the case and accordingly the initiation of reassessment without there being any income escaping assessment is without the authority of law.
- (c) In view of the above, the appellant submits that the reassessment in her case is invalid and the same deserves to be quashed. The appellant, prays that the same may please be quashed.

## **II. Objection against confirming addition of Rs. 39,00,000/- made u/s. 68 of the Act**

- (a) Without prejudice to the validity of reassessment, the CIT (A) has erred in confirming addition of Rs. 39,00,000/- made u/s. 68 of the Act on account of alleged cash loan borrowed by the appellant from M/s. Evergreen Enterprises.
- (b) Your appellant respectfully submits that the impugned addition is merely based on conjectures, surmises and suspicions and not supported by any evidence.
- (c) The appellant further submits that the impugned addition is made without appreciating the fact that there is not even a whisper about the appellant in the statement of Mr. Nilesh Bharani, partner of M/s. Evergreen Enterprises, which is the only base for making the impugned addition and accordingly the addition is made without any evidence whatsoever.
- (d) The appellant also submits that even otherwise the provisions of section 68 cannot be applied in her case considering the fact that no amount has been found credited in the books of the appellant.
- (e) In view of the above, the appellant submit that the impugned addition is not permissible and the same deserves to be deleted.

*The appellant, therefore, prays that the impugned addition may please be deleted.*

**III. Objection against disposal of appeal without considering submissions made by the appellant.**

- (a) Without prejudice to any of the grounds above, the CIT (A) has erred in not considering the submissions made by the appellant during the appellate proceedings and also not allowing sufficient opportunity to the appellant.*
- (b) Your appellant respectfully submits that the order passed by the CIT (A) is in complete violation of the principles of natural justice and the same deserves to be set-aside for this reason as well.*
- (c) The appellant, therefore, alternatively prays that the order of the CIT (A) may please be set-aside or any other relief as deemed fit may please be allowed to the appellant.*

8. During the course of hearing before us the learned Authorized Representative (AR) for the assessee reiterated the facts as borne out from the assessment records and the appellate proceedings. The AR drew our attention to the statement of Shri Nilesh Bharani, partner of M/s Evergreen Enterprises, recorded, a copy of which is placed at page No. 33 of the paper book. It was submitted that a careful reading of the said statement clearly demonstrates that there is no specific mention or identification of the assessee by name therein. According to the learned AR, the addition has thus been made merely on presumptions without any direct or cogent material linking the assessee to the alleged cash loan transaction.

9. The learned AR further submitted that in Question No. 72 of the said statement, reference is made to Annexure-2. However, the said Annexure-2 has neither been referred to nor discussed by the Assessing Officer in the assessment order, nor has a copy

of the same been furnished to the assessee at any stage of the proceedings.

10. The learned AR further submitted that, even otherwise, the provisions of section 68 of the Act could not have been invoked in the present case, as no amount has been found credited in the books of account of the assessee during the relevant previous year. It was contended that the primary and jurisdictional condition for application of section 68, namely existence of a credit entry in the books of the assessee, is completely absent, and therefore the addition made thereunder is legally unsustainable.

11. The learned AR also pointed out a discrepancy in the reasons recorded for reopening, wherein the name of the assessee is mentioned as "Jigna Ashok Bhatt", whereas the correct name of the assessee is "Jigna Ashutosh Bhatt". It was submitted that this discrepancy itself reflects non-application of mind on the part of the Assessing Officer while recording reasons for reopening the assessment.

12. Lastly, the learned AR controverted the observation of the CIT(A) that the assessee had failed to submit any reply during the appellate proceedings. He submitted that this finding is factually incorrect, as the assessee had duly filed her reply, a copy of which is placed at page No. 52 of the paper book. It was therefore contended that the order of the CIT(A) proceeds on an erroneous

assumption of facts and deserves to be set aside on this ground as well.

13. The learned Departmental Representative (DR) strongly relied upon the orders of the Assessing Officer as well as the CIT(A). He submitted that the Assessing Officer has passed the assessment order after due verification and after granting adequate opportunity to the assessee. The learned DR specifically drew our attention to paragraph 11 of the assessment order, wherein the Assessing Officer has recorded detailed reasons for treating the cash loan of Rs. 39,00,000/- as unexplained cash credit under section 68 of the Act. It was submitted that, as noted by the Assessing Officer, the assessee failed to establish the creditworthiness of the loan creditor and failed to furnish supporting documentary evidence to substantiate the genuineness of the transaction.

14. We have carefully considered the rival submissions, perused the material available on record, and examined the orders passed by the lower authorities. We have also gone through the paper book filed by the assessee and the judicial precedents relied upon before the lower authorities.

15. At the outset, we note that the assessee has raised specific grounds challenging the validity of reopening under section 147 of the Act. However, during the course of hearing before us, the learned AR did not advance any specific arguments on the legality or jurisdiction of the reassessment proceedings. The learned AR

confined his submissions primarily to the merits of the addition made under section 68 of the Act. In the absence of any specific arguments advanced at the time of hearing, and considering that the learned Departmental Representative relied upon the findings recorded by the Assessing Officer and upheld by the CIT(A), we proceed to adjudicate the appeal on merits of the addition made under section 68 of the Act, without expressing any independent opinion on the validity of the reassessment proceedings. Accordingly, the grounds challenging reopening are treated as not pressed.

16. The substantive issue for our consideration is the addition of Rs. 39,00,000/- made by the Assessing Officer under section 68 of the Income-tax Act, 1961, treating the same as unexplained cash credit, which has been confirmed by the CIT(A).

17. From the assessment order, it is evident that the Assessing Officer initiated reassessment proceedings on the basis of information received from the Investigation Wing, Mumbai, wherein reliance was placed on the statement of Shri Nilesh Bharani, partner of M/s Evergreen Enterprises, recorded under the Act. Based on the said information, the Assessing Officer proceeded on the premise that the assessee had taken a cash loan of Rs. 39,00,000/- during the previous year relevant to Assessment Year 2011-12.

18. During the assessment proceedings, the assessee categorically denied having taken any cash loan from M/s

Evergreen Enterprises. It was specifically contended that there was no mention of the assessee's name in the statement of Shri Nilesh Bharani and that no incriminating material evidencing receipt of cash loan by the assessee was brought on record. The assessee further objected to non-supply of documents relied upon by the Assessing Officer, including Annexure-2 referred to in Question No. 72 of the statement, and sought an opportunity of cross-examination of Shri Nilesh Bharani. These objections were rejected by the Assessing Officer.

19. The Assessing Officer, however, proceeded to make the addition by observing in paragraph 11 of the assessment order that the assessee failed to establish the creditworthiness of the loan creditor and failed to produce documentary evidence in support of the alleged cash loan. The Assessing Officer thus treated the alleged cash loan of Rs. 39,00,000/- as unexplained cash credit under section 68 of the Act. The CIT(A) upheld the action of the Assessing Officer, primarily on the ground that the assessee did not cooperate adequately during appellate proceedings and failed to substantiate her contentions with supporting evidence.

20. At this stage, it is necessary to note that the assessee had made detailed written submissions before the CIT(A), which are part of the appellate record, but have not been specifically dealt with or adjudicated in the impugned appellate order. In those submissions, the assessee had categorically contended that:

- I. The statement of Shri Nilesh Bharani does not name or identify the assessee at all, and there is no whisper therein suggesting that the assessee had taken any cash loan from M/s Evergreen Enterprises.
- II. The Assessing Officer placed reliance on Annexure-2 referred to in Question No. 72 of the statement, allegedly containing names of persons involved in cash transactions. However, the said Annexure-2 was neither referred to nor discussed in the assessment order, nor was a copy of the same ever furnished to the assessee despite specific requests made during assessment proceedings.
- III. The assessee had repeatedly requested the Assessing Officer to furnish:
  - Annexure-2 referred to in the statement,
  - the alleged telephone diary,
  - copies of statements recorded under section 132(4),
  - and any other material linking the assessee with the alleged cash loan.

Admittedly, no such material was provided to the assessee.

21. These submissions, though forming part of the record before the CIT(A), have not been specifically addressed or rebutted in the impugned appellate order. The CIT(A) proceeded largely on the premise that the assessee failed to cooperate and failed to file submissions, which, on verification of the record, is factually incorrect.

22. On a careful consideration of the entire material on record, we find substance in the contentions advanced by the assessee on merits. Section 68 of the Act can be invoked only when any sum is found credited in the books of the assessee maintained for

the relevant previous year and the assessee fails to offer a satisfactory explanation regarding the nature and source thereof. In the present case, it is an undisputed fact emerging from the record that no amount of Rs. 39,00,000/- has been found credited in the books of account of the assessee during the year under consideration. This foundational requirement for invoking section 68 is conspicuously absent.

23. Further, the addition has been made solely on the basis of a third-party statement. On perusal of the statement of Shri Nilesh Bharani, placed at page No. 33 of the paper book, we find that there is no specific reference or identification of the assessee by name. Moreover, the alleged Annexure-2, which is stated to contain names of persons in Question No. 72, has neither been discussed in the assessment order nor furnished to the assessee at any stage of the proceedings. The Assessing Officer has also not brought on record any independent corroborative material to establish that the assessee had in fact received any cash loan from M/s Evergreen Enterprises. We also noted that there is a discrepancy in the name mentioned in the reasons recorded for reopening, wherein the name appears as "Jigna Ashok Bhatt", whereas the correct name of the assessee is "Jigna Ashutosh Bhatt", which further reflects lack of proper linkage of the assessee with the alleged transaction.

24. The conclusion drawn by the CIT(A) that the assessee failed to file any reply is also found to be factually incorrect, as the reply filed by the assessee is placed at page No. 52 of the paper

book. Thus, the appellate order proceeds, at least partly, on an erroneous factual premise.

25. In the absence of any credit entry in the books of the assessee, and in the absence of any cogent material directly linking the assessee with receipt of cash loan, we are of the considered view that the addition made under section 68 of the Act cannot be sustained in law.

26. In view of the above discussion and considering the totality of facts and circumstances of the case, we hold that the addition of Rs. 39,00,000/- made under section 68 of the Act and confirmed by the CIT(A) is unsustainable and is hereby directed to be deleted.

27. In the result the appeal of the assessee is partly allowed on merits.

Order pronounced in the open court on 06.01.2026.

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

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

Mumbai, Dated 06/01/2026  
Dhananjay, Sr.PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai