

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI

**BEFORE MS. KAVITHA RAJAGOPAL, JM
AND
SHRI OMKARESHWAR CHIDARA, AM**

IT(SS)A No.3120/Mum/2025
(Assessment Year: 2017-18)

M/s. JS Infrastructure, Plot No.30, Jivandeep Apartment, Station Road, Ambernath (E), Thane – 421 501	Vs.	ACIT, Central Circle-2, Ashar IT Park, 6 th Floor, Wagle industrial Estate, Thane – 400 604
PAN:AAHFJ6630Q		
(Appellant)	:	(Respondent)

Assessee by	:	Shri Vijay Patel
Respondent by	:	Shri Vivek Perampurna, CIT- DR

Date of Hearing	:	29.09.2025
Date of Pronouncement	:	23.12.2025

ORDER

Per Kavitha Rajagopal, JM:

This appeal has been filed by the assessee, challenging the order of the Learned Commissioner of Income Tax (Appeals) [‘Ld. CIT(A)’ for short], passed u/s. 250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2017-18.

2. It is observed that the present appeal has been filed belatedly with a delay of 2 days beyond the period of limitation. The assessee had filed an application for condoning the said delay along with an affidavit. Upon perusal of the same, we deem it fit to hold that the assessee had “sufficient cause” for the delay and hence the delay is condoned.

3. The assessee has raised the following grounds of appeal:

“1. That, the learned CIT(A)-11, Pune has grossly erred in not considering the impugned block assessment order passed is against natural justice and bad in law. The AO may please be directed to annul the impugned block assessment order.

2. That, the learned CIT(A)-11, Pune is not justified in upholding the addition Rs.Rs.50,00,000 from Kesari Gems Pvt. Ltd. u/s.68 on the basis of non-incriminating material and the explanation along with cogent supporting submitted to the entire satisfaction of the AO. The Assessing Officer may please be directed to delete such addition.

3. The appellant craves leave to add, alter, and amend any ground/s of an appeal on or before hearing of the appeal.”

4. Brief facts of the case are that the assessee is a partnership firm engaged in the business of construction and real estate development and had filed its return of income dated 28.07.2017 u/s. 139(1) of the Act declaring total income at “Rs.Nil” for the year under consideration. Pursuant to a search and seizure action u/s. 132 of the Act conducted in the case of M/s. Patel RPL Realty Group dated 08.08.2019 certain documents were found which pertained to the assessee and the Learned Assessing Officer (“Ld. AO” for short) after recording his satisfaction issued notice dated 17.09.2020 u/s. 153C of the Act through ITBA which was duly served upon the assessee. In response to the same, the assessee filed its return of income dated 28.09.2020 declaring total income at “Rs.Nil”. Notice u/s. 142(1) of the Act was also issued to the assessee seeking for details pertaining to unsecured loan received from M/s. Kesari Gems Pvt. Ltd. amounting to Rs.50,00,000/-. After considering the assessee’s submission the Ld. AO passed the assessment order u/s. 153C of the Act dated 25.09.2021 determining total income at Rs.50,00,000/- u/s. 68 of the Act.

5. Aggrieved, the assessee was in appeal before the first appellate authority, who vide order dated 27.02.2025 upheld the addition made by the Ld. AO on the ground that the

assessee has failed to substantiate the genuineness of the loan as per the requirement of section 68 of the Act.

6. Aggrieved, the assessee is in appeal before us, challenging the order of the Ld. CIT(A).

7. The Learned Authorized Representative (“Ld. A.R.” for short) for the assessee commenced the arguments stating that there was no incriminating material found during the search pertaining to the assessee. The Ld. A.R. further contended that addition was made merely on the basis of the ledger account extracted from the tally software which was part of the regular books of account. The Ld. A.R. submitted that the Ld. CIT(A) has erred in not considering the evidences that were furnished by the assessee to substantiate that the loan availed by it was genuine. The Ld. A.R. brought our attention to the confirmation given by the creditor supported by the bank statements furnished by the assessee. The Ld. A.R. further contended that the creditor’s details were also furnished by the assessee before the lower authorities to substantiate that it had sufficient source to extend loan to the assessee. The Ld. A.R. contended that the assessee has discharged its primary onus casted upon it as per section 68 of the Act that the assessee has proved the identity, creditworthiness of the parties and genuineness of the transactions. The Ld. A.R. relied on various decisions in support of his contention. It was also the contention of Ld. A.R. that notice u/s. 143(2) of the Act was not issued to the assessee by the Ld. AO.

8. The Learned Departmental Representative (“Ld. D.R.” for short), on the other hand, controverted the said fact and stated that these were not genuine transactions and are merely



for providing accommodation entries in which the assessee is said to be one of the beneficiaries of the said transactions. The Ld. D.R. further stated that the Ld. AO issued notices u/s. 133(6) of the Act which were not served on such persons as not found in the given address. With regard to the issue of “no incriminating material”, the Ld. D.R. contended that even allegations found during investigation, specific information would also amount to incriminating material. Further, with regard to the Ld. A.R.’s argument that notice u/s 143(2) of the Act was not issued to the assessee, the Ld. D.R. relied on the finding of the Ld. CIT(A) in holding that notice u/s 143(2) of the Act was not a mandatory requirement for completing assessment u/s. 153A/153C of the Act. The Ld. D.R. relied on the order of the lower authorities.

9. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has raised various contentions pertaining to “no incriminating material” found during the search for which the Ld. A.R.’s contention was the seized material was only the ledger account of the assessee which was part of the regular books of account of the assessee firm. Pursuant to the search action in the case of Patel RPL Realty Group, ledger accounts of various parties were seized which revealed transactions that were already appearing in the assessee’s balance sheet. During the assessment proceedings the assessee had furnished details of confirmation of accounts along with bank entries for the impugned loan transaction along with details of repayment made, sufficiently corroborated by documentary evidences. It is evident from the assessment order as well as from the Ld. CIT(A)’s order that these documents were not disputed by the lower authorities nor was it held to be non-genuine. Further, it is also



observed that no discussion of the documentary evidences furnished by the assessee was found in the order of the lower authorities. There is no iota of doubt that the assessee has discharged the primary onus casted upon it u/s. 68 of the Act to establish the identity and creditworthiness of the lenders and the genuineness of the transactions. This fact was also not disputed by the Ld. D.R. during the appellate proceedings when confronted with. It is also the settled proposition of law by the Hon'ble Apex Court in the case of *Abhisar Buildwell (P.) Ltd. (2023) 149 taxmann.com 399 (SC)* that in respect of completed or unabated assessment no addition can be made by the Ld. AO in the absence of any incriminating material found during the course of search. In the present case in hand, except for the ledger account of the assessee which was already forming part of the regular books of account, no incriminating material was found during the search operation. From the above observation, we deem it fit to hold that the assessee has furnished complete details of the unsecured loan received and subsequently repaid through banking channels which are appearing in the books of accounts of the parties, corroborated by bank statements, financial statements, confirmation letters and details of return of income filed by the parties. We are also conscious of the fact that no incriminating material pertaining to the assessee was seized during the search in the case of M/s. Patel RPL Realty Group.

10. On the above factual matrix, we deem it fit to hold that the impugned addition made in the hands of the assessee ought to be deleted as there is no justification in making an addition on the aforementioned facts of the case.

11. Thus, the grounds of appeal raised by the assessee are hereby allowed.



12. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 23.12.2025

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai; Dated: 23.12.2025

* Kishore, Sr. P.S.

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai