

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**I.T.A. No. 7649/Mum/2025
A.Y: 2012-13**

ACIT- CC 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, MK Road, Mumbai-400020	Vs .	Trishul Reality Infra LLP Office No.1, 2 nd Floor, 3, Patel Bhuvan, 29, Vijay Wadi, Dr. N.N. Shah Lane, Chira Bazar, Mumbai - 400002 PAN – AADCT0412D
(Appellant)		(Respondent)

**CO. No. 33/Mum/2026
(Arising out of ITA No. 7649/Mum/2025)
A.Y: 2012-13**

Trishul Reality Infra LLP Office No.1, 2 nd Floor, 3, Patel Bhuvan, 29, Vijay Wadi, Dr. N.N. Shah Lane, Chira Bazar, Mumbai - 400002 PAN – AADCT0412D	Vs	ACIT- CC 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, MK Road, Mumbai-400020
(Appellant)		(Respondent)

Assessee by	Shri Rushabh Mehta
Revenue by	Shri Brajendra Kumar (SR. DR.)

Date of Hearing	09.02.2026
Date of Pronouncement	19.02.2026

ORDER

Per Sandeep Gosain, JM:

The present appeal has been filed by the Revenue and cross objection by the assessee challenging the order dated 29.09.2025 passed under section 250 of the Income Tax Act, 1961 ('the Act'), by the National Faceless Appeal Centre (NFAC) / CIT(A) for the assessment years 2012-13.

2. Since all the issues involved in the present appeal and cross objection are common and identical and belongs to one assessee therefore, they have been clubbed, heard together and consolidated order is being passed.

The revenue has raised the following grounds of appeal:

1. "On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition u/s 68 of the Income Tax Act 1961 of Rs. 40,00,000/- being accommodation entry received from M/s. Mahagouri Vintrade Pvt. Ltd. by routing it through M/s. Gulmohar Towers Pvt. Ltd., without appreciating that it was established during the course of enquiry conducted by Investigation Wing Kolkata that the company, M/s. Mahagouri Vintrade Pvt. Ltd., is the paper/shell company, with no creditworthiness, its bank accounts are used for parking funds and providing accommodation entries."

2. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating that, it is equally well settled that, the initial burden of proof is always upon the assessee. This burden does not stand discharged by mere production of PAN numbers, income tax returns or by showing that the transactions were routed through banking channels. These documents, though relevant are not conclusive when the surrounding circumstances indicate

otherwise. When lender/investor companies have negligible income, no genuine business and no real financial capacity, then mere production of documents or banking records cannot establish genuineness of the transactions. Hon'ble Supreme Court in the case of Navodaya Castle (P) Ltd. v. CIT (2015) 230 Taxman 268 has upheld the order of the Hon'ble High Court wherein it was held that certificate of incorporation, PAN, etc were not sufficient for purpose of identification of subscriber company when there was material to show that subscriber was a paper company and not a genuine investor.

3. On facts and circumstances of the case and in law, the ld. CIT(A) should have applied the ratio of the judgement of Hon'ble Supreme Court in the case of Pr. CIT (Central) v. NRA Iron & Steel (P.) Ltd. (2019) 103 taxmann.com 48/262 Taxman 74/412 ITR 161 (SC) wherein it has been categorically held that if the investor companies have no real financial capacity, negligible income and no genuine business activities, the assessee cannot be said to have discharged its burden under section 68 and additions are justified. The ratio of this judgment of Apex Court squarely applies to the present case."

4. "The appellant craves leave to add to alter, amend, modify and/or delete any or all of the above said grounds of appeal. The appellant reserves its right to file further submission in the appeal

3. First of all, we take up appeal filed by the Revenue. All the grounds raised by the revenue are interrelated and interconnected and relates to challenging the order of CIT(A) in deleting the additions under Section 68 of the Act therefore we

have decided to adjudicate these grounds through the present consolidated order.

4. Ld. DR appearing on behalf of Revenue, while relying upon the order of assessment, submitted that ld. CIT(A) has erred in deleting the additions made under Section 68 of the Act. As per ld. DR assessee is a beneficiary of accommodation entries in the shape of unsecured loans. It was further submitted that assessee had availed unsecured loan from M/s. Gulmohar Towers Pvt. Ltd who in turn had taken this amount as loan from M/s. MahagouriVintrade Pvt. Ltd. which was a shell Company. In order to substantiate his arguments ld. DR focused on the findings of the Assessing Officer which are at Para no. 2 of the Assessment Order, wherein it was pointed out that Investigation Wing of Kolkata conducted the enquiry in the case of M/s MahagouriVintrade Pvt. Ltd. and during the course of enquiries the investigation wing found that MahagouriVintrade Pvt. Ltd. opened a current a/c for their trading investments and the total credit transaction in the said account was of Rs 12.58 crores and subsequently the said account was closed on 07.10.2013. It was also submitted that these transactions included high value RTGS and interest transactions. In order to further enquire into the existence and business activities of the said company, an Inspector of the Investigation Wing was deputed who neither found any office nor saw any business activities of the said company. Ld. DR also stressed upon the point that on further perusal of MCA Database it was seen by the Investigation Wing that the name of MahagouriVintrade Pvt. Ltd. had already been

struck off which goes to show that the said company is a shell company and their account was being used for parking of funds providing accommodation entries. It was also pointed out that Mahagouri Vintrade Pvt. Ltd. had zero fixed assets and the total turnover of said company for the F.Y. 2011-12 and 2012-13 was also zero therefore on the basis of above submissions it was submitted by Ld. DR that the order of CIT(A) in deleting the additions made was bad in law and therefore the order of AO be restored.

5. On the Contrary Ld. AR appearing on behalf of the Assessee reiterated the same arguments as were raised before the revenue authorities and also relied on written submissions filed by him before the Revenue Authorities which are reproduced herein below:

Ground No.2: Addition of unsecured loan of Rs. 40,00,000/- as unexplained cash credit u/s.68 of the Act.

Facts of the case

1. During the year under consideration, the appoliant company had obtained a loan of Rs. 1,83,00,000/-from M's. Gulmohar Towers Pvt Ltd which was earlier added to the total income of the appellant company in assessment u/s. 153A r.w.s. 143(3) of the Act. The said loan includes the sum of Rs.40,00,000/- (actual amount of loan is Rs.30,00,000/-) which was received by M's. Gulmohar Towers Pvt Ltd from the alleged bogus entity Mi's. Mahagouri Vintrade Pvt Ltd.

2. The appellant company had preferred an appeal against the said addition of Rs. 1,83,00,000/- u/s.68 of the Act wherein the Hon'ble CIT(A) had deleted the addition based on the merits of the case.

3. Subsequently, based on the information received from the Investigation Wing, Kolkata that M's. Mahagouri Vintrade Pvt Ltd. is a shell company, reassessment proceedings u/s. 147 of the Act were initiated alleging that the appellant company is the ultimate beneficiary of the bogus loan of Rs. 40,00,000/-.

4. During the course of reassessment proceedings, all the relevant explanation/ documentary evidences were submitted to substantiate the genuineness of the loan.

5. However, disregarding the same, the Id. Assessing Officer proceeded to make the addition of Rs. 40,00,000/0 u/s.68 of the Act as unexplained cash credit and added to the total income of the appellant company.

A.O's Contentions

1. It is seen that as per the information received, M's. Gulmohar Towers Pvt. Ltd. had received Rs.40,00,000/- from M's. Mahagouri Vintrade Pvt. Ltd. whose ultimate beneficiary was the assessee. Thus, it is not established by the assessee that the above sum of Rs. 40,00,000/-was forming part of Rs. 1,83,00,000/-.

2. The assessee has submitted that the addition made in the hand of M's. Everfine Construction Pvt. Ltd. on substantive basis of the above amount and on protective basis in their case. However, the fate of the addition made in the case of M's. Everfine Construction Pvt. Ltd. is not known as to whether the assessee has contested the addition in further appeal.

3. From certain facts and enquiries conducted, it was found that M/s. Mahagouri Vintrade Pvt. Ltd. was a shell company and their Bank Accounts were used for parking of funds/ providing accommodation entry and hence there is no need to prove the source of source by the

assessee as it is already established that the source of source was a shell company used for accommodation entries.

4. M's. Gulmohar Towers Pvt. Ltd. had received amount of Rs.40,00,000/- from Mis. Mahagouri Vintrade Pvt. Ltd. which was transferred to the assessee as ultimate beneficiary. Hence, considering the facts discussed above, the amount of Rs.40,00,000/- received by the assessee as ultimate beneficiary from the shell company M/s. Mahagouri Vintrade P Ltd. is treated as unexplained cash credits in the hands of the assessee.

Appellant's Submission

1. During the year under consideration, the appellant company had obtained a loan of Rs. 1,83,00,000/- from M's. Gulmohar Towers Pvt Ltd. The said sum includes the sum of Rs. 40,00,000/- which has been alleged to have ultimately bogus entity Mahagouri Vintrade Pvt Ltd

2. Infact, M's. Gulmohar Towers Pvt. Ltd had factually obtained a a loan of Rs. 30,00,000/- from Mahagouri Vintrade. Pvt Ltd which was further transferred to the appellant company. The said fact was also communicated to the Id. Assessing Officer and was duly substantiated by furnishing the bank statement of M's. Gulmohar Towers Pvt. Ltd and ledger account of the company in the books of the appellant company (enclosed herewith marked as Annexure 'B') however, the same has not been considered by the Id. Assessing Officer since as per the information received, the loan amount mentioned was Rs. 40,00,000/-

3. Without prejudice to the discrepancy in the loan figure, Your Honour may note that the total loan of Rs. 1,83,00,000/- was earlier assessed to tax and added to the total income of the appellant company in assessment u/s. 153A r.w.s. 143(3) of the Act. (assessment order enclosed herewith marked as Annexure 'C') and thereafter the company preferred an appeal before the Hon'ble CIT(A) wherein the said addition

4. At this juncture, Your Honour's attention is drawn to the factual background and context in which the Hon'ble CIT(A) deleted the addition of Rs. 1,83,00,000/- after considering the due merits of the case (order of the Hon'ble CIT(A) enclosed herewith marked as Annexure 'D'). A gist of the submission made before the Hon'ble CIT(A) is as under:

i. During AY.2011-12, a company named M's. Everfine Constructions Pvt. Ltd. had acquired the assessee's lender company viz. M's. Gulmohar Towers Pvt. Ltd. by purchasing its 100% Equity Shares at a Face value of Rs. 10 per share for a total consideration of Rs.2,26,30,000/-

ii. A specific information was received from the Investigation Wing by the Id. Assessing Officer revealing that Shri Khimji Patel had admitted in his statement that as per the understanding with the promoters of the company, the value of M's. Gulmohar Towers Pvt. Ltd. was shown as Rs. 10/- per share and the security premium of Rs.42,80, 19,650/- was paid in cash by M's. Everfine Constructions Pvt. Ltd. to the promoters of Mis. Gulmohar Towers Pvt. Ltd.

iii. Accordingly, addition to the tune of Rs. 42,80, 19,650/- had been made on substantive basis u/s.68 of the Act in the hands of Mis. Everfine Constructions Pvt. Ltd. in the course of reassessment proceedings u/s. 147r.w.s. 143(3) dated 22.12.2017.

iv. Further, M's. Everfine Constructions Pvt. Ltd. had preferred an appeal before the Hon'ble CIT(A) against the addition of Rs. 42,80, 19,650/- which was also sustained by the Hon'ble CIT(A). (Refer Order of the Hon'ble CIT(A) enclosed herewith marked as Annexure 'E')

v. Your Honour's attention is drawn to the relevant extract of the statement of Shri Khimji Patel wherein it was stated by him that the amount of Rs. 42,80, 19,650/- was brought back to the group by way of loans from Mis. Gulmohar Towers Pvt. Ltd. to different group concerns over a period of time in which even the assessee was covered.

Statement of Shri Khimji Karamshi Patel

Q13 Please refer to the balance sheet of the M's Gulmohar Towers Private Limited, referred above. On perusal of Balance sheet of Mis Gulmohar Towers Private Limited, it is found that this company has share premium of Rs.42.80,19,6501- apart from Share Capital of Rs. 2,26,30,0001-. It is impossible that a company having share premium of Rs. 42,80,19,650-can be acquired at Face Value. Please furnish the valuation report of the Ms. Gulmohar Towers Private Limited, on the basis of which the above valuation of share at the Rs. 101- has been arrived at.

Ans. Sir no valuation to arrive at the share price was carried out at the time of the acquisition of the company. As per the understanding with the promoters of the company the value of the Company on paper was shown at Rs. 101-per share and the security premium amount as above was paid in cash to the promoter of the company. This money amounting to Rs 42,80,19,6501-was brought back to the group by way of loans from M/s Gulmohar Towers Private Limited to our different group concerns over a period of time in the following manner:

Sr.	Name of the concerns	Amount	Date of Receipts
1	N. S. Enterprises	60,00,000/-	25-02-2011
2	Veji Mala Patel	10,00,000/-	22-11-2010
		10,00,000/-	13-12-2010
		13,00,000/-	18-04-2011
3	Lalji Mala Patel	10,00,000/-	28-02-2011
4	Novelty Stationery	20,00,000/-	22-11-2010
		4,00,000/-	18-04-2011
5	Trishul Realty Infra Pvt. Ltd	11,85,00,000/-	27-05-2010 to 29-7-2010
		18,64,00,000/-	27-08-2010 to 31-03-2011
		1,83,00,000/-	01-04-2011 to 8-7-2011
		1,80,00,000/-	01-08-2013 to 5-2-2014
	Total	35,39,00,000/-	

The balance of Rs.7,41, 19,650/- has been given by way of loans from Mis Gulmohar Towers Private Limited to Shri Bhagwanji Manji Patel (approx. Rs.4 Cr.), Shri Valji Manji Patel (approx. Rs. 50 Lac), Mis. Pitashree Enterprises Private Limited (approx. Rs.50 lac). The details of the balance amount given is not readily available. I undertake to submit the details on Monday (13-10-2014). The above cash payment of Rs. 42, 80, 19,6501 is not reflected in regular books of account of Mis. Everfine Construction Pdvate Limited and in view of what is stated above I am willing to disclose the same as undisclosed investment of the company M/s Everfine Construction Private Limited in Ms. Gulmohar Towers Private Limited the respective years starting from F. Y.2010-2011 to F. Y.2013-2014. The same is routed through Ms. Gulmohar Towers Private Limited as loan to the above mentioned concern

vi. Accordingly, not only an addition of Rs. 42,80, 19,650/- was made in the hands of Mis Everfine Constructions Pvt. Ltd on substantive basis by the Id. Assessing Officer but also made respective additions in the hands of the recipients of the loans on protective basis including the appellant company of Rs. 1,83,00,000/-

5. Considering our submission, the Hon'ble CIT(A) has concluded as under:-

7.11 in view of the above facts, I find that the addition u/s. 68 of the Act is uncalled for in the present facts and circumstances of the case. In any case, it is pertinent to note that although the revenue has authority and right to make protective assessment as well as substantive assessment in another case, however, with the rider that ultimately and finally, the income/transaction/addition, if at all would be in the hands of A or B but it cannot be sustained in both the hands. In this regard, the decision of in the case of Commissioner of Income-tax, Jaipur v. Sobhrajmal [2014] 51 taxmann.com 506 (Rajasthan) is relevant wherein it was held that addition once made on substantive basis in case of firm or other

partners and same was sustained, same addition could not be made on protective basis in hands of assessee being partner of firm

In light of the above judicial precedent, when ultimately, since the addition has been sustained in case of Ms. Everfine Constructions Pvt. Ltd. on account of cash paid to the promoters of Ms. Gulmohar Towers Pvt. Ltd. at the time of acquisition of shares, the amount received by the assessee from Ms. Gulmohar Towers Pvt. Ltd. in the form of advance against property cannot be again added to the income of the assessee on protective basis more so when the assessee has also discharged its onus u/s. 68 of the Act.

7.12 Accordingly, the addition of Rs. 1,83,00,000/- on protective basis made by the AO deserves to be deleted. This ground of appeal is accordingly ALLOWED.

6. In view of the above, Your Honour would appreciate that the Hon'ble CIT(A) had observed that once addition was made on substantive basis, addition of the same amount could not be made on protective basis and accordingly deleted the addition of Rs. 1,83,00,000/-. Therefore, the question of making an addition of the same amount received from the same party which had already been duly explained during the appellate proceedings does not arise and would infact tantamount to double taxation.

7. Even otherwise, the appellant company is required to only prove the nature and source of the funds obtained from its lender company which had been duly substantiated which was also accepted in the course of appellate proceedings. The assessee has not entered into any transaction with the alleged bogus entity ie. Mis. Mahagouri Vintrade Pvt Ltd. but infact obtained funds from M's. Gulmohar Towers Pvt. Ltd. The appellant company cannot be burdened to prove the source of source of the funds obtained but only the nature and source of the funds obtained from its lender ie. Mis. M's. Gulmohar Towers Pvt. Ltd.

8. Accordingly, during the course of assessment proceedings u/s. 153A r.w.s. 147 as well the appellate proceedings, the appellant company furnished the following documents to explain fully the identity, credit worthiness of Mis. Gulmohar Towers Pvt. Ltd. and genuineness of the transaction entered as envisaged by section 68 of the Act: (Enclosed herewith marked as Annexure 'F')

i. Copy of Financials

ii Copy of duly signed confirmation

iii Copy of ITR acknowledgment

iv. Copy of PAN card

v. Copy of Bank statement

It was evident from the financials of the M's. Gulmohar Towers P Ltd that the company had sufficient owned funds of its own for advancing the funds to the appellant company in the year under consideration and therefore, it correctly discharged its burden of establishing the genuineness of the funds received.

5. In this context, at para 7 of the impugned assessment order, the Id. Assessing Officer has referred to the information received about the alleged bogus entity M's. Mahagouri Vintrade Pvt. Lid and stated that there is no need to prove the source of source by the assessee as it is already established that the source of source was a shell company used for accommodation entries. In this regard, we wish to state that the appellant company is not bound to prove the source of source with the support of the provisions contained in the legislature and not due to the fact that it has already been established by the Investigation Wing. Your Honour would appreciate that if predominantly the money trail of the lenders is to be analyzed, then it would always boil down to tax the

ultimate beneficiary of the funds for the sham transactions done by the previous lenders which is not justified.

6. As per the provisions of section 68 of the Act, the beneficiary of funds is required to prove the nature and source of only its predecessor and not beyond that which has been duly done by the appellant company. In this regard, reliance is placed on the decision of the Hon'ble Bombay High Court in the case of CIT v. Gagandeep Infrastructure Pvt.Ltd (2017) 80 taxmann.com 272 (Bom.) it observed as under:

..." The proviso to section 68 has been introduced by the Finance Act, 2012 with effect from 1-4-2013. Thus, it would be effective only from the assessment year 2013-14 onwards and not for the subject assessment year. In fact, before the Tribunal, it was not even the case of the Revenue that section 68 as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1-4-2013 was its normal meaning. The Parliament did not introduce to proviso of section 68, with retrospective effect nor does the proviso to introduced states that it was introduced for removal of doubts or that it is 'declaratory. Therefore, it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to section 68 is immaterial and does not change the interpretation of section 68 both before and after the adding of the proviso.

..... The Apex Court in a case in this context to the pre-amended section 68 has held that where the revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income-tax Officer to proceed by reopening the assessment of such shareholder and assessing them to tax in accordance with law. It does not entitle the revenue to add the same to the assessee's income as unexplained cash credit As the proviso to section 68 is applicable from AY 2013-14, which is not related to the year under consideration. Also, proviso to section 68 provides to prove the source of source in case of share

application money whereas the subject matter in assesses case is of unsecured loans. In fact even today there are no provisions to prove the source of source for unsecured loans. As required under section 68, the assessee has defined the source source and nature of the amount received."

A reading of the above judgement makes it amply dear that the 2nd proviso to section 68 of the Act became effective from AY.2013-14 onwards wherein the source of source only in respect of share application money had to be established whereas in the present case, the appellant company had received unsecured loans and infact even today there is no provision in the Act to prove the source of source of unsecured loans obtained. Therefore, for the appellant company, the source of funds is M's.Gulmohar Towers Pvt. Ltd. of which the identity, genuineness and creditworthiness had been duly substantiated. The appellant company cannot be penalized for the alleged bogus loans given by Ms.Mahagouri Vintrade Pvt. Lid where infact no transaction has been done with the alleged company.

7. Also, the Hon'ble Bombay High Court in following recent cases has also held the assessee is not required to prove the source of source wherein the assessment years concerned were prior to AY.2013-14.

a. Mr. Gaurav Triyugi Singh v. ITO ITA No. [1750 of 2017] dated 22.01.2020

b. PCIT v. Ami Industries (India) (P.) Ltd. (2020) 116 taxmann.com 34

c. PCIT v. Veedhata Tower Pvt.Ltd. ITA No. [819 of 2015] dated 17.04.2018

d. PIT v. Aditya Birla Telecom Ltd [ITA No. 1502 of 2016] dated 26.03.2019

Recently, the Hon'ble Allahabad High Court has also enunciated the same principle in the case of Kesharwani Sheetalaya Sahsaon v. CIT [2020] 116 taxmann.com 382 (Allahabad).

8. Further, at para 6 of the impugned assessment order, the Id. Assessing Officer has stated that as per the information received, M's. Gulmohar Towers Pvt. Ltd. had received Rs. 40,00,000/- from Mis Mahagouri Vintrade Pvt. Ltd. whose ultimate beneficiary was the assessee and thus, it is not established by the assessee that the above sum of Rs.40,00,000/- was forming part of Rs. 1,83,00,000/-. In this regard, we wish to state that on a perusal of the bank statement of M's. Gulmohar Towers Pvt. Ltd. for the year under consideration, Your Honour would note that the said company M's. Gulmohar Towers Pvt. Ltd. had entered into a single transaction in the entire year with M's. Mahagouri Vintrade Pvt. Ltd. on 28.05.2011 wherein a sum of Rs.30,00,000/- was received. The said sum was advanced to the appellant company on 30.05.2011. Accordingly, the bank statement of the lender company M's. Gulmohar Towers Pvt. Ltd. along with the ledger conformation establishes the fact that the addition of alleged loan of Rs.40,00,000/- (actual amount Rs.30,00,000/-) is forming part of the total loan of Rs. 1,83,00,000/-. The Id. Assessing Officer has completely failed to prove that how the alleged sum of Rs. 40,00,000/- is exclusive of the total Loans received of Rs. 1.83.00.000/- where infact as mentioned above, the lender company had a sole transaction of Rs. 30,00,000/- with the alleged bogus entity during the year. The Id. Assessing Officer has also not established that the assessee company had obtained loan of Rs. 40 lacs over and above Rs. 1,83,00,000/- from the lender company-M's. Gulmohar Towers Pvt. Ltd.

9. The appellant company had also explained in detail about all these facts in the Objections filed pursuant to reopening of our case but the Id Assessing Officer has just followed the information received mechanically and proceeded with the reopening without applying his own mind. Copies of Objections filed twice vide letter dated 24.09.2019 and 21.10.2019 are enclosed herewith marked as Annexure 'G. ME TAX DEPARTMEN

10. In view of the above, Your Honour would appreciate that a sum of Rs.40,00,000 (actual amount Rs.30,00,000/-) had not only been once added in the hands of the appellant company which has been deleted by the Hon'ble CIT(A) but the addition of the same amount has also been sustained in the hands of Mis. Everfine Constructions Pvt. Ltd. and therefore once again an addition of Rs. 40,00,000/- would tantamount to double addition which is not justified.

Accordingly, we request Your Honour to kindly delete the addition of Rs. 40,00,000/- made u/s.68 of the Act"

6. Thus while relying upon the above submissions, the Ld. AR submitted that the additions were rightly deleted by Ld. CIT(A) after evaluating the entire records and therefore the order of CIT(A) be upheld and this appeal by the Revenue be dismissed

7. We have heard counsels for both the parties, perused the materials placed on record and also the judgements cited before us and the order passed by the Revenue authorities. From the records we noticed that the Assessee had taken a loan from M/s. Gulmohar Towers Pvt. Ltd and the said company in turn had taken a loan from M/s. MahagouriVintrade Pvt. Ltd. which happens to be a **"shell company"** therefore AO was of the view that since the Assessee is the ultimate beneficiary of the amount transferred by M/s. MahagouriVintrade Pvt. Ltd. a shell company therefore the additions were made in the hands of the Assessee.

8. We also noticed that at every stage of hearing it was specifically submitted by the Assessee that Assessee had no direct linkage with M/s. MahagouriVintrade Pvt. Ltd., however an unsecured loan was taken from M/s. Gulmohar Towers Pvt.

Ltd. and in this regard have already submitted all the required corroborative documentary evidences in the shape of **bank statements, loan confirmation, PAN card, copy of ITR acknowledgement and financial statements** of M/s. Gulmohar Towers Pvt. Ltd and submitted that the identity, genuineness and creditworthiness of the lender company has thus been established. It is important to mention here that the Assessee had taken total unsecured loan of Rs 1,83,00,000/- from M/s. Gulmohar Towers Pvt. Ltd and in turn M/s. Gulmohar Towers Pvt. Ltd had taken in fact Rs 30,00,000/- instead of Rs 40,00,000/- from M/s. Mahagouri Vintrade Pvt. Ltd. and the said amount of Rs 30,00,000/- is included in the total loan of Rs. 1,83,00,000/-. and out of the total unsecured loan a sum of Rs 65,00,000/- has already been repaid to the lender but still the said amount of Rs 1,83,00,000/- was added in the hands of Assessee under Section 68 of the Act. In a separate order passed under Section 153A r.w.s 143(3) of the Act, however said additions were subsequently deleted in the first appeal vide order dated 28.03.2019 and the relevant extract of Ld. CIT(A) order while adjudicating the appeal of assessment order passed under Section 153A r.w.s. 143(3), the same is reproduced herein below:

7.6 The assessee accordingly claims that no addition of Rs.1.83,00,000/- is called for as it has completely established the three ingredients viz, identity, genuineness and creditworthiness as envisaged u/s. 68 of the Act whereas the AO has treated the same to be bogus and added the same u/s. 68 of the Act solely on his surmises. Thus, the essential dispute is with regard to the advance against property received by the appellant from Mis. Gulmohar

Towers Pvt. Ltd. and whether the assessee has discharged its onus cast upon by the provisions of section 68 of the Act.

7.7 The assessee has submitted the above documents in the course of assessment as well as before me. I have perused the aforesaid documents. It is pertinent to note that Section 68 is not a charging section but a deeming fiction dealing with the burden of proof. The section casts initial onus u/s. 68 of the Act on the assessee to prove identity, genuineness and creditworthiness of the transaction to the satisfaction of the AO. If the assessee fails to do so or the explanation offered by him is not satisfactory to the AO, the AO is empowered to add the same to the total income of the assessee. The said power is to be exercised judiciously by the AO. Thus, once the initial onus is discharged by the assessee, the onus shifts on the AD to bring out fallacies in evidence brought by the assessee or by bringing new evidence that indicate the transactions undertaken by the assessee are non-genuine. Thus, the section deals with an equilibrium of onus of proof and must be viewed to evaluate as to whether the evidences brought by the assessee or AD weigh more and accordingly in whose favour the equilibrium bends. In the present case, on one hand, the assessee has placed evidence in the form of Financials of alleged company, duly signed confirmations received from the alleged company, ITR acknowledgments of the alleged company, PAN card of the alleged company, Bank statement of the alleged company, MOU reflecting the terms and conditions of the transaction for purchase of plot, etc. The transactions are also carried out through account payee cheques. Accordingly, the assessee has discharged its onus u/s 68 of the Act. I find that the AO has not been able to point out any deficiencies in the above documents and has not brought on record any cogent evidence to doubt the transaction entered by the assessee with Mis. Gulmohar Towers Pvt. Ltd. Moreover, as rightly pointed out by the appellant, it is not a transaction of a simpliciter loan taken by the appellant but is

that of an investment in property and hence, the rigours of section 68 also cannot be strictly applied. On the contrary. the Assessing Officer has solely placed reliance on the statement of Shri Khimji Patel, Shri Anand Sharma and Shri Vivek Agarwal and general findings of Investigation wing. When we peruse the facts of A.Y.2011-12, it emerges that M/s. Everfine Constructions Pvt. Ltd. has paid cash of Rs. 42,80,19,650/- to shareholders of Mis, Gulmohar Towers Pvt. Ltd. which was not accounted in its books of accounts for which addition has been already made in the hands of M/s. Everfine Constructions Pvt. Ltd. which is also confirmed by this office vide order dated 15.03.2019. However, transaction between the appellant and Mis Gulmohar Towers Pvt. Ltd. is a post facto event in respect of which the appellant has discharged its onus u/s 68 of the Act by establishing the genuineness of the transaction and identity & credit worthiness of the party.

7.8 The expression "nature and source has to be understood together as a requirement of identification of the source and the nature of the source, so that the genuineness or otherwise could be inferred. The Hon'ble Supreme Court, in Kale Khan Mohd. Hanif ve. CIT, pointed out that the onus on the assessee has to be understood with reference to the facts of each case and proper inference drawn from the facts. If the prima facie inference on the fact is that the assessee's explanation is probable, the onus will shift to the Revenue. As far as the creditworthiness or financial strength of the creditor/subscribers/lender is concerned, that can be proved by producing the bank statement of the creditors/cuboorborallender showing that it had sufficient balance in its accounts to enable it to subscriber to the share capital. Once these documents are produced, the assessee would have satisfactorily discharged the onus cast upon him. Thereafter, it is for the Assessing Officer to scrutinize the same and in case he nurtures any doubt about the veracity of these documents, to prove the matter further.

7.9. *The assessee must satisfy three important conditions, namely, (1) the identity of the creditor, (i) the genuineness of the transaction; and (i) the financial capacity of the person, le the credit worthiness of the party. However, the onus of the assessee is limited to the extent of proving the source from which he received the cash credit. The credit worthiness of the lender has to be judged vis-à-vis the transaction which had taken place between the assessee and the lender, and it is not the burden of the assessee to find out the source of creditworthiness of the lender to prove the genuineness of the transaction. This issue is dealt by the Gauhati High Court in the case of CIT v. Smt. Sanghamitra Bharal (2014) 361 ITR 481 (Gau). The aforesaid points were also affirmed in the past by the Appex Court in the case of CIT v. Orissa Corporation P. Ltd reported in (1986) 159 ITR 78 (SC). In the case of CIT v. Varinder Rawley (2014) 366 ITR 232 (P&H) the court held that where the assessee shows that the entries regarding credit in a third party's account were in fact received from the third party and are genuine, he discharges the onus. In that case, the sum cannot be charged as the assessee's income in the absence of any material to indicate that it belongs to assessee"*

7.10 *in view of the overall discussion made above, it is clear that source of advance obtained by the assessee from Mis. Gulmohar Towers Pvt. Ltd, stands explained, Whereas, the AO has not pointed out any defect in the above-mentioned documentary evidences submitted during the proceedings. Without pointing out any lacuna in the evidences submitted by the appellant, the sources and the genuineness of transaction cannot be doubted. It is a trite law that once evidences related to a transaction are submitted before the AO, the onus shifts on him to prove these as non-genuine. The AO has not discharged the onus cast upon him. As such, in the absence of any contrary evidence or findings placed on record, the transactions cannot be doubted*

7.11 In view of the above facts, I find that the addition u/s. 68 of the Act is uncalled for in the present facts and circumstances of the case, in any case, it is pertinent to note that although the revenue has authority and right to make protective assessment as well substantive assessment in another case, however, with the ridor that ultimately and Finally, the income/transaction/addition, if at all would be in the hands of A or B but it cannot be sustained in both the hands. in this regard, the decision of in the case of Commissioner of Income-tax, Jaipur v. Sobhrajmal [2014] 51 taxmann.com 506 (Rajasthan) is relevant wherein it was held that addition once made on substantive basis in case of firm or other partners and same was sustained, same addition could not be made on protective basis in hands of assessee being partner of firm.

In light of the above judicial precedent, when ultimately, since the addition has been sustained in case of Mis. Everfine Constructions Pvt. Ltd. on account of cash paid to the promoters of Mis. Gulmohar Towers Pvt. Ltd. at the time of acquisition of shares, the amount received by the assessee from Mis. Gulmohar Towers Pvt. Ltd, in the form of advance against property cannot be again added to the income of the assessee on protective basis more so when the assessee has also discharged is onus u/s 68 of the Act.

7.12 Accordingly, the addition of Rs. 1,83,00,000/- deserves to be deleted. This ground of appeal is accordingly ALLOWED

9. Now since this amount of Rs. 30,00,000/- received by the assessee forms the part of total receipt of Rs. 183 Crore received from M/s. Gulmohar Towers Pvt. Ltd during the year 2011-12 and it had already been considered for taxation in the original assessment and deleted in the first appeal, therefore the assessee had relied upon and submitted the ledger confirmation from M/s. Gulmohar

Towers Pvt. Ltd as per which a total outstanding of Rs. 29.57 crores was repaid by the assessee to M/s. Gulmohar Towers Pvt. Ltd by 31.03.2021 thus we found that the assessee had successfully discharged its onus for proving the genuineness of the loan taken from M/s. Gulmohar Towers Pvt. Ltd and assessee was not required to prove the genuineness of the transaction between M/s. Mahagouri Vintrade Pvt. Ltd. and M/s. Gulmohar Towers Pvt. Ltd which shall be akin to proving the source of source. In this regard reliance has been placed on the decision of ***Bombay High Court in the case of CIT V. Gagandeep Infrastructure Pvt. Ltd. 80 taxmann.com 272*** wherein it was held that the second proviso to Section 68 of the Act had become effective from AY 2013-14, wherein it was also held that the source of source theory is applicable only in respect of share application money.

10. Since, the present case relates to unsecured loan and even till today there is no provision in the Act to prove source of source of unsecured loan obtained, therefore Ld. CIT(A) after considering the entire factual as well as legal position rightly deleted the additions.

11. No new facts or circumstances or documents have been placed on records by Ld. DR in order to controvert or rebut the lawful findings so recorded by the Ld. CIT(A), therefore, we see no reasons to interfere into or to deviate from the findings so recorded by Ld. CIT(A), hence we

dismiss the grounds raised by the Revenue and uphold the order of Ld. CIT(A) deleting the additions.

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12. Since we have already dismissed the appeal filed by the Revenue, therefore, CO filed by the Assessee stands dismissed as the same becomes infructuous.

13. In the result, the appeal filed by the Revenue and the COs filed by the Assessee stand dismissed.

Order pronounced in the open court on 19/02/2026

Sd/-

**(PRABHASH SHANKAR)
ACCOUNTANT MEMBER**

Sd/-

**(SANDEEP GOSAIN)
JUDICIAL MEMBER**

Mumbai:

Dated: 19/02/2026

RY, Sr. PS

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)

ITAT, Mumbai