

IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 5012/Mum./2025
(Assessment Year : 2013-14)

ITA No. 5664/Mum./2025
(Assessment Year : 2014-15)

Kailas Punavasi Yadav,
5th floor, Shivraj Heights,
Bhabrekar Nagar, Kandivali West,
Mumbai – 400067
PAN : ACWPY4027D

..... Appellant

v/s

Income Tax Officer, Ward - 42(1)(3),
Room No. 735, 7th floor,
Kautilya Bhavan, Bandra Kurla Complex,
Bandra (East)
Mumbai – 400051

..... Respondent

Assessee by : Ms. Dinkle Hariya, Adv.

Revenue by : Shri Ritesh Misra, CIT-DR

Date of Hearing – 26/03/2026

Date of Order – 15/04/2026

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeals against the separate impugned orders dated 12/06/2025 and 17/07/2025, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals) [*learned CIT(A)*], for the assessment years 2013-14 and 2014-15.

2. Since both appeals pertain to the same assessee involving similar issues arising out of the similar factual matrix, these appeals were heard together as a matter of convenience and are being decided by way of this consolidated order. With the consent of the parties, the assessee's appeal for the assessment year 2013-14 is considered as a lead case, and the decision rendered therein shall apply mutatis mutandis to the other appeal filed by the assessee before us.

3. In its appeal for the assessment year 2013-14, the assessee has raised the following grounds: –

"1. THE ORDER IS BAD IN LAW, ILLEGAL AND WITHOUT JURISDICTION

1.1 In the facts and the circumstances of the case, and in law, the appellate order u/s. 250 of the Income tax Act, 1961 ['the Act'] framed and passed on 12.06.2025 by the Commissioner of Income tax (Appeals), National Faceless Appeal Centre ['Ld. CIT (A)'] is bad in law, illegal and without jurisdiction, as the same is framed in breach of the statutory provisions of the Act and the scheme and as otherwise also is not in accordance with the law.

1.2 Without prejudice to the generality of the above, the appellate order so passed is bad in law, illegal and void as the same is arbitrary and perverse.

2. VIOLATION OF PRINCIPLES OF NATURAL JUSTICE

2.1 In the facts and the circumstances of the case, and in law, the appellate order so framed is bad in law and illegal, as the same is framed in breach of the principles of Natural Justice.

2.2 Without prejudice to the generality of the above ground, in the facts and the circumstances of the case, the Ld. CIT (A) erred in -

(i) not granting proper, sufficient, reasonable and fair opportunity of being heard to the Appellant while passing the appellate order; and

(ii) not granting an opportunity of personal hearing.

WITHOUT PREJUDICE TO THE ABOVE

3. ADDITION OF RS. 1,55,45,000/- AS UNEXPLAINED CASH CREDIT U/S. 68 OF THE ACT

3.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making addition of the amount of Rs. 1,55,45,000/- as alleged unexplained cash credit u/s. 68 of the Act, on the ground that the Appellant failed to establish the identity and creditworthiness of the loan party, M/s. Raj Associates, and genuineness of the transaction.

3.2 While doing so, the CIT (A) erred in: 3.2

(i) Basing his action on surmises, suspicion and conjecture;

(ii) Taking into account irrelevant and extraneous considerations; and

(iii) Ignoring relevant material and considerations as submitted by the Appellant.

3.3 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.

3.4 Without prejudice to the above, assuming - but not admitting - that some addition was called for, the Ld. CIT (A) failed to appreciate that the computation of the addition made by the A.O. was arbitrary, excessive and not in accordance with the law.

4. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is a proprietor of M/s Shivraj Developers and is engaged in the business of SRA development, redevelopment of properties and all liaising work. For the assessment year 2013-14, the assessee filed its return of income on 28/03/2015, declaring a total income of INR 5,62,600. The return filed by the assessee was selected for scrutiny, and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, it was observed that the assessee had obtained unsecured loans amounting to INR 4,51,45,000 from the following parties: –

Sr. No.	Name of the Party	Amount (Rs.)
1	M/s Raj Associates	1,55,45,000
2	M/s Parinee Contour Const P Ltd	1,25,00,000
3	M/s Rander Corporation	1,71,00,000
	Total	4,51,45,000/-

5. Accordingly, the assessee was asked to submit the loan confirmation and was also required to prove the identity and creditworthiness of the loan lenders and the genuineness of the transaction. In order to verify the identity and creditworthiness of the loan lenders and the genuineness of the transaction, notice under section 133(6) of the Act was issued to the aforementioned parties. Upon perusal of the reply, inter alia, filed by M/s Raj Associates in response to notice issued under section 133(6) of the Act, it was observed that the assessee received unsecured loans to the tune of INR 1,55,45,000 during the year from M/s Raj Associates. On verification of the bank statement of M/s Raj Associates, it was noticed that cash was deposited to the tune of INR 90,50,000 during the year. From the financial statement of M/s Raj Associates, it was also noticed that M/s Raj Associates is engaged in the business of builders and developers. However, during the year under consideration, it has not received any advances towards flat booking from the customers. It was also noticed that the closing WIP as per the profit and loss account was shown at INR 72,44,947, but in the balance sheet, the closing WIP was shown at INR 93,59,632. Further, major construction expenses like expenses of land, purchase of material, etc., were also not incurred by M/s Raj Associates as per its profit and loss account. On verification of the partners' capital account of M/s Raj Associates, it was noticed that the total capital of the firm is merely INR 9,50,000, and out of the four partners, not a single partner has introduced any capital during the year under consideration. Further, M/s Raj Associates was found to have filed the return of income at INR NIL for the year under consideration. Accordingly, notices were issued to

the assessee on 14/12/2015, 16/02/2016, 24/02/2016, 26/02/2016 and 07/03/2016 to establish the identity, genuineness and creditworthiness of the creditors. As the assessee failed to respond to these notices, a final opportunity was granted vide show-cause notice dated 15/03/2016 to prove the genuineness of the transaction and the identity and creditworthiness of M/s Raj Associates. In response, the assessee submitted that all the loans were received during the year only through account payee cheques.

6. The Assessing Officer ("AO"), vide order dated 21/03/2016 passed under section 143(3) of the Act, disagreed with the submissions of the assessee and held that the assessee failed to establish the creditworthiness and genuineness of the transaction with M/s Raj Associates. It was also held that the assessee did not offer any explanation about the discrepancies in the financial statements of M/s Raj Associates. Thus, the AO held that the assessee has neither established the genuineness of the transaction nor the creditworthiness of the person who made a payment through an account payee cheque, which is not sacrosanct, nor can it make non-genuine transactions as genuine. The AO further held that the unsecured loans shown by the assessee are nothing but the assessee's own undisclosed money routed through the bank account of M/s Raj Associates, which is not a person of means, as established from the above-mentioned facts and circumstances. Accordingly, the amount of INR 1,55,45,000 received from M/s Raj Associates was treated as unexplained cash credit under section 68 of the Act and added to the total income of the assessee.

7. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee on this issue and upheld the addition made under section 68 of the Act, by observing as follows: –

"5.1 The AO made the addition u/s. 68 of the Act by observing that the assessee could not establish the creditworthiness of creditor and genuineness of transaction as there was huge cash deposit to the bank account of creditor Raj associates before transmission of amount / issuance of cheque in favor of the appellant., therefore, the source of unsecured loan was cash deposit to the bank account of the loan creditor and the AO came to a conclusion as a final finding that the unsecured loan of Rs. 1,55,45,000/- was nothing but unaccounted cash of the assessee which was routed through banking account for camouflaging the funds as unsecured loan and ultimately accounted the same in the bank account.

5.2 These glaring facts had cumulatively established that the transaction of unsecured loan was bogus and the assessee failed to explain the source of such unsecured loan by way of establishing capacity & creditworthiness of creditor and genuineness of transaction. In view of foregoing discussions, this office had reached a logical conclusion it is a settled principle of tax jurisprudence that for claiming creditworthiness of the creditors and genuineness of transactions of unsecured loan the onus is on assessee to prove that the creditor was having capacity and creditworthiness to extend the loan and thus the transaction was genuine. In the present case undisputedly the appellant had filed the copies of bank statements of creditor, copy of income tax return and confirmation issued by M/s Raj associates along with the copy of appellant's bank account in which unsecured loan was received. But merely filing said documentary evidence is not sufficient to discharge the onus as per mandate of section 68 of the Act particularly when there was factum of cash deposit to the bank account of creditors immediately before issuance of cheques to the assessee as unsecured loan. The Assessing officer has noted a detailed and categorical finding, destroying the factual correctness of confirmation issued by M/s Raj associates and its capacity to extend the unsecured loan amounting to Rs. 155 lacs to the appellant. In view of above observations, it is hereby held that the AO had recorded a categorical finding that the assessee failed to explain and prove the creditworthiness of loan creditor and the genuineness of transaction of unsecured loan received by him.

5.3 The appellant's contention that the major portion of the loan was repaid in the same financial year and the balance in the subsequent financial year does not hold water. The honorable jurisdictional ITAT in the case of J. K. Global v. ITO [2024] 167 taxmann.com 15 (Mumbai - Trib.) after considering the facts of the case in toto and in the light of the decision of the co-ordinate bench in Praveen Kumar Jain v. Dy. CIT [IT Appeal No. 7191 (Mum.) of 2018, dated 19-1-2023] held that the addition made under section 68 for the captioned assessment years, is to be confirmed. The contention of the assessee that the loans have been repaid during the year under consideration therefore the set off of the same should also be given to the assessee does not hold any water as it has been established that the impugned loans were nothing but accommodation entries and the repayment is also nothing but return of accommodation entries and, therefore, the money which has been

brought in the garb of unsecured loan is nothing but the unaccounted money of the assessee and the repayment of the same does not make any sense.

The facts of the appellant case squarely fit in the above decision. In view of the above, the addition made u/s 68 by the AO to the tune of Rs 1,55,45,000/- is hereby upheld."

Being aggrieved, the assessee is in appeal before us.

8. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the assessee filed copies of bank statements of the creditor, income Tax return and confirmation issued by M/s Raj Associates along with the assessee's bank account in which unsecured loan was received. The learned AR submitted that these facts have been duly recorded by the lower authorities. It was further submitted that the assessee is not required to prove the source of source, and the amendment in the provisions of section 68 of the Act, requiring the assessee to prove the source of source in respect of loans or borrowings, was brought into the statute with effect from 01/04/2023, and thus is not applicable to the year under consideration. The learned AR further submitted that the loan received by the assessee was utilised for the purpose of its business.

9. On the other hand, the learned Departmental Representative ("*learned DR*") vehemently relied upon the order passed by the lower authorities and submitted that the assessee failed to substantiate that the loan lender had the capacity and creditworthiness to extend the loan to the assessee.

10. Having considered the submissions of both sides and perused the material available on record, it is evident that in the present case, the AO has

not doubted the identity of M/s Raj Associates, and the said party also responded to the notice issued under section 133(6) of the Act during the assessment proceedings. As the said party did not receive any advances towards the flat booking from customers during the year under consideration, and there were no major construction expenses incurred by M/s Raj Associates, the AO raised doubts about the creditworthiness of the loan lender. Further, it was noticed that not a single partner of M/s Raj Associates introduced any capital during the year under consideration, and the total capital of the firm was merely INR 9,50,000. From the perusal of the bank statement of M/s Raj Associates, it was noticed that a total cash of INR 90,50,000 was deposited in its bank account during the year under consideration. Since the cash deposit raised suspicion about the source of the loan granted to the assessee, as the loan lender did not carry out any revenue transaction during the year under consideration, as revealed from the profit and loss account, the assessee was asked to prove the creditworthiness of the loan lender and the genuineness of the transaction. It is evident from the record that neither before the AO nor before the learned CIT(A) did the assessee produce any evidence to discharge the onus as mandated by section 68 of the Act, particularly when there was a fact of cash deposit in the bank account of M/s Raj Associates immediately before the issuance of cheques to the assessee as unsecured loans. Even during the hearing before us, apart from reiterating the submissions made before the lower authorities, no material was brought on record to negate the findings of the lower authorities.

11. From the perusal of the bank statement of M/s Raj Associates, it is amply evident that prior to issuance of the cheques to the assessee in respect of unsecured loans, cash was deposited in the bank account of M/s Raj Associates. Thus, the same raises the suspicion regarding the creditworthiness of M/s Raj Associates, and the onus has not been duly discharged by the assessee. Therefore, we are of the considered view that the aforesaid facts also raise questions on the genuineness of the assessee's transaction with M/s Raj Associates. The mere fact that the requirement of proving the source of source being brought into the statute from 01/04/2023, does not absolve the assessee from proving the creditworthiness of the loan lender, which is one of the primary requirements under section 68 of the Act, when cash was found deposited in the bank account of M/s Raj Associates, from which cheques were issued to the assessee as a loan.

12. During the hearing, the learned AR placed reliance upon various decisions. However, on perusal of these decisions, we find that they have been rendered on their own facts, in which the taxpayer could prove the source of the funds transferred by the loan lender. Therefore, we are of the considered view that these decisions have been rendered in a different factual matrix and are thus not applicable to the present case.

13. Accordingly, as the assessee failed to discharge the onus cast on it under section 68 of the Act in respect of the loan received from M/s Raj Associates, we do not find any infirmity in the findings of the lower authorities in making the addition under section 68 of the Act. As a result, the impugned order is upheld, and Grounds No. 3.1-3.4 raised by the assessee are dismissed.

14. In Grounds No. 1.1 and 1.2, raised in assessee's appeal, the assessee has challenged the impugned order on the basis that the same is bad in law, illegal and without jurisdiction, without bringing on record any material to substantiate its claim. Accordingly, Grounds No. 1.1 and 1.2 are dismissed.

15. In Grounds No. 2.1 and 2.2, the assessee has challenged the impugned order on the basis that the same is bad in law and illegal for violation of the principle of natural justice. However, from a perusal of the assessment order as well as the impugned order, we find that ample opportunities were granted to the assessee, and the orders were passed only after considering its submissions and the material placed on record. Accordingly, we do not find any merit in Grounds No. 2.1 and 2.2 raised in the assessee's appeal, and therefore, the same are dismissed.

16. In the result, the appeal by the assessee for the assessment year 2013-14 is dismissed.

17. In its appeal for the assessment year 2014-15, the assessee has raised similar grounds challenging the addition made under section 68 of the Act on account of the unsecured loan received from M/s Raj Associates. From the perusal of the record, we find that on an identical basis, as in the preceding year, the lower authorities disagreed with the submissions of the assessee and made the impugned addition under section 68 of the Act. During the hearing, both sides fairly agreed that the factual matrix leading to the impugned addition is similar to the assessment year 2013-14. Accordingly, our findings/conclusions as rendered in assessee's appeal for the assessment year

2013-14 shall apply *mutatis mutandis* to the present appeal. As a result, the grounds raised by the assessee in its appeal for the assessment year 2014-15 are dismissed.

18. In the result, the appeal by the assessee for the assessment year 2014-15 is dismissed.

19. To sum up, both appeals by the assessee are dismissed.

Order pronounced in the open Court on 15/04/2026

**Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER**

**Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 15/04/2026

Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai