IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI
BEFORE MS. PADMAVATHY S, ACCOUNTANT MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 2563/MUM/2025(A.Y: 2013-14)

Nandkshore Telefilms & Media Private Limited 112, Ashirwad, Ahmdeabad Street Carnac Bunder, Mumbai-400 009. **PAN: AADCB9299C** **(Appellant)**	*Vs.*	**DCIT Circle-7(2)(2)** Room No. 623, Ayakar Bhawan, M. K. Road, Mumbai-400 020 **(Respondent)**

Assessee Represented by	**:**	**ShriRavikant Pathak, Ld. AR**
Department Represented by	**:**	**Shri Swapnil Choudhary (Sr. DR.)**
Date of conclusion of Hearing	**:**	**07.11.2025**
Date of Pronouncement	**:**	**05.12.2025**

O R D E R

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 17.02.2025 of National Faceless Appeal Centre (NFAC), Delhi[hereinafter referred to as the "*CIT(A)*"],passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as "*the Act*"] for the

A.Y. 2013-14, wherein the addition made by AO u/s 68 and 69 of the Act was confirmed.

2. The brief facts as culled out from the proceedings of authorities below are that the assessee e-filed the return of income for AY 2013-15 on 30.09.2013 declaring total loss at Rs. 10,25,982/- which was processed u/s 143(1) of the Act. However, the case was opened by issuing notice u/s.148 dated 30.03.2017 which was duly served after recording reasons.In response to the notice u/s 148 of the Act, the assessee submitted that the earlier return filed on 21.04.2017 may be considered as return filed u/s. 148 of the Act for the said assessment year. Further, the assessee raised objections to the reopening of assessment u/s. 147 of the Act and the same were rejected vide letter dated 22.09.2017. In the mean time, the statutory notices u/s 143(2) and 142(1) of the Act were issued on 10.11.2017 along with questionnaire. In response, the assessee furnished all the necessary details. The AO observed that assessee has taken bogus accommodation entries as mentioned in para 4.1 of the assessment order and the same is extracted below:-

Sr. No.	*Name of Bogus Entity*	*AY*	*Amount*
1	*Dolex Commercial P. Ltd.*	*2013-14*	*10,00,000*
2	*P Saji Textiles Ltd*	*2013-14*	*10,00,000*

3	*Shyam Alcohol & Chemical Ltd*	*2013-14*	*10,00,000*
4	*Victory Sales P. Ltd.*	*2013-14*	*10,00,000*
5	*B K Dyeing & Printing Mills P. Ltd.*	*2013-14*	*10,00,000*

3. In response to the statutory notice u/s 142(1) of the Act, the assessee submitted the details vide letter dated 20.11.2017 in the form of loan creditors, copy of bank account reflecting the transactions, ITR acknowledgement and balance sheet. Additionally, the assessee company also submitted the copies of loan confirmation of all the parties from whom the assessee company had taken loan stating that assessee had taken genuine business loans from the loan creditors and the loan's were repaid in the same financial year and nothing was outstanding as on 31.03.2013. It was further submitted before the AO that on the basis of above documents, assessee clearly established the genuineness of the loan with respect to identity, source and creditworthiness of the loan creditors and the onus cast on the assessee company u/s 68 of the IT Act was duly fulfilled.

4. During the assessment proceedings, the AO issued notice u/s 133(6) of the Act dated 10.11.2017 to the entities from whom loans were taken. In response to notice u/s 133(6), reply received on 27.11.2017 was not found complete and no detail/explanation was received which made the AO to believe that the company from which loan was taken was not

genuine. Ld. AO concluded that the reply received in response to notice u/s 133(6) of the Act were not acceptable because during the course of search in the case of Shri Vipul Bhatt, statement u/s 132(4) of the Act dated 09.02.2016 was recorded and Shri Vipul Bhatt has himself stated that the above mentioned entities are bogus and engaged in providing bogus accommodation entries. Ld. AO has reproduced the reply of question no. 1, 14, 15 & 24 of Mr. Vipul Bhatt in the assessment order wherein Mr. Vipul Bhatt stated that he was providing accommodation entries in lieu of cash. It was observed by the AO that assessee has failed to produce the lenders who have not appeared in response to the notice issued u/s 133(6) of the Act. The confirmation as filed by the assessee from the lenders was bearing date 01.04.2013 whereas the statement of Shri Vipul Bhatt was recorded on 09.02.2016 wherein he has declared that he has managed for providing bogus entries to the beneficiary including the assessee company. The Ld. AO has not accepted the submissions of the assessee on account of necessary documents including bank statement, confirmation from the lenders and repayment of loan in the same financial year on the ground that statement of Mr. Vipul Bhatt goes against the assessee. Ld AO has declined to accept the submission of the assessee on ground that retraction after a long time and AO relied the original statement of Mr. Vipul Bhatt and concluded that assessee was not engaged in genuine transaction, hence proceeded to made addition u/s 68 of the Act to tune of Rs. 50 lakhs as bogus and unsecured loans and sum of Rs. 50000/- (1% of 50 lakhs) was added as unexplained expenditure u/s 69C of the Act.

5. Aggrieved by the order of AO, assessee preferred the appeal before Ld. CIT(A) and the Ld. CIT(A) dismissed the appeal of the assessee despite observing that prima facie everything is in four corners of Law. Ld. CIT(A) observed that the reality of these transactions stands exposed due to the failure of the Lenders to appear before the AO. The Ld. CIT(A) concluded that there was no such lenders and for that reasons they did not appear. Ld. CIT(A) observed that assessee has failed to show the payment of interest on these loans or re-payment of the principal of these loans or any kind of movement in these loan accounts in assessee's books. Since nothing has been done by the assessee, therefore the Ld. CIT(A) observed that the genuineness of the transaction of the assessee's company was of no use.

6. Aggrieved by the said impugned order, the assessee is in appeal before us and has raised the following grounds of appeal:-

"1. On the facts and in the circumstances of the case and in law the Hon'ble CIT(A), NFAC erred in upholding the issue of notice u/s. 148 of the income Tax Act, 1961 by the learned Assessing Officer as valid and thereby upholding the validity of reassessment proceedings without considering the fact that the learned Assessing Officer has not applied his mind and having no independent satisfaction with regard to reopening of the case u/s. 148 and as such, proceedings u/s. 148 are liable to be quashed.

2. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A), NFAC erred in upholding addition of Rs. 50,00,000/- made by the learned Assessing Officer to the returned income in respect of unsecured loan received and repaid by the assessee Company as unexplained cash credit without appreciating the provisions of section 68 that no sum was remained in credit in the books of account as on the date of financial statements.

3. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A), NFAC erred in upholding addition of Rs. 50,00,000/- made by the learned Assessing Officer to the returned income by treating the unsecured loans received by the assessee Company as unexplained cash credit without appreciating the fact that assessee has discharged its onus u/s 68 of the Act by submitting the evidences proving the creditworthiness, Identity and genuineness of the loan parties and the reasons assigned for doing so are wrong and contrary to the Provisions of Income Tax Act and rules made there under.

4. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A), NFAC erred in upholding addition of Rs. 50,000/- make by the learned Assessing Officer to the returned income being 1 percent of the loan amount as unexplained expenditure u/s. 69C of the Act without any basis and purely on his own assumptions and presumptions."

7. Ground no. 1 pertains to validity of reopening u/s 147 of the Act. Ground no. 2 & 4 pertains to the addition made u/s 68 and 69 of the Act.

8. We have heard Ld. AR and Ld. DR and examined the record. At the outset, Ld. AR submitted thatassessee does not want to press Ground no. 1. Hence, the ground no. 1 is dismissed as not pressed. With regard to Ground no. 2 to 4, Ld. AR in support of his arguments relied on paper book containing 1 to 200 pages and various judgments. Ld. AR further argued that the impugned order as well as assessment order is not legally sustainable because of the following reasons:-

    i) The AO highly relied on the statement of Mr. Vipul Bhatt dated 09.02.2016 because he is the main person allegedly operating the entities from whom loan was taken by the assessee and he was the accommodation entries provider against cash. It is submitted that the reliance on the said statement is not as per law because the said statement was retracted by him and therefore the reliance on retracted statement was against the settled principle of law.Ld. AR placed reliance on the judgment of Hon'ble Supreme Court in the case of Mehta Parikh & Co. (1956) 30 ITR 181 (SC) wherein it was held that once the statement on oath is retracted, AO has to examine that person again, if that is not done, he cannot rely on original statements made the that person.

ii) With respect to refusal of cross examination of the main witness Mr. Vipul Bhatt on whosestatement's basis addition was made, Ld. AR relied on various decision of ITAT and Hon'ble High Court and Hon'ble Supreme Court in the case of Andaman Timber Industries vs. Commissioner of Central Excise, Kolkata-II 281 CTR 241 (SC) alongwith 5 other cases referred in the case of Jurisdictional Mumbai Tribunal in ITA No. 6301/Mum/2017 order dated 05.12.2019 wherein it was held that once a statement given on oath is retracted, AO has to examine that person again and if that is not done, he cannot rely on original statement made by that person.

iii) It was also argued that assessee has discharged his onus u/s 68 by proving the identity of the creditors, genuineness of the transaction and creditworthiness of the creditors and the AO has failed to bring anything on record to contradict the factual material and evidence brought on record by the assessee in the form of bank statement confirmation of the loan by the creditors andrepayment of loan in the same assessment year. It is therefore submitted that requirement of onus of assessee u/s 68 of the Act has been fulfilled and in the absence of cross examination of Mr. Vipul Bhatt and relying on the retracted statement of Mr. Vipul Bhatt makes assessment order illegal as it has resulted into miscarriage of justice, therefore the grounds raised by the assessee are required to be allowed.

9. Ld. DR on the other hand, relied on the orders passed by the AO as well as Ld. CIT(A) and submitted that Mr. Vipul Bhatt has retracted the statement after 8 months which is an afterthought. Ld. DR argued that the payment of loan by the assessee of the unsecured loan to creditors who were bogus entity does not absolve the assessee from the addition made u/s 68 and 69 of the Act. Ld. DR further argued that the retracted statement of Mr. Vipul Bhatt has rightly been relied by the AO who has rightly concluded that the existence of loan creditors are not proved. Ld. DR further submitted that the evidence of loan confirmation, bank statement is not sufficient to establish the lender's creditworthiness or genuineness because in response to notices u/s 133(6) of the Act, the said lenders did not respond which has undermined the transaction's legitimacy. Ld. DR further relied on the decision of Hon'ble Supreme

Court's case of CIT vs. Lovely Exports Pvt. Ltd. (2008) 216 CTR 195 (SC) wherein it was held that the assessee must prove the genuineness of transaction beyond banking channel. Ld. DR further relied on the case of Hon'ble High Court in PCIT vs. Kanak Impex (India) Ltd. (2025) 172 taxmann.com 283 (Bombay HC), Buniyad Chemicals Ltd. Ltd. vs. ACIT (2025) 172 taxmann.com 462 (Bom HC) and A and R Buildmart Pvt. Ltd. vs. ITO. Ld. DR therefore, submitted that the appeal of the assessee is liable to be dismissed.

10. We have considered the rival submissions and examined the record. We have noticed that the Ld. CIT(A) has observed in para no. 4.3 of his order as under:-

"4.3 Findings & Decision wrt Ground No 2 to 5:

All these grounds are directed against addition of Rs 50 Lakhs u/s 68 on account of unexplained cash-creditors, being Unsecured Loans Lenders. The AO received the information from Investigation Wing that an S & S operation was conducted in the case of one Shri Vipul Bhatt, an entry-operator. In his statement recorded u/s 132 (4), he confessed to arranging entries of unsecured loans , share capital, etc , etc. One of the beneficiaries is our assessee too. The AO issued notices to lenders, with CC to assessee, for their production and examination. None of them appeared, of course. Bank statements of lenders were analyzed. The AO found that the entries appeared like a race of coming &going , with no connection to any meaningful business transaction , connected to Lenders. As for their P & L *accounts, the AO found them to be either nil tax-payers or marginal tax payers. The AO concluded that they were dummy concerns , being operated by Shri Vipul Bhatt, who, as we have seen, had already confessed to his doings.*

The assessee in its submissions , has argued on usual lines , like existence of PAN, transaction through bank and the lenders filing ITRs, to establish the three elements of Cash Credits, namely, Identity, genuineness of transactions and their credit-worthiness. There is no doubt about the paper-documentation that is usually involved in such transactions. The issue is of the truth behind these transactions. Prima-facie, every thing is in four corners of Law. However, the reality of these transactions stands exposed due to the failure of the Lenders to appear before the AO. This is so because there are no such Lenders, actually. The big gap between the Balance sheet and the P & L account of the lenders , is another give-away. There is no meaning in the transactions appearing in the bank account or the Balance sheet. P & L account, which would have mattered, is a non-descript document. What perhaps would have been better for the assessee, had it shown the payment of interest on these Loans , or, re-payment of the principal of these loans , or , any kind of movement in these loan accounts in assessee' books. Nothing of the sort has been done by the assessee. It has chosen the beaten track which does not cut much ice any more. In fact, the assessee has not even denied taking help of Shri Vipul Bhatt , or , whether these so-called Lenders are being operated by Shri Bhatt !

Keeping in view the above, the additions made of Cash Credits u/s 68 and unexplained expenditure u/s 69C are confirmed. Grounds are dismissed."

11. On perusal of the impugned order, we have noticed that Ld. CIT(A) himself is not sure about the fault if any in transaction done by the assessee because it is observed that prima facie everything is in four corners of Law, but due to failure of lenders appearing before the AO,

the reality of these transactions stands exposed. In this case, the duty of the assessee was only to prove the identity of the lenders, creditworthiness of lenders and genuineness of the transaction relating to taking of loan from the entities mentioned. The assessee has produced all the necessary documents i.e. statement of bank account pertaining to the transaction conformity of party wise which is placed at page no. 46 onwards of the paper book and for this reason, the Ld. CIT(A) has observed that everything is within the parameter of law. The main reason for making addition u/s 68 of the Act is the statement of Mr. Vipul Bhatt despite retraction the same has been relied by the AO as well as Ld. CIT(A). Further the denial of cross examination is in violation of principle of natural justice and the case relied by the assessee referred (supra) are also ignored by the lower authorities. The case relied by the assessee in ITA No. 6301/Mum/2017 (supra) wherein the Ld. CIT(A) has deleted the addition made by the AO and the appeal of the revenue was dismissed, is squarely applicable to this case. The relevant para is extracted below:-

> *4.1 Addition made by disallowing claim of interest of Rs. 16,14,410/- was also allowed by CIT(A) after following observations*

> *"The AO computed disallowance of Rs. 16,14,410/- on the loans granted to the above lender parties. Having concluded the above that the loans are not to be considered as in genuine, I hereby allow the interest paid on the same to the said lender parties and delete the addition made by the A.O. This ground of appeal is allowed".*

5. Against the above order of the CIT(A) the revenue is in further appeal before us. 5.1. At the outset, ld. AR placed on record order of the Tribunal in the case of group concerns M/s. Manba Finance Ltd in ITA No.1448, 1449 & 1461/Mum/2017 dated 15/10/2018 for the A.Yrs.2013-14, 2010-11 and 2011-12 wherein under similar facts and circumstances, the Tribunal have confirmed the order of CIT(A) for deleting similar additions made by the AO during the course of very same search.

5.2. Ld. AR also relied on the findings recorded by CIT(A) to the effect that loan was genuine and was repaid in next financial year. He also invited our attention to the observation of CIT(A) to the effect that the parties from whom loan was taken had sufficient creditworthy

5.3. On the other hand, ld. DR relied on the order passed by the AO and contended that CIT(A) was not justified in deleting addition so made.

6. We have considered the rival contentions and gone through the orders of the authorities below and found from record that the assessee company is engaged in the business of property development. A.O has incorporated the fact of loan taken from three companies in para 4.1 and 4.2 of the order according to which, assessee company has taken loan from 3 companies amounting to Rs. 1,10,00,000/- on the basis of information received from the DDIT (Inv)-I, Mumbai in respect of search and seizure action taken placed in the group of Shri Pravin Kumar Jain and Shri Gautam Jain and other (surat Diamond Concerns) and further loan taken from three other companies of Rs. 65,00,000/- as per the *information received from DDIT (Inv), Unit-7(4). The A.O has incorporated the fact of various documents filed by the assessee in respect of loans taken in part*

4.5 of the assessment orderi.e loan confirmations, Bank statement of Lender parties, ledger copy etc. AO rejected assessee's contention and made the addition.

6.1 From the record, we found that in respect of show cause notice as mentioned in para 7.4 of the assessment order, assessee has relied on all the documents and evidences filed in respect of these loan parties and also submitted that the three persons on whose statements department has relied have not mentioned name of the assessee in their statements. A.O has not accepted the reliance placed by assessee on various judgments which were submitted before the A.O. The A.O has relied on provisions of Sec. 292C of the Act, which raises a presumption against the persons in whose case search is conducted. However, in the case of assessee, no search or survey has taken place.

6.2 By the impugned order the Ld. CIT(A) has deleted addition after threadbare dealing with all the contentions of the A.O. On page No. 6 of the order, the Ld. CIT(A) has incorporated various decisions of Hon'ble ITAT, High Court and Supreme Court relied on by the assessee on the ground of not allowing cross examination of parties whose statement AO is relying on particularly the judgment of Hon'ble Supreme Court in the case of Andaman Timber Industries V. CIT, 281 CTR 241 along with following decisions.

1. H.R. Metha Vs. ACIT, 387 ITR 561 (Bom HC)

2. C Vasantlal& co. Vs. CIT, 45 ITR 206 (SC)

3. KishinchandChellaram Vs. CIT, 125 ITR 713 (SC)

4. CIT Vs. Ashish International, ITA No. 4299 of 2009.

5. CIT Vs. Ashwani Gupta, 322 ITR 396 (Bom)

6.3 It was contented by Ld. AR that in the statement of Shri Vipul Vidur Bhatt, he has replied regarding unsecured loans to only one party M/s Moraj Building concepts Pvt Ltd., and he has nowhere mentioned the name of the assessee company. Shri Vipul Vidur Bhatt has retracted the statement on 02.09.2016 by making an affidavit before notary public. Similarly, Shri Pravin Kumar Jain has retracted his statement on 15.05.2014 by making an affidavit before notary public. On page No. 8, Ld. CIT(A) has relied on submission made by assessee that the AO should not have relied on the three original statements made by Shri Vipul Vidur Bhatt and Shri Pravin Kumar Jain recorded during the course of search when they retracted their statements and in substance two contradictory statements made by these persons are available. Then the A.O should rely on the retraction statement. 6.4 Ld. AR relied on the decision of Hon'ble Supreme Court in the case of M/s. Mehta Parikh & Co., reported in 30 ITR 181, wherein it was held that once a statement given on oath is retracted, AO has to examine that person again and if that is not done, he cannot rely on original statement made by that person.

7. From the record, we also found that on page No. 10 onwards, Ld. CIT(A) has incorporated various documents filed by assessee in respect of each party from whom loan is taken. The Ld. CIT(A) has also incorporated from the balance sheet of these loan parties that they have the creditworthiness as their share capital and reserves are much more out of which loans are given to assessee company.

7.1 It is also clear from the record that all the loans taken during the year were repaid in next financial year. Therefore no addition can be made. For this purpose we rely on the decision of Hon'ble Bombay High Court in the case of M/s. Skylark Build in ITA No. 616 of 2016 dated 24.10.2018, 2018-TIOL-2323-HC-Mum-IT.

7.3 Further more Ld. CIT(A) has incorporated various judgments on page No. 18 of the order according to which by filing various documents the creditworthiness of lender parties is established. Ld. CIT(A) has incorporated the submission given *by assessee in response to show cause notice issued by A.O on page No. 19 of his order. Ld. CIT(A) has given findings starting from page No. 20 of his order and relied on various judgments. The final findings are at page No. 25 of the order. Detailed finding so recorded by CIT(A) has not been controverted by Ld. DR by bringing any positive material on record. Accordingly, we do not find any reason to interfere in the findings so recorded by CIT(A) which are as per material on record.*

7.5. We had also carefully gone through the order of the Co-ordinate Bench in the case of group concern M/s.Manba Finance Ltd. dated 05/10/2010, wherein under similar facts and circumstances, the Tribunal have confirmed the order of CIT(A) for deleting the addition so made after having the following precise observation:-

> *41. We have carefully considered this proposition. We note that the Id. Counsel of the assessee has referred to several case laws in this regard that when the assessee has supplied all the documents the onus is discharged. In this regard, the Id. Counsel of the assessee has placed reliance upon the several case laws including that from Hon'ble Delhi High Court in the case of Gangeshwan Metal Pvt. Ltd. (supra), CIT v. Varinder Rawley (2014) 366 ITR 232 (P&H), Hon'ble Gujarat High Court decision in the case of CIT v. Sachitel Communications P. Ltd. (2014) 227 Taxman 219 (Mag) and others.*
>
> *42. In our considered opinion, these case laws duly support the proposition canvassed by the assessee. In our considered opinion, the A.O. has not brought on record any cogent, adverse material to rebut the credibility of the corporate entity from whom loan has been taken. As already pointed out by us as above, that these corporate entities were found by the A.O. to have acquired funds by borrowals and acceptance of share capital and share premium. This by itself cannot lead to presumption that these sources are bogus without any enquiry. In these circumstances, in our considered opinion, the Id. DR's request that this issue be again remitted to the file of*

the A.O. to make further necessary enquiries cannot be entertained. The decision of the Hon'ble Karnataka High Court referred by the Id. DR was on a different set of facts, wherein, the Hon'ble Karnataka High Court on the facts and circumstances of the case had upheld the certain direction of the ITAT, In the present case, as pointed out hereinabove, in our considered opinion, the assessee has discharged its onus. As noted above, the A.O. has not brought on required cogent material to rebut the documentary evidence submitted by the assessee nor he made any enquiry. As noted above, the assessee has given all the necessary evidence including the confirmation letters, bank statement, financial statements of the corporate entities.

Hence, in our considered opinion, the identity, creditworthiness, genuineness of the transaction has been proved by the assessee and the onus cast upon the assessee has been discharged. In the background of the aforesaid discussion and precedent, we find that the Id. CIT(A) has passed a well reasoned order supported by appropriate case laws duly rebutting all the findings of the A.O. Hence we uphold the order of the Id. CIT(A).”

7.6. We found that facts and circumstances during the year under consideration are parimateria, therefore, respectfully following order of the Tribunal in case of group concern, we do not find any infirmity in the order of CIT(A) for deleting the impugned addition. 8. In the result appeal of the revenue is dismissed.”

12. In view of the above discussion and respectfully following the aforesaid decision of Coordinate Bench of ITAT, we are of the considered opinion that the requirement of section 68 and 69C of the Act has been duly discharged by the assessee and the lower authorities has failed to find fault with the submission made and the case relied by the assessee specifically with regard to denial of cross examination and relying the

retracted statement of Mr. Vipul Bhatt and on the basis of whose statement the alleged addition were made. For these reasons, the ground no. 2 to 4 raised by the assessee are allowed and AO is directed to delete the addition.

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

Order pronounced in the open court on 05.12.2025

Sd/-	Sd/-
(PADMAVATHY S)	**(RAJ KUMAR CHAUHAN)**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

Mumbai / Dated 05.12.2025
Dhananjay (Sr. PS)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai