

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

**ITA No. 4850/Mum/2025
Assessment Year: 2010-11**

Abdul Wajid Abdul Rehman Sheikh C-1205, Amey CHSL, Palm Beach Residency, Nerul Node-III, Thane, Navi Mumbai-400706 PAN: AOBPS4776A	Vs.	DCIT, Central Circle- 4(3) Kautilya Bhavan, Mumbai-400012
(Appellant)		(Respondent)

Assessee by	Shri Parin Shah
Department by	Shri Surendra Mohan, SR. DR

Date of Hearing	04.02.2026
Date of Pronouncement	27.02.2026

ORDER

Per: SHRI JAGADISH, A.M.:

1. This appeal filed by the assessee is directed against the order dated 24.06.2025 passed by the Ld. CIT(A)-52, Mumbai under section 250 of the Income Tax Act, 1961 for A.Y. 2010-11, arising out of the assessment framed under section 143(3) r.w.s. 147 of the Income Tax Act.

2. The effective ground of appeal is against confirming the addition of ₹35,09,056/- made under section 68 of the Act by the A.O.
3. The facts in brief are that the assessee is an individual engaged in trading activity of chicken and buffalo meat through proprietary concerns. The return of income was originally filed declaring total income of ₹69,27,342/-. The assessment was reopened on the basis of information allegedly received from the Investigation Wing that the assessee had transactions with Shri Abdul Wahab and that an amount of ₹35,09,056/- was found credited in the account of the proprietary concern "Fresh Chicken". The Assessing Officer treated the said amount as unexplained cash credit under section 68 and added the same to the total income.
4. Before us, the Ld. Authorised Representative submitted that the assessee had made purchases of ₹20,00,000/- only from Shri Abdul Wahab through banking channels and the same were duly reflected in the books of account and bank statement. It was submitted that except this transaction, there was no other dealing with the said party. The addition of ₹35,09,056/- has been made merely on the basis of third-party information without furnishing any details such as copy of account, date-wise entries, nature of transaction, or any corroborative material. It was further submitted that the books of account were produced before the Assessing Officer and no specific credit entry of ₹35,09,056/- was pointed out. The Ld. AR contended that the assessee cannot be expected to prove a negative, namely, to disprove a transaction which does not exist in his books. It was argued that in absence of establishing the primary fact that such sum was credited in the books of the assessee, invocation of section 68 is legally unsustainable.

5. The Ld. Departmental Representative relied upon the orders of the lower authorities and submitted that the information was received from the Investigation Wing and the assessee failed to furnish confirmation or supporting evidence in respect of the alleged credit. It was contended that the burden under section 68 lies upon the assessee and, in absence of satisfactory explanation, the addition was rightly made and confirmed.
6. We have heard rival submissions and perused the material available on record. The addition of ₹35,09,056/- has been made under section 68 on the premise that the said amount was credited in the account of the assessee's proprietary concern. However, from a perusal of the assessment order as well as the order of the Ld. CIT(A), we find that no concrete material has been brought on record to demonstrate that such amount was in fact credited in the books of the assessee. There is no discussion of any specific entry in the cash book, ledger or bank account of the assessee evidencing credit of ₹35,09,056/-. No copy of account of Shri Abdul Wahab reflecting such credit has been placed on record. The addition appears to have been made solely on the basis of generalized information without correlating the same with the books of the assessee.
7. It is well settled that for invoking section 68, the foundational requirement is that a sum is found credited in the books of the assessee maintained for the relevant previous year. Unless the existence of such credit entry in the books is established, the question of calling upon the assessee to explain the nature and source thereof does not arise. In the present case, the assessee has consistently contended that except purchase of ₹20,00,000/- through banking channel, there was no other transaction with Shri

Abdul Wahab. The books of account were produced and have not been rejected. No specific defect has been pointed out.

8. In our considered view, the initial burden to establish the existence of a credit entry in the books of the assessee lies upon the Assessing Officer. Only thereafter does the onus shift to the assessee to explain the nature and source of such credit. The assessee cannot be expected to prove a negative fact or to disprove an entry which has not been shown to exist in his books. Suspicion, however strong, cannot substitute proof. In absence of cogent material demonstrating that ₹35,09,056/- stood credited in the books of the assessee, the addition made under section 68 is not sustainable in law.
9. Considering the totality of facts and circumstances, we are of the view that the addition of ₹35,09,056/- made under section 68 and confirmed by the Ld. CIT(A) deserves to be deleted. Accordingly, the grounds raised by the assessee are allowed.
10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 27/02/2026

Sd/-

(NARENDER KUMAR CHOUDHRY)
Judicial Member

Sd/-

(JAGADISH)
Accountant Member

Mumbai, Dated: 27/02/2026

Ashwani Rao
Sr. Private Secretary

Copy of the order forwarded to:

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

By order

(Assistant Registrar)
ITAT, Mumbai