

THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI
BEFORE SHRI R.C SHARMA, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA no.3838/Mum/2013
(Assessment Year: 2008-09)

Jayantilal C. Jain,
Prop. M.S. Rajguru Jewellery Mart,
621 Cotton Exchange Bldg. 6th Floor,
Kalbadevi Road, Mumbai 400002,
PAN ABOPJ3987G

..... Appellant

v/s

ITO 15(1)(1)
Mumbai

..... Respondent

Assessee by : Shri. Vimal Purniya -AR
Revenue by : Shri. Alok Johari – CIT-DR

Date of Hearing –09.10.2017

Date of Order - 18.10.2017

Order under section 254(1) OF Income-tax Act

PER: PAWAN SINGH JUDICIAL MEMEBR;

1. This appeal by assessee under section 253 of I.T Act is directed against the order of Commissioner of Income-tax (Appeals) [‘CITT-(A)’] for the Assessment Year 2008-09. The assessee has raised following ground of appeal.

Ground No.1

- 1. The Ld. CIT (A) erred in confirming and treating the cash seized of Rs. 61 Lacs from assessee's employee/ manager at the Mumbai airport on 15.05.2007 as concealed income from his undisclosed business.*
- 2. He also erred in treating the cash, which is recorded in the books of account as concealed income of the assessee.*

3. *He failed to appreciate and ought to held that:*
 - a. *the presumption that the cash seized as undisclosed income from undisclosed sources without relying upon any documents/ evidences by CIT(A) is not justified as cash seized was recorded in the books of account.*
 - b. *Assessee manufactured jewellery at Mumbai and sent to cuttack for retails sale against spot basis, delivery against cash payment.*
 - c. *As per practice at cuttack office, assessee transfer cash in lump sum to Tijori (Godrej Chest) a/c.*
 - d. *Assessee removed cash of Rs.61 from Tijori and give to Mr. Kanharam. All cash is part of assessee books of account.*
 - e. *The Ld. CIT (A) has not relied on books of account and evidence supported by the appellant.*
 - f. *The Ld. CIT (A) and AO has erred in ignoring the details of cash submitted by the assessee vide letter dated 06/12/2012.*
 - g. *On the facts and in circumstances of the case, the said disallowance were unjustified and unwarranted.*
4. *The assessee prays that the said addition of Rs. 61 Lacs be deleted.*

GROUND NO. 2

1. *The Ld. CIT (A) erred in confirming and treating the gold jewellery of Rs. 18,15,390/- seized at Mumbai airport, as unexplained investment of the assessee under section 69 of the Income Tax Act.*
2. *He also erred in treating the gold jewellery which is recorded in the books of account as unexplained investment of the assessee.*
3. *He failed to appreciate and ought to held that:*
 - a. *That the seized gold was realized by assessee in exchange of jewellery sold at cuttack.*
 - b. *The seized jewellery is part of assessee stock-in-trade and recorded in books of account.*
 - c. *The Ld CIT (A) made addition on account of unexplained investment u/s 69, without appreciating that above jewellery is recorded in books and sec.69 applies only when investment is not recorded in books of account.*
 - d. *On the facts and in circumstances of the case, the said disallowance were unjustified and unwarranted.*

4. *The assessee prays that the said addition of Rs. 18,15,390/- be deleted*

GROUND NO. 3

1. *The Ld. CIT(A) has erred in treating the genuine creditors as bogus and added Rs. 30,21,580/- to the total income of the assessee.*
2. *The Ld. CIT (A) has erred in disregarding the documentary evidence filed by the assessee such as confirmation from the loan parties along with the necessary documents.*
3. *He failed to appreciate and ought to held that:*
 - a. *The basic requirements for proving genuineness of the transaction are fulfilled by the assessee through the documents submitted by the loan parties which is enough to prove that the identity of the loan party and genuineness and creditworthiness of the loan parties.*
 - b. *The said transaction of loan has been made from through proper banking channel via cross account payee cheques which itself proves the genuineness of transaction.*
 - c. *Further also all the loan parties are assessed to income tax and PAN copies of all the parties have been submitted along with the loan confirmation.*
 - d. *there being a real receipt of amount as loan by the assessee from these creditors, the assessee can be said to have explained the credit entries and established that the unsecured loans so raised from third parties by him are genuine and also the onus that lay upon him u/s 68 of the Act stood duly discharged after he had furnished the aforesaid information which he could do as a borrower.*
 - e. *The assessee was under no obligation to prove source of source nor origin of origin after the assessee had established the source of such receipts as loans.*
 - f. *It is an admitted position of law that once the assessee explains the credit entry and brings evidence to show that the entry is related to a third party and that credit was that of the third party, the burden would shift to the Assessing Officer to prove that it is not true.*
 - g. *The Income Tax Officer thus has to establish that the entry was not real but was pseudonymous.*

- h. *This burden in the present case in appeal, however, has not been discharged by the Assessing Authority before making addition under the Act nor has he established that the entry was not real but was pseudonymous*
 - i. *The documentary evidence was adequate to establish all the three ingredients required to be established by the assessee under Section 68, namely, the identity and creditworthiness and the genuineness of the loan transactions.*
 - j. *On the facts and in circumstances of the case, the said disallowance were unjustified and unwarranted.*
4. *The assessee prays that the said addition of Rs. 30,21,580/- be deleted*

Ground No.4

- 1. *The assessee prays that the said addition of Rs. 4,89,423/-less: interest on loan of Rs.15lakh required to be deleted.*
- 2. *The Id CIT(A) as a consequence of disallowance of loan has also disallowed interest of Rs. 4,89,423/- less: interest on loan of Rs. 15 lakh.*
- 3. *But disallowance of loan made by Id CIT (A) is unsustainable and bad in law.*
- 4. *On the facts and in circumstances of the case, the said disallowance was unjustified and unwarranted.*
- 5. *The assessee prays that the said addition of Rs. 4,89,423/- less: interest on loan of Rs. 15 lakh required to be deleted.*

GROUND NO. 5

- 2. *The Ld. CIT (A)erred in confirming the addition of Rs. 36,000/- rent of premises at cuttack respectively in view of section 69C of the Income Tax Act, 1961.*

The assessee submits that:

- i. *the said rent of Rs.36,000/- paid by assessee's brother Mr. Pradeep C Jain and same has been shown as withdrawal in capital account of your appellant's brother Mr. Pradeep C Jain.*
- ii. *No addition for the same can be made in the hands of the assessee while completing the Assessment for the A.Y. 2008-09.*
- iii. *The said amount was also not reimbursed by the assessee to his brother.*
- iv. *Further the said amount has not claimed by the assessee as expenditure in his Profit & Loss account.*

- v. hence, Addition cannot be made in the hands of the assessee.
- vi. Further the appellant has explained the source of expenditure. hence the addition u/s 69C is bad in law.
- vii. on the facts and in circumstances of the case, the said disallowance were unjustified and unwarranted.
- viii. Hence, the said addition of Rs. 36,000/- needs to be deleted.

GROUND NO. 6

1. The Ld. CIT (A) has erred in confirming the disallowing 10% of the conveyance and travelling expenses i.e Rs. 8,374/- (10% of Rs. 83,739/-) and added the same to the total income of the assessee and thereby alleged that the said conveyance and travelling expenses are incurred for non business purpose.
2. The assessee submits that:
 - a. The Ld. AO has made an ad-hoc disallowance of 20% of the conveyance & travelling expenses incurred by the assessee. And CIT(A) confirm upto 10%.
 - b. without bringing on record any documentary evidence supporting the assumption that the same is of personal nature.
 - c. Such a disallowance is purely presumption in nature and cannot be made without bringing on record any evidence to prove that the same? as not been incurred for the purpose of business.
 - d. additions cannot be made merely on assumptions or presumptions or surmises or conjectures.
 - e. It is the burden of the Department to prove the correctness of such additions.
 - f. on the facts and in circumstances of the case, the said disallowance were unjustified and unwarranted.
 - g. Hence, the said addition of Rs. 8,374/- needs to be deleted .

GROUND NO. 7

1. The Ld. CIT (A) erred in actually serving the order on 05/01/2011 but he should have served the order to the assessee on or before 31/12/2010 which was the last date of completion of assessment or make such arrangement that order should beyond the limit of him, therefore the order is barred by limitation.

2. Hence, the said order is time barred, therefore, bad in law and void-ab-initio.

GROUND NO. 8

1. The Ld. CIT (A) erred in charging interest u/s 234A, 234B and 234C of the IT Act.
2. The assessee prays that levy of said interest be deleted.

GROUND NO. 9

1. The Ld. CIT (A) erred in charging interest u/s 271(1)(c) of the income tax act.

GROUND NO. 10

1. The assessee craves leave to add further grounds or to amend or alter the existing grounds of appeal.

The assessee further by filing separate application has raised following additional ground of appeal.

Ground No.11

"The order dated 31.12.2010 passed by the Ld. AO u/s. 143(3) r.w.s. 153A of the Income Tax Act for A.Y.2008-09 was barred by the period of limitation u/s. 153A(1)(b) of the Income Tax Act, 1961".

In view of the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. vs. CIT reported in 229 ITR 383, we would request the Hon'ble ITAT to admit the additional ground of appeal.

2. Brief facts of the case are that assessee filed return of income assessment year 2008-09 on 26.03.2009 declaring total income of Rs.8,35,940/-. As a search action u/s. 132 was carried out on the assessee on 15.05.2007 during the such a cash of Rs.61,00,000/- and jewellery of Rs.18,15,390/- was found and ceased from the assessee's employee Shri Kahna Ram and Pradeep C Jain. Subsequent

to the search action the assessment for six previous assessment years were completed by Dy.CIT Circle (15) Mumbai, vide order dated 23.12.2009 u/s. 143(3) r.w.s. 153A. The assessment in that year under consideration was completed on 31.12.2010. The assessing officer in while passing order in column no. 11 of ITNS 65 (format of assessment order) recorded "section 143(3) r.w.s 153A of the Income Tax". However, at the concluded para of the assessment order the assessing officer recorded "assessed accordingly u/s. 143(3) of the Income Tax Act".

3. The assessing officer while passing assessment year made the addition of various addition/disallowance consisting of addition of Rs.61,00,000/- on account of undisclosed income, addition of Rs. 18,15,390/- as unexplained investment in Gold u/s. 69, addition of Rs. 45,21,580/- on account of unexplained loan, addition of Rs. 4,89,423/- on account of interest on unexplained loan, addition on account of disallowance of rental expenses of premises at Cuttack for Rs.66,000/-, and disallowance of conveyance of Rs.16,747/-.
4. On appeal before Commission of Income –tax (Appeals) the addition on account of undisclosed business income of business income for Rs. 61,00,000/-,unexplained investment

in Gold u/s. 69 of Rs. 18,15,390/, unexplained loans and its interest was sustained. However, the disallowance of rental expenses was restricted to Rs.36,000/- (out Of total Rs.66,000/-) and disallowance on account of conveyance was restricted to 10% out of total expenditure claim for Rs.83,739/-. Thus, aggrieved by the Commission (Appeals) the assessee has filed present appeal before us.

5. We have Ld. AR, of the assessee and Ld. DR of revenue and perused the material on record. In support of additional ground of appeal the Ld. AR, of the assessee argued that a search action was conducted on assessee again on 15.05.2007. The six assessment year immediately preceding assessment year relevant to the previous year were assessment year 2007-08 to 2002-03(descending order). The assessment order for assessment year 2008-09 is out of the purview of section 153A of the Income Tax Act. The assessing officer passed the order for assessment year under consideration u/s. 143(3) r.w.s 150A on 13.12.2010. Thus, the order passed by assessing officer is invalid and is liable to declared as such. The Ld. AR of the assessee further argued that additional ground of appeal is purely legal a nature and does not require two bring any further facts of

record. All facts related for the disposal of additional ground of appeal emanate from the record itself. The additional ground of appeal goes to the root of the case and should be decided first. It was argued that the revenue cannot take even the benefit of Section 292 B to cure the invalidity of the order. In support of his submissions the Id AR for the assessee relied on the decision of Madras High Court in V. Ramaiah Vs CIT [2013] 37 taxman.com 167(Madras), Punjab and Haryana High Court in CIT Vs Norton Motors [2015] 146 TAXMAN 701 (P&H) and decision of Tribunal in DLS properties (P) Ltd Vs DCIT [2013] 33 taxman.com 420(Delhi). On the other hand Ld. DR for the revenue strongly opposes the application for raising additional ground of appeal. It was argued that and para 11 of ITNS 65(formant of assessment order), there is a merely a typographical error which may occurred while passing order. The assessing officer correctly recorded provision of section at the concluded para of assessment order. The order is neither invalid nor requires any correction. It was further argued that admittedly no notice u/s. 153A for the assessment year under consideration was issued by assessing officer. In fact, the assessment was passed u/s.

143(3). The search was conducted on 15.05.2007. The assessee filed return of income for relevant assessment year later on 26.03.2009. The assessing officer admittedly not issue notice u/s. 153A to assessee requiring him to furnish return of income. Thus, the assessee cannot take the plea that assessment order was passed u/s. 153A r.w.s 143(3). Even otherwise a six assessment year as referred in clause (b) and sub section (1) of 153A speaks about six assessment year immediately preceding the assessment year relevant to the previous year in which year search is conducted.

6. We have considered the rival submissions of the party and have gone through the contents of assessment order and other material available on record. The search was conducted on 15.05.2007. The assessing officer has no occasion to issue notice u/s. 153A to the assessee for assessment year 2008-89 requiring the assessee to file return of income. Even otherwise assessment order for preceding six assessment years have been completed by completed by Dy.CIT Circle (15) Mumbai, vide order dated 23.12.2009 u/s. 143(3) r.w.s. 153A. The assessee filed his returned of income only on 26.03.2009. The assessment year 2008-09 was out of the purview of notice u/s. 153A. The assessee has not disputed

the validity of assessment of six preceding years. In our considered view the six assessments year as referred in clause (b) of sub section (1) of 153A clearly speaks about six assessment year immediately preceding assessment year relevant to the previous year in which year search is conducted. Further, in our considered view, the assessment year under consideration is out of the preview of scope of section 153A. Since the assessment for the year under consideration was out of the scope of section 153A, thus, the period of limitation prescribed under section 153A(1)(b) has no application for passing the assessment order with a stipulated period as prescribed therein. Hence the order passed by the AO under section 143(3) is within prescribed period of limitation as provided under section 153. The various decision relied by Id AR of the assessee are not applicable on the facts of the grounds of appeal as discussed above, in fact the order passed by AO for the AY under consideration is order under section 143(3) and not under section 153A r.w.s. 143(3) of the Act. Hence, the additional ground of appeal raised by assessee is dismissed.

7. Ground No. 1 & 2 relates to unexplained cash of Rs. 61,00,000/- and unexplained jewellery of Rs. 18,15,390/-

seized at Mumbai Airport. The Id. AR of the assessee argued assessee made purchases of jewellery in Mumbai and used to sale in Cuttack in retail sale against spot basis on cash payment, the cash recovered in the said search was accounted money of the assessee. The assessee's 98.82% of purchase are from Raksha Bullion. All the cash and jewellery are shown in the books of account. The assessee has provided all the details of the cash and the jewellery along with confirmation. The cash and jewellery cannot be treated as unexplained or concealed income of the assessee. The AO passed the assessment order without giving sufficient opportunity. It was argued that pursuant to the search action, the assessment order for AYs 2004-05, 2005-06, 2006-07 & 2007-08 was passed under section 153A r.w.s. 143(3). The assessee filed appeal in all quantum assessment before the Tribunal and the matter was restored to the file of AO vide order dated 27.04.2016 in ITA No. 7190, 6989, 6990 & 7191/Mum/2010. The relief prayed in the ground no.1 & 2 of the appeal are related to the cash and gold jewellery was seized in the search action on 15.05.2007. The AO while passing assessment order has not given sufficient opportunity to explain and substantiate the claim of assessee

and these grounds of appeal may also be restored to the file of AO with the direction to allow the assessee to explain about the seizure of cash and jewellery. On the other hand, the Id. DR for the Revenue supported the order of authorities below and would argue that the assessee has not appeared before the AO on a number of appointed dates and asked for adjournment. The assessee started to appear at the fag end of the year when the time period for passing the assessment order was knocking. However, on our specific query, the Id. DR for the Revenue agreed that he has no objection, if the grounds of appeal are restored to the file of AO. However, it was prayed that assessee be directed to fully co-operate and to provide the full detail and not to drag the proceeding unnecessary.

8. We have considered the rival submission of the parties and perused the order of Tribunal for AY 2004-05 to 2007-08 in ITAs No. 7190, 6989, 6990 & 7191/Mum/2010. We have noted that most of the grounds raised in the appeal were restored to the file of AO. Considering the contention of both the parties, the ground no.1 &2 are restored to the file of AO to decide both the ground afresh in accordance with law. The assessee is directed to provide full detail and information

which may be required by AO and not to take the adjournment without legitimate ground.

9. In the result, ground no.1 & 2 are allowed for statistical purpose.
10. Ground No.3 relates to addition on loan of Rs. 30,21,580/- and Ground no. 4 relates to proportionate disallowance of interest on loan for Rs. 4,89,423/-. The Id. AR of the assessee argued that assessee has raised similar ground of appeal before the Tribunal in the appeals for AY 2004-05 to 2007-08 and the Tribunal in its order dated 27.04.2016 remanded the similar ground of appeal to the file of AO. On the other hand, the Id. DR for the Revenue has not disputed the contention of Id. AR of the assessee.
11. We have considered the contention of both the parties and have gone through the order of Tribunal for AY 2004-05 to 2007-08 wherein on similar ground, the Tribunal has restored the matter to the file of AO to pass the order afresh. The relevant portion of order for AY 2007-08 on similar ground is extracted below.

ISSUE NO. 1, 2 & 3:-

24. In the said issue the assessee has challenged the addition to the tune of Rs.21,08,000/- u/s. 69C of the Act. The assessee has taken the loan from 9 persons but failed to produced them before the Assessing Officer therefore the Assessing Officer treated the said amount as

unexplained loan and added to the income of the assessee u/s. 68 of the Act. Here also the matter is the same where the Assessing Officer raised the question on identity, capacity and genuineness of the transaction. The Assessing Officer has also recorded the reason that the lenders were not produced before him. However, the assessee has proved the identity of the lenders by producing the sufficient documents on record which has also been produced before us in the paper book. What has been produced by the assessee on record is hereby mentioned below:-

Sr. No	Name of the lender	Documents of the lender
1.	Chaganlal D. Jain	<ol style="list-style-type: none"> 1. Copy of the Balance Sheet, Income & Expenditure a/c.and Capital A/c.forA.Y.07-08. 2. Computation of Income for A.Y.07-08. 3. Income Tax Acknowledgement for A.Y.07-08. 4. Pan card Xerox 5. Ration Card Xerox 6. Xerox copy of the bank passbook of the lender duly reflecting the loan given to the appellant. 7. Confirmation letter for Loan given. 8. Copy of letter dated:11/11/2008 written by the lender to the AO in reply to the notice u/s. 133(6) issued to them confirming the transaction with your appellant. 9. Copy of the Bank Statement of the Lender (Saraswat Bank) and that of the appellant (ICICI Bank) duly reflecting a further lending of a amount of Rs.23 lacs on 21/11/2006 by the lender to the appellant.
2.	Prakashdevi Jain	<ol style="list-style-type: none"> 1. Copy of the Balance Sheet, Income & Expenditure a/c.and Capital A/c.forA.Y.07-08. 2. Computation of Income for A.Y.07-08. 3. Income Tax Acknowledgement for A.Y.07-08. 4. Pan card Xerox 5. Ration Card Xerox 6. Xerox copy of the bank passbook of the lender duly reflecting the

		<p>loan given to the appellant.</p> <p>7. Confirmation letter for Loan given.</p> <p>8. Copy of letter dated:11/11/2008 written by the lender to the AO in reply to the notice u/s. 133(6) issued to them confirming the transaction with your appellant.</p> <p>9. Copy of the Bank Statement of the Lender (Saraswat Bank) and that of the appellant (ICICI Bank) duly reflecting a further lending of a amount of Rs.2.4 lacs on 15/11/2006 and 2.4 lacs on 23.11.2006 by the lender to the appellant.</p>
3.	Pradeep Jain	<p>2. Copy of the Balance Sheet, Income & Expenditure a/c.and Capital A/c.forA.Y.07-08.</p> <p>2. Computation of Income for A.Y.07-08.</p> <p>3. Income Tax Acknowledgement for A.Y.07-08.</p> <p>4. Pan card Xerox</p> <p>5. Ration Card Xerox</p> <p>6. Xerox copy of the bank passbook of the lender duly reflecting the loan given to the appellant.</p> <p>7. Confirmation letter for Loan given.</p> <p>8. Copy of letter dated:11/11/2008 written by the lender to the AO in reply to the notice u/s. 133(6) issued to them confirming the transaction with your appellant.</p> <p>9. Copy of the Bank Statement of the Lender (Saraswat Bank) and that of the appellant (ICICI Bank) duly reflecting a further lending of a amount of Rs. 2.5 lacs on 15.11.2006 by the lender to the appellant.</p>
4.	Mitesh C. Jain	<p>1. Copy of the Balance Sheet, Income & Expenditure a/c.and Capital A/c.forA.Y.07-08.</p> <p>2. Computation of Income for A.Y.07-08.</p> <p>3. Income Tax Acknowledgement for A.Y.07-08.</p> <p>4. Pan card Xerox</p> <p>5. Ration Card Xerox</p> <p>6. Xerox copy of the bank passbook of the lender duly reflecting the loan given to the appellant.</p>

		<p>7. Confirmation letter for Loan given.</p> <p>8. Copy of letter dated:11/11/2008 written by the lender to the AO in reply to the notice u/s. 133(6) issued to them confirming the transaction with your appellant.</p> <p>9. Copy of the Bank Statement of the Lender (Saraswat Bank) and that of the appellant (ICICI Bank) duly reflecting a further lending of a amount of Rs.80,000/- on 21.11.2006 by the lender to the appellant.</p>
5.	Neetu Jain	<p>1. Copy of the Balance Sheet, Income & Expenditure a/c.and Capital A/c.forA.Y.07-08.</p> <p>2. Computation of Income for A.Y.07-08.</p> <p>3. Income Tax Acknowledgement for A.Y.07-08.</p> <p>4. Pan card Xerox</p> <p>5. Ration Card Xerox</p> <p>6. Xerox copy of the bank passbook of the lender duly reflecting the loan given to the appellant.</p> <p>7. Confirmation letter for Loan given.</p> <p>8. Copy of letter dated:11/11/2008 written by the lender to the AO in reply to the notice u/s. 133(6) issued to them confirming the transaction with your appellant.</p> <p>9. Copy of the Bank Statement of the Lender (Saraswat Bank) and that of the appellant (ICICI Bank) duly reflecting a further lending of an amount of Rs.2.3 lacs on 15.11.2006 by the lender to the appellant.</p>
6.	Narpatraj D. Sanghvi	<p>1. Copy of the Balance Sheet, Income & Expenditure a/c.and Capital A/c.forA.Y.07-08.</p> <p>2. Computation of Income for A.Y.07-08.</p> <p>3. Income Tax Acknowledgement for A.Y.07-08.</p> <p>4. Pan card Xerox</p> <p>5. Ration Card Xerox</p> <p>6. Xerox copy of the bank passbook of the lender duly reflecting the loan given to the appellant.</p> <p>7. Confirmation letter for Loan given.</p> <p>8. Copy of letter dated:11/11/2008</p>

		<p>written by the lender to the AO in reply to the notice u/s. 133(6) issued to them confirming the transaction with your appellant.</p> <p>9. Copy of the Bank Statement of the Lender (Saraswat Bank) and that of the appellant (ICICI Bank) duly reflecting a further lending of a amount of Rs.3 lacs on 23/11/2006 and 1.00 lacs on 06.12.2006 and Rs.25,000/- on 10/01/2007 by the lender to the appellant.</p>
7.	Manjudevi N. Sanghvi	<p>1. Copy of the Balance Sheet, Income & Expenditure a/c.and Capital A/c.forA.Y.07-08.</p> <p>2. Computation of Income for A.Y.07-08.</p> <p>3. Income Tax Acknowledgement for A.Y.07-08.</p> <p>4. Pan card Xerox</p> <p>5. Ration Card Xerox</p> <p>6. Xerox copy of the bank passbook of the lender duly reflecting the loan given to the appellant.</p> <p>7. Confirmation letter for Loan given.</p> <p>8. Copy of letter dated:11/11/2008 written by the lender to the AO in reply to the notice u/s. 133(6) issued to them confirming the transaction with your appellant.</p> <p>9. Copy of the Bank Statement of the Lender (Saraswat Bank) and that of the appellant (ICICI Bank) duly reflecting a further lending of a amount of 33,000/- on 12.01.2007 by the lender to the appellant.</p>
8.	Kalpana Pradeep Jain	<p>1. Copy of the Balance Sheet, Income & Expenditure a/c.and Capital A/c.forA.Y.07-08.</p> <p>2. Computation of Income for A.Y.07-08.</p> <p>3. Income Tax Acknowledgement for A.Y.07-08.</p> <p>4. Pan card Xerox</p> <p>5. Ration Card Xerox</p> <p>6. Xerox copy of the bank passbook of the lender duly reflecting the loan given to the appellant.</p> <p>7. Confirmation letter for Loan given.</p> <p>8. Copy of letter dated:11/11/2008</p>

		<p>written by the lender to the AO in reply to the notice u/s. 133(6) issued to them confirming the transaction with your appellant.</p> <p>9. Copy of the Bank Statement of the Lender (Saraswat Bank) and that of the appellant (ICICI Bank) duly reflecting a further lending of a amount of Rs.2 lacs on 08.04.2006 and another Rs.1 lacs on 15.05.2006 by the lender have also lend Rs.2.00 lacs which was duly repaid on 17.01.2007.</p>
9.	Ritesh K. Jain	<ol style="list-style-type: none"> 1. Copy of the Balance Sheet, Income & Expenditure a/c.and Capital A/c.for A.Y.07-08. 2. Computation of Income for A.Y.07-08. 3. Income Tax Acknowledgement for A.Y.07-08. 4. Pan card Xerox 5. Ration Card Xerox 6. Xerox copy of the bank passbook of the lender duly reflecting the loan given to the appellant. 7. Confirmation letter for Loan given. 8. Copy of letter dated:11/11/2008 written by the lender to the AO in reply to the notice u/s. 133(6) issued to them confirming the transaction with your appellant. 9. Copy of the Bank Statement of the Lender (Saraswat Bank) and that of the appellant (ICICI Bank) duly reflecting a further lending of a amount of Rs.40,000 on 10.01.2007 and Rs.40,000 on 12.01.2007 by the lender to the appellant.

The learned CIT(A) did not consider the claim of the assessee on the ground of that the assessee failed to produced the above mentioned 9 creditors and the documents which have been produced by the assessee were also not been considered on the presumption that the assessee was using the avoidance tactics. The Learned CIT(A) was also of the view that the assessee failed to show the capacity of the above said 9 creditors and the above said creditors were not having the proper source of income. But as discussed above the assessee has given

the details of the creditors and their records which should be considered in accordance with law. However, the Assessing Officer issued the notice u/s. 133(6) of the Act and the said creditors also filed reply to the said notice. If the presence of the above said creditors are necessary then the Assessing Officer can secure their presence by issuance of notice u/s. 131 of the Act and also can provide the opportunity of being cross examination to the assessee. Anyhow in view of the above said documents we are of the view that the identity, capacity and genuineness of the lenders is required to be examined in view of the documents produced before us on record in the interest of justice after due providing an opportunity of being heard to the assessee in accordance with law. Accordingly, we restore this issue on the file of Assessing Officer to examine a matter afresh in view of the above said observations and also decide the issue in accordance with law. Accordingly, these issues are decided in favour of the Assessee and against the Revenue.

12. Considering the decision of Tribunal in assessee's own case for earlier years, these ground of appeal are also restored to the file of AO with the same observation as per order dated 27.04.2006 passed by Tribunal. In the result, Grounds No. 3 & 4 are allowed for statistical purpose.
13. Ground No.5 relates to confirming the addition of Rs. 36,000/- on account of rent of premises at Cuttack. The Id. AR of the assessee fairly argued that similar ground of appeal was decided by the Tribunal against the assessee in assessee's own case for AY 2007-08. The Id. DR for the Revenue submitted that facts of the year under consideration are similar. Hence, the ground of appeal raised by assessee be dismissed.

14. Considering the contention of Id. AR of the assessee that similar ground of appeal for AY 2007-08 was dismissed by the Tribunal vide order dated 27.04.2016. Hence, this ground of appeal is decided against the assessee.
15. Ground No.6 relates to adhoc disallowance of Travelling Expenses @ 10% of total expenses. The Id. AR of the assessee argued that similar adhoc disallowance was raised against the assessee for AY 2007-08 and the Tribunal has remanded the matter to the file of AO in its order dated 27.04.2016. The Id. DR for the Revenue argued that he has no objection, if this ground of appeal is also restored back to the file of AO for considering afresh.
16. We have considered the submission of both the parties and have seen the order of Tribunal for AY 2007-08. The Tribunal passed the following order:

ISSUE NO. 6:-

26. According to issue no.6 the assessee has challenged the addition to the tune of Rs. 60,000/- on account of unexplained expenses like electricity, salaries and travelling expenses of both sides (Mumbai and Cuttack) for the A.Y. 2007-08. The contention of the assessee is that office of the assessee was not in operation in the A.Y. 2007-08 therefore there is no issue of expenditure. On appraisal of order passed by the Assessing Officer as well as learned CIT(A) on record, the expenses assessed by the Assessing Officer is on account of electricity, salary and travelling etc. The electricity bills, salary and expenditure of travelling is a matter of record which can be confirmed by going through the relevant books of accounts/bill etc of the assessee. Merely on the basis of this fact that the assessee was not running the business therefore the

expenditure is not allowable, does not seem justifiable without conducting any required enquiry. Anyhow, this matter has not been examined properly earlier therefore we are of the view that this expenditure which has been disallowed on account of non working of the business of the assessee is required to be examined afresh in the light of the documents / accounts of the assessee in the interest of justice. We therefore remand this issue on the file of Assessing Officer to be examined afresh in the light of the documents / accounts of the assessee and by giving him an opportunity of being heard in accordance with law. Accordingly this issue is decided in favour of the Assessee and against the Revenue.

17. Considering the decision of Tribunal in assessee's own case wherein similar ground of appeal was restored to the file of AO. Thus, keeping in view the principle of consistency, this ground of appeal is also restored to the file of AO.
18. In the result, this ground of appeal is allowed for statistical purpose.
19. Ground No.7 relates to the service of assessment order served on 05.01.2011. The Id. AR of the assessee argued that assessment order passed on 31.12.2010 is time barred as the same was not served within period of limitation. It was argued that the assessment order was delivered by him on 05.01.2011. The assessment order should have been served on or before 31.12.2010. Since the assessment order was served on 05.01.2011, it became time barred, therefore, bad-in-law and void ab-initio. In support of his submission, the Id. AR of the assessee relied upon the decision of Gujarat

High Court in case of Kanubhai M. Patel (HUF) v. Hiren Bhatt or his successors to Officer [2011] 12 taxmann.com 198 (Guj.) and decision of Delhi Tribunal in ITO vs. On Exim P. Ltd. (2013) 40 taxmann.com 133 (Del Trib.). Further on record we find that the Id AR for the assessee has filed written notes on various grounds of appeal wherein he has also relied on the decision of Allahabad High Court in CIT Vs Sincere Construction [2015]54 taxman.com 31(Allahabad) and decision of Tribunal In Shanti Lal Godawat Vs ACIT [2009] 126 TTJ 135 (Jodh). On the other hand, the Id. DR for the Revenue supported the order of authorities below. It was argued that assessment order was made within two year from the end of Assessment Year. The AO passed the order within period of limitation as prescribed under section 153 of the Act. The ground of appeal raised by assessee is misconceived. It was argued that as per the provisions of section 153, the AO is required to make the order within prescribed period. Section 153 nowhere speaks about service of assessment order within the prescribed period of limitation provided for passing the assessment order. The various decision relied by Id. AR of the assessee are not applicable. The decision relied by Id. AR of the assessee relates to period

service of notice under section 148, which has no relevance with the ground of appeal raised herein. Section 147 relates to notice of re-opening for which service of notice within prescribed period of limitation provided therein, which is mandatory.

20. We have considered the rival submissions of the parties and have gone through the order of authorities below. We have noted that assessment order is passed on 31.12.2010. The assessment order is passed within prescribed period of limitation as provided under section 153(1) at the relevant period. Section 153 nowhere provides time limit for service of assessment order passed either under section 143 or 144 of the Act, with in the period prescribed therein. The legislature has intentionally used the word "made" while drafting the section 153 of the Act for passing the assessment order under section 143 or 144 of the Act. The Id AR for the assessee has not argued that after preparing and before service of the order the AO made any variation. There is allegation or evidence that the order of assessment was passed after period of limitation. Even otherwise, the order was served within reasonable time. The various decisions relied by Id AR for the assessee are factually differ.

The ground of appeal raised by assessee has no force and the same is dismissed. Hence, this ground of appeal is dismissed.

21. Ground No.8 relates to interest under section 234A, 234B & 234C of the Act. This ground of appeal is consequential and needs no adjudication.
22. Ground No. 9 relates to initiating penalty under section 271(1)(c). This ground of appeal is premature and needs no adjudication at our end.
23. Ground No. 10 is general and needs no adjudication.
24. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 18.10.2017

Sd/-

R.C. SHARMA
ACCOUNTANT MEMBER
MUMBAI, DATED: 18.10.2017
Copy of the order forwarded to:
SK, PS

Sd/-

PAWAN SINGH
JUDICIAL MEMBER

1. *The Assessee;*
2. *The Revenue;*
3. *The CIT(A);*
4. *The CIT, Mumbai City concerned;*
5. *The DR, ITAT, Mumbai;*
6. *Guard file.*

By Order.

(Dy./Asstt.Registrar)

ITAT, Mumbai