

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

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No. 5580/Mum/2025
(Assessment Year: 2018-19)**

&

**ITA No. 6091/Mum/2025
(Assessment Year: 2018-19)**

RAK Construction Project Pvt. Ltd. 113, A Wing, Mittal Tower, Nariman Point, Mumbai- 400 021	Vs.	ITO Ward-3(3)(1), Aayakar Bhavan, M. K. Road, Mumbai-400 020
PAN/GIR No. AACCK8147P		
(Applicant)		(Respondent)

Assessee by	Shri Shri Dharmesh Shah & Ms. Mitali Parekh, Ld. ARs
Revenue by	Shri Umashankar Prasad, Ld. DR

Date of Hearing	03.02.2026
Date of Pronouncement	09.02.2026

आदेश / ORDER

PER MAKARAND VASANT MAHADEOKAR, AM:

These are cross-appeals filed by the assessee as well as the Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)"] dated 15.07.2025, for

Assessment Year 2018–19. Since both the appeals arise out of the same order of the Ld. CIT(A) and involve interconnected issues, they are being disposed of by this consolidated order for the sake of convenience.

Facts of the Case

2. The assessee is a company engaged in the business of development of commercial and residential buildings and plots. For the Assessment Year 2018–19, the assessee filed its return of income on 29.03.2019, declaring a total income of Rs. 11,54,370/-. The return was processed under section 143(1) of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] on 23.10.2019.

3. Subsequently, the case was selected for complete scrutiny on the issues relating to business loss, contract receipts or fees and unsecured loans. Notice under section 143(2) was issued. Thereafter, notices under section 142(1) were issued calling upon the assessee to furnish details of unsecured loans reflected in Note No. 3 of the balance sheet, loans and advances reflected in Note No. 9 of the balance sheet, bank statements and other related particulars. According to the Assessing Officer, there was no compliance to the notices initially issued, whereupon reminders were issued. The assessee ultimately furnished details relating to unsecured loans taken and given along with bank statements through submissions, which were taken into consideration.

4. On examination of the balance sheet and other details, the Assessing Officer observed that the assessee had unsecured loans aggregating to Rs. 1,13,37,71,357/- as on 31.03.2018, on which interest had been paid to various parties, including related parties, at rates ranging from 12% to 24%. Simultaneously, the assessee had advanced unsecured loans aggregating to Rs. 67,63,03,070/- as on 31.03.2018, carrying interest at the rate of 12%. The Assessing Officer prepared a party-wise working by restricting the interest rate on unsecured loans to 12% and computed the interest paid in excess thereof at Rs.5,31,46,170/-. A show cause notice was issued proposing to treat the said amount as unexplained. In response, the assessee submitted that the loans were taken in the normal course of real estate business, that the sector is capital intensive and risky, that institutional finance was not readily available, and that loans had to be raised at higher interest rates due to business exigencies and pending litigation relating to land acquisition. It was also stated that the interest cost was capitalised to work-in-progress and that advancing funds to other parties was done on grounds of commercial expediency. The Assessing Officer did not accept the explanation and treated the amount of Rs. 5,31,46,170/- as unexplained under section 68 of the Act. Penalty proceedings under section 271AAC(1) were initiated separately.

5. The Assessing Officer further observed that certain parties appeared both under unsecured loans taken (Note No. 3) and under loans and advances given (Note No. 9) with different

opening and closing balances. According to the Assessing Officer, the recording of transactions resulted in both debit and credit balances for the same parties during the same financial year. The Assessing Officer merged the figures of loans taken and loans advanced and, on such consolidation, worked out a difference of Rs. 30,09,99,829/-, which was treated as unexplained unsecured loans under section 68 of the Act. A show cause notice dated 12.04.2021 was issued in this regard. The assessee explained that the difference arose due to regrouping and rearrangement of loan accounts during the year to comply with Schedule III of the Companies Act and that there was no duplication or unexplained amount. The explanation was not accepted by the Assessing Officer, who held that the accounting method adopted resulted in artificial balances. Accordingly, the amount of Rs. 30,09,99,829/- was added to the income of the assessee under section 68 of the Act, with initiation of penalty proceedings under section 271AAC(1).

6. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee reiterated its submissions regarding business exigencies, commercial expediency and capitalisation of interest in respect of the addition of Rs. 5,31,46,170/-. It was also contended that section 68 could not be invoked in respect of interest expenditure. With regard to the addition of Rs. 30,09,99,829/-, the assessee explained that the difference arose only due to regrouping of balances from loans liability to loans and advances

and vice versa, that confirmations, ledger accounts, bank statements and financial statements of the parties were furnished, and that the Assessing Officer failed to appreciate the same. The Ld. CIT(A), after considering the material on record, confirmed the addition of Rs. 5,31,46,170/- under section 68 of the Act. However, the Ld. CIT(A) deleted the addition of Rs. 30,09,99,829/-, accepting the explanation of regrouping of balances furnished by the assessee.

7. Aggrieved by the decisions of CIT(A), both, revenue and assessee are in appeal before us raising following grounds of appeal:

Assessee's Appeal in ITA No. 5580/MUM/2025 for A.Y. 2018-19)

- 1. The Ld. CIT(A) has erred in law and in facts in granting partial relief while disposing of the appeal in the present case.*
- 2. The Ld. CIT(A) has erred in law and in facts in confirming the addition of Rs. 5,31,46,170/- by invoking section 68 of the Act which is incorrect and unjustified.*
- 3. The Ld. CIT(A) has erred in law and in facts in confirming the addition made u/s 68 of the Act amounting to Rs. 5,31,46,170/- in respect of unsecured loans wherein the rate of interest paid is in excess of 12%.*
- 4. The appellant craves leave to add, amend, alter, delete all or any of the foregoing grounds of appeal.*

Revenue's Appeal in ITA No. 6091/MUM/2025 for A.Y. 2018-19)

- 1. Whether on the facts and in the circumstance of the case and in law, the Ld. CIT(A) was correct in deleting the addition of Rs. 30,09,99,829/- u/s 68 of the Income-tax Act, 1961 by accepting the explanation of 'regrouping of balances' without independent verification of creditors and without appreciating that the assessee had not conclusively established genuineness and creditworthiness of the transactions?*

2. *Whether on the facts and in the circumstance of the case and in law, the Ld. CIT(A) was right in accepting evidences submitted during appellate proceedings as additional evidences u/r 46A of Income-tax Rules, 1961, without appreciating the fact that the Assessing Officer in his remand report has categorically stated that the evidences under remand, purported to be additional evidences, had already been submitted during the assessment proceedings and upon examination of very same evidences the assessment was concluded and accordingly addition was made?*

ITA No. 5580/MUM/2025

8. We shall first take up the appeal filed by the assessee, which is directed against the confirmation of addition of Rs. 5,31,46,170/- made under section 68 of the Act and sustained by the Ld. CIT(A). It is the contention of the assessee that the provisions of section 68 have been wrongly invoked and that the addition is unsustainable both on facts and in law.

9. In the course of hearing of the assessee's appeal, the Ld. Authorised Representative (AR) submitted that the interest cost forming the basis of the impugned addition of Rs. 5,31,46,170/- was not debited to the profit and loss account for the year under consideration. It was submitted that the entire interest expenditure on unsecured loans had been capitalised to the cost of work-in-progress, having regard to the nature of the assessee's real estate development activity.

10. The Ld. AR took us through the profit and loss account and the ledger account of Work-in-Progress placed in the paper book, particularly at page 165, to demonstrate that the interest cost on unsecured loans was not claimed as revenue expenditure. It was

pointed out that the interest was initially debited in the books and thereafter capitalised to Work-in-Progress, forming part of the cost of the project. It was thus submitted that no deduction of such interest had been claimed in computing the income under the head "Profits and gains of business or profession".

11. According to the Ld. AR, since no claim of interest expenditure was made in the profit and loss account, there was no question of any disallowance or addition on account of interest under the normal computation of income, and the invocation of section 68 in respect of such capitalised interest was, therefore, misconceived. It was submitted that section 68 applies only to a sum found credited in the books of account for which the assessee offers no satisfactory explanation. According to the Ld. AR, the impugned addition does not represent any unexplained credit in the books, but arises from a comparative working made by the Assessing Officer by substituting the interest rate with 12 percent.

12. Without prejudice to the above contention, it was further submitted that even assuming the interest paid at higher rates is to be regarded as excessive, at the highest it could result in reduction of the capitalised cost of Work-in-Progress. It was argued that since the interest has been capitalised and not claimed as deduction, there could be no addition to income under section 68, and any adjustment, if at all warranted, could only be made by reducing the value of Work-in-Progress.

13. We have carefully considered the rival submissions and perused the material available on record. The addition of Rs. 5,31,46,170/- has been made by the Assessing Officer by invoking section 68 of the Act on the ground that interest paid on unsecured loans at rates exceeding 12% is excessive and unexplained. The Ld. CIT(A) has confirmed the said addition.

14. Section 68 applies where any sum is found credited in the books of account of the assessee and the assessee either offers no explanation about the nature and source thereof or the explanation offered is not satisfactory in the opinion of the Assessing Officer. In the present case, the impugned amount of Rs. 5,31,46,170/- does not represent any sum found credited in the books of account during the year. It is not a loan received, share capital introduced, or any fresh credit entry. Rather, it is an amount computed by the Assessing Officer by restricting the interest rate on unsecured loans to 12% and treating the differential portion of interest paid as "excess". Thus, the addition does not arise from any unexplained credit entry in the books. It arises from a comparative working based on substitution of a benchmark rate. Section 68 does not empower the Assessing Officer to determine the reasonableness of an expenditure or to substitute a rate of interest and treat the differential as unexplained credit. The pre-condition for invoking section 68 is the existence of a credit entry of which the nature and source remain unexplained. In the present case, there is no such credit entry corresponding to Rs. 5,31,46,170/-.

15. The interest has been paid through disclosed banking channels, to identified parties, and forms part of the loan transactions already reflected in the balance sheet. The Assessing Officer has not doubted the identity of lenders in this context while making this particular addition. What has been doubted is the rate of interest. Determination of reasonableness of interest expenditure falls within the domain of allowability of expenditure under the appropriate charging provisions. It does not fall within the ambit of section 68. Therefore, we hold that invocation of section 68 in respect of alleged excess interest is legally unsustainable. On this short ground alone, the addition made under section 68 cannot be sustained.

16. Though we have held that section 68 is inapplicable, the Ld. AR has raised an alternate plea, namely, that the entire interest cost has been capitalised to Work-in-Progress and not claimed as revenue expenditure, and therefore even if any portion is regarded as excessive, the consequence would be reduction of WIP and not addition as income. The Ld. AR took us through the profit and loss account and the ledger account of Work-in-Progress (paper book page 165) to demonstrate that the interest cost has been debited to the WIP ledger and capitalised as part of project cost. It was specifically submitted that no portion of such interest has been claimed as deduction in the profit and loss account. If the interest cost forms part of Work-in-Progress, then any adjustment to such cost must necessarily operate by way of

revaluation of closing WIP, and the resultant impact on income or loss must follow in accordance with the method of accounting.

17. In such a case, the Assessing Officer cannot mechanically add the entire differential amount as income. The correct approach, assuming any disallowable portion exists, would be:

- To identify the amount of interest capitalised into Work-in-Progress;
- To reduce the capitalised cost to the extent considered inadmissible; and
- To recompute the resultant income or loss for the year accordingly.

18. Since the primary addition under section 68 has already been held to be unsustainable, the matter does not survive as an addition per se. However, for completeness and in the interest of proper computation, we deem it appropriate to restore the matter to the Assessing Officer for limited verification of the accounting treatment of interest and consequential re-computation, if required. The Assessing Officer is directed to recompute the value of Work-in-Progress by appropriately adjusting the capitalised interest component, if required, and thereafter determine the resultant income or loss for the year in accordance with law. The Assessing Officer shall grant the assessee a reasonable opportunity of being heard before passing the consequential recomputation order.

19. In the result, the appeal filed by the assessee is allowed in the above terms.

ITA No. 6091/MUM/2025

20. We shall now take up the appeal filed by the Revenue. The Revenue is aggrieved by the action of the Ld. CIT(A) in deleting the addition of Rs. 30,09,99,829/- made by the Assessing Officer under section 68 of the Act in respect of unsecured loans. The Revenue has further challenged the acceptance of evidences by the Ld. CIT(A) during the appellate proceedings, contending that the provisions of Rule 46A of the Income Tax Rules, 1962 were not properly appreciated.

21. The core grievance of the Revenue is that the Ld. CIT(A) accepted the assessee's explanation that the difference arose merely on account of regrouping of balances between unsecured loans and loans and advances, and that the addition was deleted without proper verification of the creditors' identity, genuineness and creditworthiness.

22. The Ld. Departmental Representative relied upon the reasoning contained in the assessment order and submitted that the Assessing Officer had merged the loan accounts and worked out a difference of Rs. 30,09,99,829/- which remained unexplained. It was contended that the Ld. CIT(A) erred in granting relief without appreciating that the assessee had not discharged the burden cast under section 68.

23. On the other hand, the Ld. Authorised Representative supported the order of the Ld. CIT(A) and submitted that there was no unexplained credit during the year, that the difference arose purely due to accounting regrouping when credit balances turned into debit balances upon repayment, and that the addition was made merely on the basis of a merged tabulation without identifying any specific unexplained credit entry. In support of the same, the Ld. AR took us through the ledger accounts of the concerned parties to demonstrate the manner in which regrouping had taken place during the year. Particular reference was made to the ledger account of M/s. R.A. Associates, placed in the paper book at page 22. It was pointed out that the said ledger reflected an opening credit balance of Rs. 6,05,68,560/- as on 01.04.2017, which was shown under the head of unsecured loans in the earlier year. During the course of the year, substantial transactions of repayment and fresh advances took place between the parties. As a consequence of excess repayment, the account, which originally had a credit balance, ultimately resulted in a closing debit balance of Rs. 25,68,49,091/- as on 31.03.2018. It was contended that this accounting treatment did not result in any duplication of balances or unexplained credit, but merely reflected the changing character of the same running account during the year.

24. According to the Ld. AR, the Assessing Officer, by mechanically merging the figures of loans taken and loans given, failed to appreciate that the same ledger account could

legitimately transition from a credit balance to a debit balance during the course of the year depending upon the net movement of funds. The Ld. AR further submitted that the extracted portion of the assessment order, wherein the Assessing Officer illustrated the position by way of an example of “M/s ABC” and “M/s PQR”, is factually incorrect and does not represent the actual accounting treatment adopted by the assessee. It was contended that the analogy drawn by the Assessing Officer proceeds on an assumption that identical amounts were simultaneously reflected as both unsecured loans and loans and advances in respect of the same party at the close of the financial year, thereby creating artificial balances.

25. The Ld. AR further submitted that in the case of one of the concerned parties, namely Shri Sushil R. Kothari, the assessment for the relevant year had been completed by the Department, and no addition on account of any discrepancy in the loan transactions with the assessee had been made in his hands. It was submitted that the ledger account of Shri Sushil R. Kothari forming part of the paper book reflects the corresponding entries of receipts and repayments, and the same were duly considered in his assessment proceedings. According to the Ld. AR, if the very same transactions had resulted in any artificial or unexplained balance as presumed by the Assessing Officer in the present case, corresponding discrepancies would have necessarily emerged in the assessment of Shri Sushil R. Kothari. The absence of any such adverse finding in the assessment of the said party, it

was contended, supports the correctness of the balances as recorded in the books of the assessee.

26. The Ld. AR thus submitted that the addition made under section 68 on the premise of alleged mismatch or artificial regrouping of balances is not borne out by the factual position reflected in the corresponding accounts of the parties concerned.

27. We have heard the rival submissions and perused the material available on record. Having considered the submissions, we find that the addition made by the Assessing Officer is founded not on identification of any specific unexplained credit entry in the books of account, but on a reclassification exercise. Section 68 contemplates a situation where any sum is found credited in the books of the assessee and the assessee fails to satisfactorily explain the nature and source thereof. In the present case, the Assessing Officer has not pointed out any particular credit entry which remained unexplained. Instead, he has merged figures appearing under two different heads and, on that basis, worked out a difference. Such an approach, in our considered view, does not satisfy the statutory requirement of section 68.

28. The material placed before us, including the ledger accounts, indicates that the balances with the concerned parties were running balances and that the nature of the closing balance depended upon the net position as on 31.03.2018. If an account which had an opening credit balance results in a closing debit balance due to repayment and further advances, its classification

in the balance sheet would necessarily change in accordance with its character. Such regrouping or presentation in the financial statements cannot, by itself, give rise to an inference of unexplained cash credit. The Assessing Officer's illustrative example proceeds on an assumption of simultaneous existence of identical debit and credit balances in respect of the same party at year end, which, on the facts as demonstrated before us, is not borne out.

29. We further note that the assessee had furnished ledger accounts and other supporting documents before the lower authorities. There is nothing on record to show that the Assessing Officer carried out any substantive verification to rebut the specific entries in those ledgers or to demonstrate that any particular credit entry lacked identity, genuineness or creditworthiness. The addition has thus been made on the basis of perceived accounting presentation rather than on detection of an unexplained credit.

30. In these circumstances, we find ourselves in agreement with the conclusion reached by the Ld. CIT(A) that the addition of Rs. 30,09,99,829/- under section 68 was not sustainable. The reasoning adopted by the Ld. CIT(A) is in consonance with the scope of section 68 and with the factual position emerging from the ledger accounts. Accordingly, we see no reason to interfere with the order of the Ld. CIT(A) on this issue.

31. In the result, the appeal filed by the Revenue is dismissed.

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

Order pronounced in the open court on 09.02.2026.

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, Dated 09/02/2026
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.

सत्यापित प्रति //True Copy//

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आदेशानुसार/ BY ORDER,

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