

**IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.2414/Bang/2025
Assessment Year: 2018-19

Shri Vijay Mahantesh Trading Company, No.596 Bagi Building, Market Road, Navalgund – 582 208. PAN – AAGFS 0504 F	Vs.	The Income Tax Officer, Ward – 1(2), Hubballi – 580 025.
APPELLANT		RESPONDENT

Assessee by	:	Shri Rajeev C Nulvi, Advocate
Revenue by	:	Shri Ganesh R Ghale, Advocate – Standing Counsel for Revenue

Date of hearing	:	23.02.2026
Date of Pronouncement	:	05.03.2026

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The present appeal has been instituted by the assessee against the order of the Ld. CIT(A) passed u/s 250 of the Act dated 01.09.2025

2. The assessee in the memorandum of appeal has raised 6 grounds, which we for the sake of brevity and convenience are not inclined to reproduce here. The grounds raised by the assessee are interconnected and pertains to the addition made by the AO under section 68 of the Act amounting to Rs. 33,90,000/- only. Since all the grounds revolve around the same issue relating to the treatment of the

said amount as unexplained cash credit, they are taken up together for the purpose of adjudication.

3. The brief facts of the case are that the assessee, a partnership firm, consisting of two partners, namely Mr. Anappa Bagi and Ms. Shivaleela S. Bagi. The assessee filed its return of income for the captioned assessment year declaring a total income of Rs. 1,75,580.00 only.

4. On examination of the cash book produced by the assessee, the AO observed that the opening cash balance as per the books was Rs. 12,69,085/- only. Further, on perusal of the capital accounts of the partners, the AO noticed that the opening capital was Rs. 26,42,699/- and the closing capital was Rs. 1,23,38,355/-. Thus, during the year there was an increase in capital of Rs. 96,95,996/-. As per the assessee, out of the increase in the capital Rs. 96,95,996/-, a sum of Rs. 33,90,000/- was introduced by Ms. Shivaleela S. Bagi, partner of the firm.

4.1 When called upon to explain the source of such increase in capital, the assessee submitted that its partners namely Mr. Anappa Bagi and Ms. Shivaleela S. Bagi, have entered into two Joint Development Agreements with Maxworth Reality India Private Limited and an amount of Rs. 48 lakhs (96 lacs gross) had been received during the financial year 2015-16 as advance by each partner. It was submitted that the said amount was withdrawn during financial year 2015-16 and subsequently introduced as capital in the partnership firm during financial year 2016-17.

4.2 However, on verification of the bank account of Ms. Shivaleela S. Bagi, the AO observed that there were no withdrawals corresponding to the capital introduced by her. In response, the assessee submitted that the advance pertaining to Ms. Shivaleela S. Bagi was received in the bank account of her son, Mr. Vijay Mahantesh Bagi, who was also a party to the JDA. It was explained that Mr. Vijay Mahantesh Bagi had withdrawn the amount and brought the same into the firm as capital. The AO, however, did not accept the explanation furnished by the assessee. The AO observed that Mr. Vijay Mahantesh Bagi was not a partner in the firm and the assessee had not furnished any documentary evidence to establish that the amount received in his account had not been utilized elsewhere or that it was the source of capital introduced in the firm. The AO further noted that the assessee had not explained the capacity in which the funds were transferred through different hands. It was also observed that the time gap between the withdrawal of the amount and its introduction as capital in the firm remained unexplained to the satisfaction of the AO. Accordingly, the AO held that the source of the capital introduced remained unexplained and treated a sum of Rs. 33,90,000/- introduced by Ms. Shivaleela S. Bagi as unexplained cash credit and added the same to the income of the assessee under section 68 of the Act.

5. Aggrieved by order of the AO, the assessee preferred an appeal before the Ld. CIT(A).

6. Before the Ld. CIT(A), the assessee submitted that the partner of the firm, Ms. Shivaleela S. Bagi, along with her three sons had received a sum of Rs. 48 lakhs as refundable deposit pursuant to Joint

Development Agreement (JDA). It was explained that the said amount was credited in the bank account of the elder son, Mr. Vijay Mahantesh Bagi, maintained with Karnataka Bank.

6.1 The assessee further submitted that the amount received under the JDA was subsequently withdrawn by Mr. Vijay Mahantesh Bagi and was utilized for introducing capital in the partnership firm. In support of this contention, the assessee furnished date-wise details of the amounts received on account of the JDA along with a copy of the JDA agreement. The assessee also filed date-wise details of the withdrawals made by Mr. Vijay Mahantesh Bagi which, according to the assessee, were utilized for capital introduction in the firm. Additionally, a copy of the bank statement of Mr. Vijay Mahantesh Bagi was also submitted before the Ld. CIT(A) to substantiate the claim of the assessee.

6.2 The Ld. CIT(A), after considering the submissions of the assessee and the materials placed on record, examined the bank statement of Mr. Vijay Mahantesh Bagi. It was observed that an amount of Rs. 10,00,000/- was credited in his bank account on 03.08.2015 through RTGS from Suvirath Silks. Further, amounts of Rs. 13,96,808/- and Rs. 23,94,528/- were credited by bill No. 155 310B00291 on 11.08.2015 and 07.09.2015 respectively. Out of these amounts, cash withdrawals were made on various dates, namely Rs. 10,00,000/- on 04.08.2015, Rs. 8,00,000/- on 13.08.2015, Rs. 5,98,000/- on 17.08.2015, Rs. 6,00,000/- on 08.09.2015 and Rs. 5,50,000/- on 09.09.2015. The assessee contended that these withdrawals were handed over to the assessee firm and were subsequently introduced as capital.

6.3 However, on careful examination of the bank statement of Mr. Vijay Mahantesh Bagi, the Ld. CIT(A) observed that the amounts credited in his bank account did not appear to have been received as refundable deposit under the Joint Development Agreement dated 03.08.2015. The Ld. CIT(A) further noted from the copy of the said JDA that the owners, namely the appellant along with her three sons, were to receive Rs. 10,00,000/- on 03.08.2015, Rs. 14,00,000/- on 05.08.2015 and Rs. 24,00,000/- on 03.09.2015. Therefore, the Ld. CIT(A) held that the amounts credited in the bank account of Mr. Vijay Mahantesh Bagi did not correspond with the refundable deposits stated to have been received under the said JDA. Accordingly, the explanation furnished by the assessee was not found satisfactory. Accordingly, The learned CIT-A dismissed the appeal of the assessee.

7. Being aggrieved by the order of the Id. CIT-A, the assessee preferred an appeal before us.

8. The Ld. AR before us submitted the ledger of Ms. Shivaleela Bagi capital account, written submissions containing statement of facts, ground of appeals, sworn affidavit of Ms. Shivaleela Bagi and orders of lower authorities.

8.1 The Ld. AR submitted that the Ld. CIT(A), NFAC has erred in sustaining the addition of Rs. 33,90,000/- made by the Assessing Officer under section 68 of the Act despite the assessee furnishing sufficient documentary evidence explaining the source of the capital introduced by the partner, Smt. Shivaleela Siddlingappa Bagi. It was submitted that the said capital was introduced out of the refundable deposit received

pursuant to the Joint Development Agreement entered into by Smt. Shivaleela Siddlingappa Bagi along with her children with the developer. The Ld. AR submitted that the refundable deposit amounting to Rs. 48,00,000/- received under the said JDA was credited in the bank account of Sri Vijay Mahantesh Bagi, the son of Smt. Shivaleela Siddlingappa Bagi. The deposits were received on 03.08.2015, 05.08.2015 and 03.09.2015 aggregating to Rs. 48,00,000/-. Out of the said amount, cash withdrawals aggregating to Rs. 35,48,000/- were made on various dates and the same was subsequently introduced as capital in the partnership firm. It was contended that the bank statement of Sri Vijay Mahantesh Bagi clearly demonstrates that the deposits preceded the withdrawals and therefore the source of the capital introduced in the firm stands duly explained.

8.2 The Ld. AR further submitted that the Ld. CIT(A) has misread the facts while observing that the amounts credited in the bank account of Sri Vijay Mahantesh Bagi were not relatable to the refundable deposit received under the JDA. It was contended that the deposits in the bank account correspond with the amounts received under the JDA and therefore the finding recorded by the Ld. CIT(A) is contrary to the materials placed on record.

8.3 The Ld. AR also submitted that the Ld. CIT(A) erred in disregarding the affidavit filed by the assessee. It was argued that an affidavit is a sworn statement made on oath and constitutes a valid piece of evidence unless the contents thereof are disproved by the Revenue. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of *Krishan Chander Nayar vs. Chairman, Central Tractor*

Organisation (3 SCC 187) to contend that such sworn statements cannot be brushed aside without establishing that the facts stated therein are incorrect.

8.4 Without prejudice, the Ld. AR submitted that the addition has been made in the hands of the partnership firm even though the amount in question represents capital introduced by a partner. It was argued that where a partner introduces capital in the firm and the identity of the partner is not in dispute, any enquiry with regard to the source of such funds has to be made in the hands of the partner and not in the hands of the firm. Therefore, the addition made in the hands of the assessee firm under section 68 of the Act is not sustainable in law. In view of the above submissions, the Ld. AR prayed that the addition of Rs. 33,90,000/- sustained by the Ld. CIT(A) be deleted.

9. On the other hand, the Ld. DR supported the orders of the Assessing Officer as well as the Ld. CIT(A) and submitted that the assessee has failed to satisfactorily explain the source of the capital introduced in the firm by Smt. Shivaleela Siddlingappa Bagi. The Ld. DR contended that the amount claimed having been received as refundable deposit under the Joint Development Agreement was not found to be directly credited in the bank account of the partner. Instead, the amounts were routed through the bank account of Sri Vijay Mahantesh Bagi, who is not a partner of the firm. It was submitted that the assessee failed to establish the nexus between the deposits received under the JDA and the capital introduced in the firm. The Ld. DR further submitted that the explanation regarding the movement of funds through different hands and the time gap between withdrawals and

capital introduction remained unsubstantiated. Therefore, the authorities below were justified in treating the amount of Rs. 33,90,000/- as unexplained cash credit under section 68 of the Act.

10. We have heard the rival submissions of both the parties and perused the materials available on record. The issue for consideration before us is whether the addition of Rs. 33,90,000/- made under section 68 of the Act on account of capital introduced by the partner, Smt. Shivaleela Siddlingappa Bagi, is sustainable in the hands of the assessee firm.

10.1 It is observed from the record that the assessee firm had explained that the impugned capital introduced by the partner was sourced from the refundable deposit received under a Joint Development Agreement entered into by Smt. Shivaleela Siddlingappa Bagi along with her children with the developer. In support of the said contention, the assessee had furnished the copy of the Joint Development Agreement, bank statement of Sri Vijay Mahantesh Bagi in whose account the refundable deposit was credited, and the details of withdrawals made from the said bank account. From the bank statement placed on record, it is noticed that the amounts were credited on 03.08.2015, 05.08.2015 and 03.09.2015 aggregating to Rs. 48,00,000/- and cash withdrawals were made thereafter on various dates amounting to Rs. 35,48,000/-. Thus, the withdrawals clearly follow the deposits made in the said bank account.

10.2 The explanation of the assessee that the amount received under the JDA was credited in the bank account of Sri Vijay Mahantesh Bagi

and the same was subsequently withdrawn and introduced as capital in the partnership firm has not been disproved by bringing any contrary material on record by the Revenue authorities. The mere fact that the said bank account stands in the name of the son of the partner cannot by itself lead to the conclusion that the source of capital introduced in the firm remains unexplained, particularly when the assessee has furnished the supporting documentary evidence including the JDA agreement and the bank statement evidencing the flow of funds.

10.3 We also find merit in the contention of the assessee that where capital is introduced by a partner in a partnership firm and the identity of the partner is not in dispute, the addition under section 68 of the Act cannot ordinarily be made in the hands of the firm. If the Revenue is not satisfied with the explanation regarding the source of the amount introduced by the partner, the appropriate course of action would be to examine the matter in the hands of the partner concerned and not in the hands of the firm.

10.4 The above view is also supported by the decision of the Hon'ble Gujarat High Court in CIT vs. Pankaj Dyestuff Industries in (IT Reference No. 241 of 1993, dated 06.07.2005). The relevant para is reproduced below for ready reference:

"14.In the facts and circumstances of the present case, both the Deputy CIT (Appeals) and the Tribunal have found that the assessee had discharged the primary onus which was on it by offering explanation, which has not been found to be incorrect or false in any manner. The interest of the revenue is also safeguarded as the Income Tax Officer has been given the liberty to consider the said credits in the hands of the partners if he is not satisfied with the sources of investment of cash credits in the accounts of the partners.

15.In these circumstances, it is not possible to find that the order of the Tribunal suffers from any infirmity which would require interference at the hands of this Court. Accordingly, it is held that the Tribunal was right in law and on facts in deleting the addition of Rs.87,250/- being deposits in the

accounts of the partners. The question referred to this Court is, accordingly, answered in the affirmative i.e. in favour of the assessee and against the revenue."

10.5 In the present case, the identity of the partner introducing the capital is undisputed and the assessee has placed on record the primary evidence explaining the source of the funds. The authorities below have not brought any material to establish that the deposits in the bank account of Sri Vijay Mahantesh Bagi were unrelated to the refundable deposit received under the Joint Development Agreement. In our considered view, the explanation offered by the assessee has not been properly appreciated by the lower authorities and the addition has been sustained merely on presumptions. In view of the above facts and circumstances, we hold that the addition of Rs. 33,90,000/- made under section 68 of the Act in the hands of the assessee firm is not justified. Accordingly, the addition sustained by the Ld. CIT(A) is directed to be deleted. The grounds raised by the assessee are allowed.

11. In the result, the appeal of assessee is hereby allowed.

Order pronounced in court on 5th day of March, 2026

Sd/-

(KESHAV DUBEY)
Judicial Member

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 5th March, 2026

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore