

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH MUMBAI**

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

**ITA No. 3662/Mum/2025
(Assessment Year: 2017-18)**

Income Tax Officer 22 (1)(1), 3th Floor, Room No. 319, Lalbaug Piramal Chamber, Mumbai- 400012	Vs.	Antara Tushar Motiwala 601, Munshi Manor JN., of 9 th 10 th road, Khar(W), Mumbai- 400052
PAN/GIR No. AKLPM3733F		
(Applicant)		(Respondent)

Assessee by	Shri Bharat Raichandani & Shri Bhagrati Ladu Sahu
Revenue by	Shri Surendra Mohan, SR. DR

Date of Hearing	19.01.2026
Date of Pronouncement	22.01.2026

आदेश / ORDER

PER MAKARAND VASANT MAHADEOKAR, AM:

The appeal is filed by the Revenue against the order passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”], dated 27.03.2025, passed under section 250 of the Income-tax Act, 1961 [hereinafter referred to as “the Act”], for the Assessment Year

2017–18, arising out of the assessment order dated 20.12.2019 passed by the Income-tax Officer, Ward 22(1)(1), Mumbai[hereinafter referred to as “Assessing Officer”], under section 143(3).

Facts of the Case

2. The assessee is an individual. The assessee filed her return of income for A.Y. 2017–18 on 01.08.2017, declaring total income of Rs. 19,05,920/-. The return was processed under section 143(1) of the Act. The case was selected for limited scrutiny under CASS on the issue of large increase in capital during the year. During the course of assessment proceedings, the Assessing Officer noticed a substantial increase in the capital account of the assessee during the relevant previous year. In response to notices issued under section 142(1), the assessee explained that no fresh capital was introduced during the year and the increase in capital was on account of prior period adjustment amounting to Rs. 8,38,44,023/-. It was explained that the adjustment arose from the assessee’s capital account in a partnership firm, M/s Lotus Investment, in which the assessee held 34 percent share. It was further explained that the partnership firm had written back an old unsecured loan, and corresponding credit was given to the partners’ capital accounts.

3. The assessee furnished details stating that M/s Lotus Investment had obtained an unsecured loan of Rs.

26,50,00,000/- from Swan Finance Management Pvt. Ltd. which had become time-barred under the Limitation Act and was written back unilaterally in the books of the firm during F.Y. 2016-17. The assessee's share of the loan written back was Rs. 9,01,00,000/-, which after adjusting prior period losses and tax adjustments resulted in a net credit of Rs. 8,38,44,023/- in her capital account.

4. The Assessing Officer issued notice under section 133(6) to the partnership firm and called for details of the lender, loan agreement and confirmation. According to the Assessing Officer, neither the assessee nor the firm could furnish complete particulars such as PAN, address and other details of the lender. The Assessing Officer further observed that the partnership firm was stated to have come into existence on 17.04.2006, whereas the loan was claimed to have been taken earlier, no interest was paid on the loan, and no interest was charged on partners' drawings. The Assessing Officer also concluded that the firm was allegedly used as a special purpose vehicle to route unaccounted money into the books of the partners.

5. Rejecting the explanation of the assessee, the Assessing Officer held that the increase in capital represented unexplained cash credit in the hands of the assessee. Accordingly, an addition of Rs. 8,38,44,023/- was made under section 68 and taxed under section 115BBE of the Act.

6. The assessee preferred an appeal before the learned CIT(A). Before the CIT(A), the assessee reiterated the facts. The assessee submitted that the credit in the capital account was consequential to entries in the partnership firm and Section 68, if at all applicable, could be invoked only in the hands of the firm and not the partner. The assessee clarified that the loan was taken in F.Y. 2006–07, and reference to F.Y. 2005–06 was an inadvertent error. It was also submitted that the partnership firm had been assessed under section 143(3) in multiple years and the loan stood accepted.

7. The CIT(A) recorded that:

- Section 68 can be invoked only in the year in which the credit arises.
- Opening balances or prior period credits cannot be taxed under section 68 in a subsequent year.
- The entry in the assessee's capital account was only a book entry corresponding to adjustments in the firm's books.
- The write-back of loan was a capital receipt, being a unilateral act, and expiry of limitation does not extinguish the debt but merely bars its enforcement.

8. On the above findings, the CIT(A) deleted the addition of Rs. 8,38,44,023/- made under section 68 r.w.s. 115BBE and allowed the assessee's appeal.

9. Aggrieved by the order of CIT(A), the Revenue is in appeal before us raising following grounds of appeal:

1. *“Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 8,38,44,023/- on*

- account of unexplained credit in the form of unaccounted money in the books of partner of the firm Lotus Investment u/s 68 of the Income tax Act, 1961.*
- 2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the assessee's appeal without appreciating the crucial fact that both the assessee and the firm failed to submit any details with respect to lender Swan Finance Management Pvt. Ltd. resulting into non-establishment of identity and credit worthiness of the lender and genuineness of the loan taken.*
 - 3. Whether on the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in allowing the Assessee's appeal overlooking the glaring facts pertaining to the assessee and the firm; i) No amount either principal amount or interest amount related to loan was paid. ii) No remuneration interest was paid to its partners of the firm which proves that the firm was not genuine rather a make believe arrangement.*
 - 4. Whether on the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in allowing the appeal of Assessee without appreciating the facts that the firm was actually incorporated by the assessee for special purpose vehicle to route introduction of unaccounted money of partners in their books of account.*
 - 5. Whether on the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in allowing the appeal of Assessee without appreciating the facts that the written off loan will be treated as revenue of the partners and will be treated as deemed income u/s. 41 of the income tax act.*
 - 6. The appellant craves leave to amend or alter any ground or submit additional ground which may be necessary."*

10. The learned Departmental Representative (DR), strongly supporting the assessment order, submitted that the learned CIT(A) erred in deleting the addition of Rs. 8,38,44,023/- made under section 68 of the Act. It was contended that the assessee failed to discharge the primary onus cast upon her to establish the identity, creditworthiness of the lender, namely Swan Finance Management Pvt. Ltd., and the genuineness of the loan transaction. The learned DR submitted that neither the assessee nor the partnership firm M/s Lotus Investment was able to

furnish basic particulars of the alleged lender, such as PAN, address or confirmation, and therefore the Assessing Officer was justified in treating the credit appearing in the assessee's capital account as unexplained.

11. The learned Authorised Representative (AR) for the assessee, on the other hand, submitted that the transaction in question pertains to the partnership firm, namely M/s Lotus Investment, which is a distinct taxable entity under the Act. It was contended that any invocation of section 68, if at all warranted, could only be made in the assessment of the partnership firm and not in the hands of the assessee, who is merely a partner. The learned AR further pointed out that the Assessing Officer himself has recorded these very submissions of the assessee in para 8 on page 7 of the assessment order, wherein it has been noted that the assessee had specifically contended that the credit appearing in her capital account was only a book entry arising from adjustments in the books of the partnership firm and that section 68 could not be applied in the hands of the partner.

12. It was further submitted that the partnership firm had been subjected to assessments under section 143(3) of the Act for A.Ys. 2006-07, 2008-09, 2012-13 and 2014-15, and the loan in question stood accepted and assessed in the hands of the partnership firm by the Assessing Officer. According to the learned AR, once the transaction has been examined and accepted in the hands of the partnership firm, the same income

cannot again be brought to tax in the hands of the assessee-partner.

13. The learned AR thus submitted that the Assessing Officer, despite having correctly recorded the assessee's submissions in the assessment order itself, erred in disregarding the settled legal position and in making the impugned addition under section 68 in the hands of the assessee. On these premises, it was submitted that the learned CIT(A) was fully justified in deleting the addition.

14. We have carefully considered the rival submissions, perused the orders of the lower authorities, and examined the material placed on record. The Revenue is aggrieved by the deletion of the addition of Rs. 8,38,44,023/- made under section 68 read with section 115BBE of the Income-tax Act, 1961, which arose on account of increase in the capital account of the assessee consequent to write-back of loan in the books of the partnership firm M/s Lotus Investment, in which the assessee is a partner.

15. The undisputed factual position, as recorded both by the Assessing Officer and the CIT(A), is that the transaction in question pertains to the partnership firm, which had written back an old loan in its books, and the corresponding effect was given in the capital accounts of the partners in proportion to their profit-sharing ratio. The assessee did not receive any fresh funds during the year. The credit in the capital account is only a

consequential book entry arising from adjustments in the firm's accounts.

16. It is a settled position of law that though under the general law of partnership a firm is not a juristic person, under the Income-tax Act a firm is treated as a separate and distinct taxable entity. The Hon'ble Supreme Court in *CIT v. A.W. Figgis & Co.* (24 ITR 405) has categorically held that a firm is a distinct assessable unit, separate from its partners. Consequently, income which is assessable, if at all, in the hands of the firm cannot be brought to tax again in the hands of its partners merely because corresponding entries appear in the partners' capital accounts.

17. In the present case, the Assessing Officer has not made any addition in the hands of the partnership firm on account of the loan write-back, but has sought to tax the same in the hands of the assessee-partner by invoking section 68. We find no infirmity in the finding of the CIT(A) that such an approach is legally unsustainable.

18. It is an admitted position on record that the loan was taken in F.Y. 2006-07, remained outstanding in the books of the partnership firm for several years, and was written back in F.Y. 2016-17 on the ground that it had become time-barred. The partnership firm had been subjected to scrutiny assessments under section 143(3) for multiple assessment years, namely A.Ys.

2006–07, 2008–09, 2012–13 and 2014–15, and the existence of the loan stood accepted in those assessments.

19. Section 68 can be invoked only in respect of a sum credited in the books of the assessee in the relevant previous year. It is well settled that opening balances or credits pertaining to earlier years cannot be brought to tax under section 68 in a subsequent year. The CIT(A) has rightly relied on this settled principle and has correctly held that the impugned credit does not represent a fresh credit of the year under consideration.

20. The Revenue has not placed any material on record to controvert the factual finding that the credit in the assessee's capital account represents only the effect of prior period entries in the firm's books.

21. The Assessing Officer has heavily relied on the inability of the assessee and the firm to furnish current details such as PAN, address and email ID of the lender, Swan Finance Management Pvt. Ltd., to conclude that the loan never existed. We find merit in the finding of the CIT(A) that such reasoning is misplaced in the facts of the present case.

22. The transaction under consideration is not the borrowing of the loan during the year, but the write-back of an old, time-barred loan. The loan had existed in the books for more than a decade and had been accepted in earlier assessments of the firm.

The assessee cannot be expected to produce complete particulars of a lender relating to a transaction undertaken more than ten years earlier, particularly when the law itself requires maintenance of records only for a limited period. In the absence of any tangible material brought on record by the Revenue to demonstrate that the loan was fictitious, the mere non-availability of certain particulars cannot justify the addition under section 68.

23. The Assessing Officer has further alleged that the partnership firm acted as a special purpose vehicle to route unaccounted money, relying on the fact that no interest was paid on the loan and no interest or remuneration was paid to the partners. We find ourselves in agreement with the CIT(A) that these considerations, by themselves, do not establish that the transaction is sham or non-genuine.

24. Charging of interest on loans or on partners' drawings is a matter governed by the terms of the partnership agreement and commercial understanding between the parties. Absence of interest, without any corroborative evidence, cannot lead to the conclusion that the firm was a mere façade for introduction of unaccounted money.

25. The CIT(A) has further held that the write-back of a time-barred loan constitutes a capital receipt and that expiry of limitation does not extinguish the debt but merely bars its

enforcement. The Revenue has not brought any material on record to demonstrate that the conditions of section 41(1) or section 28(iv) are satisfied in the facts of the present case. The Assessing Officer himself has made the addition under section 68, and not under section 41(1). Therefore, the attempt of the Revenue to justify the addition on an alternative footing is misplaced.

26. In view of the above discussion and the undisputed factual position emerging from the record, we find no infirmity in the order of the CIT(A) in deleting the addition of Rs. 8,38,44,023/- made under section 68 read with section 115BBE of the Act. The credit in the assessee's capital account is only a consequential book entry arising from adjustments in the books of the partnership firm, the loan pertains to earlier years, and section 68 has no application to such a case.

27. Accordingly, the order of the CIT(A) is upheld and the grounds raised by the Revenue are dismissed.

Order pronounced in the open court on 22.01.2026.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, Dated 22/01/2026
Disha Raut, Stenographer

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