

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य,
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI D. KARUNAKARA RAO, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं./ ITA Nos. 675 to 679/PUN/2016
निर्धारण वर्ष / Assessment Years : 2007-08 to 2011-12

Devendra P. Shah,
F-109, Adinath Society,
Pune – 411 037
PAN : AHOPS1104N

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Central Circle-1(1),
Pune

.....प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA Nos. 793 to 796/PUN/2016
निर्धारण वर्ष / Assessment Years : 2007-08 to 2010-11

DCIT, Central Circle-1(1),
Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

Devendra P. Shah,
F-109, Adinath Society,
Pune – 411 037
PAN : AHOPS1104N

.....प्रत्यर्थी / Respondent

Assessee by : Shri Chetan Karia, Shri Suhas Bora
Revenue by : Shri S.K, Jadhav

सुनवाई की तारीख / Date of Hearing : 27.09.2018	घोषणा की तारीख / Date of Pronouncement : 12.10.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are 9 appeals under consideration. ITA Nos. 675 to 679/PUN/2016 are filed by the assessee and ITA Nos. 793 to

796/PUN/2016 are filed by the Revenue against the consolidated order of CIT(A)-12, Pune dated 29-01-2016. All these appeals pertain to A.Yrs. 2007-08 to 2011-12. Revenue has not filed any cross appeal for the A.Y. 2011-12.

2. Briefly stated relevant facts of the case include that the assessee is an individual and one of the Directors of M/s. Parag Milk and Milk Products Pvt. Ltd. There was action u/s.132 of the Act on Parag group of cases on 04-02-2011. Accordingly, as per the due process of law, the assessments were completed u/s.153A of the Act. Before us, there is no issue relating to the incriminating material or non-abated assessments etc. The appeals pertain to the A.Yrs. 2007-08 to 2011-12. During the assessment, the AO made various additions and the details of returned income, additions made and the assessed income are tabulated as under:

<i>Particulars</i>	<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>
<i>Returned income</i>	34,92,176	2,67,24,730	1,23,23,550	54,32,410	1,16,77,560
<i>Unexplained cash credit u/s.68</i>		32,50,000	46,00,000	68,10,000	
<i>Unexplained expenditure u/s.69C</i>	3,50,000	--	--	1,58,06,000	4,00,000
<i>Unexplained money u/s.69A</i>	--	--	--	--	38,41,000
<i>Unexplained investment in jewellery</i>	--	--	--	--	2,20,000
<i>Unexplained investment in Fixed Deposit u/s.69</i>	2,30,970	--	--	--	--
<i>Unexplained investment in land</i>	--	--	1,06,42,500	--	--
<i>Excess claim of agricultural income</i>	23,004	19,98,851	3,09,640	14,52,247	5,28,293
<i>Income from house property</i>	--	75,600	--	--	--
<i>Cash payment to Shrushti Sangam</i>	10,00,000	--	--	--	--
<i>Assessed Income</i>	3,97,46,150	3,20,49,181	2,78,75,690	2,95,00,657	1,66,66,843

2.1 Referring to the additions made by the AO, giving the fate of these additions before the CIT(A), assessee filed issue-wise chart raised in both appeals of Revenue & Assessee and the same is extracted as follows :

	<i>07-08</i>	<i>07-08</i>	<i>08-09</i>	<i>08-09</i>	<i>09-10</i>	<i>09-10</i>	<i>10-11</i>	<i>10-11</i>	<i>11-12</i>
	<i>R</i>	<i>A</i>	<i>R</i>	<i>A</i>	<i>R</i>	<i>A</i>	<i>R</i>	<i>A</i>	<i>A</i>
<i>Addition u/s.68</i>			<i>25 lakhs</i>	<i>7.50 lakhs</i>	<i>40.70 lakhs</i>	<i>5.30 lakhs</i>	<i>67.80 lakhs</i>	<i>30,000</i>	
<i>Addition on a/c. of Agri.income</i>									
<i>Unexplained expenses</i>	<i>3.50 crs</i>						<i>1,58,06,000</i>		
<i>Unexplained silver</i>									<i>2.20 lakhs</i>
<i>Unaccounted investment in loan given</i>		<i>10 lakhs</i>							
<i>Unexplained investment in FDR</i>		<i>2,30,970</i>							

R=Revenue appeal

A=Assessee Appeal

2.2 Referring to the all the 6 additions mentioned above, Ld. Counsel for the assessee narrated the relevant facts and made various submissions. Referring to the fate of the appeals before the First Appellate authority, Ld. Counsel submitted that the CIT(A) granted part relief on various accounts. CIT(A) granted substantial relief to the assessee on accounts of (1) unsecured loans added u/s.68 of the Act and (2) the unexplained election expenses. Aggrieved with the confirmation of above additions by the CIT(A), the assessee filed appeals for the A.Yrs. 2007-08 to 2011-12. Further, contending against the relief given by the CIT(A) to the assessee on the additions made by the AO, the Revenue is in appeals for the A.Yrs. 2007-08 to 2010-11.

Issue-wise Adjudication

3. We shall now take up issue-wise adjudication of the appeals of the assessee in the following paragraphs. It is relevant to mention that most of the grounds raised by the Revenue are linked to the issues raised by the assessee in the appeals. Therefore, we proceed to adopt the issue

based approach while adjudicating the appeals whether they are raised by the Revenue or the Assessee. The additions made by the AO on six counts namely (1) addition on account of loan u/s.68 of the Act; (2) addition on account of agricultural income; (3) addition of unexplained election expenses; (4) addition of unexplained silver; (5) addition of unaccounted investment in loan given; and (6) addition of unexplained investment in FDR.

4. **Addition of unsecured loans u/s.68 of the Act :** This addition is relevant for the A.Yrs. 2008-09 to 2010-11. Referring to the chart mentioned above, Ld. Counsel for the assessee submitted that the assessee received loans from various creditors and the same were added by the AO u/s.68 of the Act. CIT(A) granted part relief. Aggrieved with the same, the Revenue is in appeal on the sum of Rs.25 lakhs for A.Y. 2008-09. Further, the CIT(A) confirmed the addition of Rs.7,50,000/-.

Therefore, the assessee is in appeal on this part of the addition. For other assessment years also, i.e. A.Yrs. 2009-10 and 2010-11, as seen from the table above, both Revenue and Assessee are in appeal.

4.1 Going into the details of the addition on account of loans for the A.Y. 2008-09, the total loans in this year amounts to Rs.1,24,17,886/-. There are 8 creditors in this year namely (1) Bipin Shah (HUF)-Rs.2,50,000/- (2) Harsha C. Vora-Rs.6,00,000/- (3) Kalpana D. Shah-Rs.3,50,000/- (4) Dilip A. Shah-Rs.2,50,000/- (5) Hetel Enterprises-Rs.5,00,000/- (6) Neeta S. Jain-Rs.5,00,000/- (7) Sambhav Deep-Rs.5,00,000/- and (8) Tarla D. Shah-Rs.3,00,000/-. The details are given in the table at Para No.3.2.1 of the order of CIT(A). AO added the said amount of Rs.32.50 lakhs for want of details. In para No.5 of the assessment order, the AO held as under :

“The details of loan provide by such parties were scrutinized and in the case of following parties, neither genuineness nor creditworthiness of such parties was proved. The same is presented along with the reasons for treating them as non-genuine loan in tabular form as per Annexure-A, enclosed and made part of assessment order.

As already discussed evidences have been gathered during search action, that assessee group has generated unaccounted money on sale of milk products and has made investments in properties. Under these circumstances, onus was on assessee to prove the genuineness of loan and as assessee has failed to do so, hence, Rs.32,50,000/- was added back in the income of assessee u/s.68 of the Act.”

From the above, it is evident that the assessee failed to prove the genuineness of the transaction and creditworthiness of the parties. It is the case of the AO that the assessee failed to discharge the onus and, therefore, AO invoked the provisions of section 68 of the Act on the amount of Rs.32.50 lakhs. Same is the reasons given by the AO when an amount of Rs.46 lakhs is added in the A.Y. 2009-10 and Rs.68,10,000/- in the A.Y.2010-11 respectively.

4.2 However, in the First Appellate proceedings, the assessee submitted that some of its creditors also contributed towards the share capital and the same was subject matter of the assessee's application before the Income Tax Settlement Commission (ITSC) decided this issue. Assessee offered the same as bogus share capital and the ITSC accepted the application and the matter became final. The said facts were brought to the notice of the CIT(A). Further, on the issue of loan creditors, assessee made a submission stating that the same creditors have offered certain investments in shares as unaccounted income of the assessee before the ITSC should not be decided against the assessee. Further, the group concerns of the assessee-Parag Milk Foods Pvt. Ltd. filed an application before the ITSC. The contribution in the form of share application money to M/s. Bhagyalaxmi Dairy Pvt. Ltd. were treated as not genuine and offered to the taxation. The contribution

made by the said creditors in the form of unsecured loans should not be treated on par with the same and hold that the loan creditors are bogus too. Stating that the assessee's application before ITSC is genuine one, Ld. AR submitted that the loan transactions are genuine. Therefore, the addition made by the AO is fully unsustainable. However, on evidences filed by the assessee, AO raised objections with regard to the inaccuracies with reference to signatures and the Permanent Account Numbers of the creditors.

4.3 On considering the submissions made by the assessee before the First Appellate Authority, the CIT(A) granted part relief to the assessee barring unsecured loans of Rs.2.50 lakhs and Rs.5 lakhs contributed by Mr. Dilip A. Shah and Smt. Neeta S. Jain respectively stand confirmed for the A.Y. 2008-09. Relevant paras are extracted here as under :

“3.2.7 I do not agree with the learned AO. During the appellate proceedings, the Appellant has furnished the additional evidence in terms of the loan confirmation letters, ledger accounts of the lenders showing the loan transaction by cheque and copy of the acknowledgment of the return filed by the lenders. This evidence was forwarded to the learned AO for his remand report. The learned AO in his remand report has repeated the same facts, which were mentioned in the assessment order without carrying out any enquiries.

3.2.8 In my view, the learned AO's allegation of the Appellant routing his unaccounted money in form of the cash credit may be true. However, when the Appellant has furnished the loan confirmation letters with the details of the cheque payment, it is not possible to make the addition without bringing evidence on record as to how these loans are not genuine. This is also because law does not permit examination of the 'source of source'. The learned AO has relied on the Appellant's admission before the Honourable Settlement Commission in the case of Bhagyalaxmi Dairy Private Limited, in which it was stated that some of the parties are not genuine.

3.2.9 I do not agree with AO on this argument because of the two reasons: firstly, the Appellant made the admission before the Honourable Settlement Commission in the case of Bhagyalaxmi Dairy Private Limited with respect to share application money transaction. Obviously, share application money transaction is different than the loan transaction. If share application money transaction is not genuine it does not necessarily lead to the conclusion that the loan transaction is also not genuine. For the same reason, the statement of Smt. Rekha Shah cannot help the cause of the learned AO as it was given with regard to share application money. Secondly, I find that the learned AO has made very broad and general

statement without identifying specific lenders which, according to him are bogus lenders. It is not possible to sustain the addition on the basis of such broad generalizations. Accordingly, I do not find any basis in the addition made by the learned AO.

3.2.10 *However, I find on the examination of the loan confirmations submitted by the Appellant that the lenders **Shri Dilip A. Shah** with the loan amount of Rs.2,50,000 and **Smt. Neeta S. Jain**, with the loan amount of Rs.5,00,000 **have not signed loan confirmations. Their loan confirmation is signed by someone else on their behalf as 'for'**. Since, the loan confirmation is not signed by the lender, the requirement of establishing genuineness of the loan transaction is not satisfied. Therefore, I confirm the addition of Rs.7,50,000/-. Accordingly, the addition is restricted to Rs.7,50,000/- as against the addition of Rs.32,50,000/- made by the learned AO."*

4.4 Aggrieved with the above finding of the CIT(A) granting relief to the assessee to the extent of Rs.25 lakhs, the Department is in appeal and aggrieved with the confirmation of addition of Rs.7.50 lakhs, (i.e. Rs. 2.50 lakhs and Rs.5 lakhs by Mr. Dilip A. Shah and Smt. Neeta S. Jain respectively), the assessee is in appeal.

4.5 Similarly, for the A.Y. 2009-10, there are 8 creditors. The CIT(A) granted relief to the tune of Rs.40,70,000/- and confirmed an amount of Rs.5,30,000/- involving 3 creditors namely (1) Shri Dilip Shah (HUF) – Rs.85,000 (2) Smt. Rekha Shah – Rs.1,45,000/- and (3) Smt. Varsha S. Shah - Rs. 3 lakhs). Contents of Para No.4.2.5 of the order of CIT(A) are relevant. The reasons for granting relief to the assessee to the tune of Rs.40,70,000/- are given by the CIT(A) vide the discussion in Para Nos. 4.2.2 to 4.2.5. For the sake of completeness, the operational para No.4.2.5 is extracted here as under :

*"4.2.5 Findings on this Ground of Appeal are covered by the findings on Ground of Appeal 2 of the A.Y. 2008-09. Same findings will be applicable here. However, I find on the examination of the loan confirmations submitted by the Appellant that the lenders – **Shri Dilip Shah (HUF)** with the loan amount of Rs.85,000 **has not signed loan confirmation. Its loan confirmation is signed by someone else on its behalf as 'for'**. Since, the loan confirmation is not signed by the lender; the requirement of establishing genuineness of the loan transaction is not satisfied. Therefore, I confirm the addition of Rs.85,000 with respect to loan to Shri Dilip Shah (HUF). Further, Smt. Rekha Shah had stated in his statement*

recorded u/s.131 that she is a lady without means. The Appellant has not controverted her statement in his written submission. Therefore, I confirm the addition of Rs.1,45,000/- with respect to her loan. Further I find that the signature of one of the lender Smt. Varsha S. Shah is different in her loan confirmation filed in the A.Y. 2009-10 than her loan confirmation filed in the A.Y. 2010-11. Therefore, according to me, her loan confirmations are not credible. Therefore, I confirm the addition of Rs.3,00,000 pertaining to her unsecured loan. As a result, the addition is restricted to Rs.5,30,000 as against Rs.46,00,000 added by the learned AO on this ground.”

4.6 Similarly, in the A.Y. 2010-11, the details about making addition of Rs.68,10,000/- were discussed in Para No.5.2.1 of the CIT(A) involving 25 creditors. In this year, the CIT(A) confirmed sum of Rs.30,000/- involving Varsha Shah. CIT(A) granted relief in respect of addition of Rs.67,80,000/-. Thus, in all 3 assessment years, the creditors in whose cases the amounts were confirmed include (1) Shri Dilip Shah (HUF), (2) Smt.Rekha Shah and (3) Smt.Varsha S.Shah. Para No.5.2.1 of the order of CIT(A) is also reproduced here as under :

*“5.2.1 Findings on this Ground of Appeal are covered by the findings on Ground of Appeal 2 of A.Y. 2008-09. Same findings will be applicable here. I do not find any basis in the addition made by the learned AO. However, I find that the **signature of one of the lender Smt. Varsha S. Shah is different in her loan confirmation** filed in the A.Y. 2009-10 than her loan confirmation filed in the A.Y. 2010-11. Therefore, according to me, her loan confirmations are not credible. Therefore, I confirm the addition of Rs.30,000 pertaining to her unsecured loans. As a result, the addition is restricted to Rs.30,000 as against Rs.68,10,000 added by the learned AO.”*

4.7 We heard both the parties on the issue of loan creditors involving the assessee. The inconsistencies with reference to the confirmation letters filed by the assessee, their signatures, their PAN Numbers, lack of credit worthiness, etc are essentially the reasons for confirming the additions by the CIT(A). From the Revenue side, the grant of relief despite the offer of additional income on account of bogus investments in shares before the ITSC, the CIT(A) granted relief on account of loan creditors without going into the facts. In all other cases of creditors, the documentation furnished by the assessee was accepted by the CIT(A) to

a large extent and the creditors were found genuine. AO is of the opinion that the “bogus investors in Equity” cannot be “genuine loan creditors”. CIT(A) relied heavily on the remand report furnished by the AO in this regard. However, CIT(A) rejected the AO’s contention that all the transactions undertaken by the persons whose transaction that the share application money contributed to M/s. Bhagyalaxmi Dairy Pvt. Ltd., are bogus. CIT(A) is of the opinion that non-genuine transactions were already offered by the assessee through the ITSC and it has become final.

Therefore, it is an admitted fact that there are common names in the loan creditors and the list of investments in shares of certain companies of the group. This is the admitted position as evident from the application filed before the ITSC. It is the claim of the assessee that the transactions entered into by such names of persons can be partly genuine when it comes to “unsecured loans” and partly bogus when it comes to “investment in shares”. This aspect was not properly examined by the CIT(A) applying the strict tests while adjudicating the issue and while granting part relief to the assessee. This is the case of Revenue, when it comes to the unsecured loans, that the relief was liberally granted by the CIT(A) without scrutinizing the loan transactions properly. Further, we examined the documentation filed by the assessee with regard to the correctness of the transactions of loan creditors. We find “all is not well” with the documentation qua the creditworthiness, signatures on the confirmations, PANs etc. It is not justified as to why the creditors failed to give their signatures on the confirmation letters. It is the prayer of both the authorities before us that this entire issue may be remanded to the file of AO for want of one more round of adjudication at the level of the assessing authorities. The remand proceedings

already entertained by the AO were not done in a proper perspective due to various constraints including the issue of time limitation.

On considering the entire gambit of the facts and the circumstances, we are of the opinion, as informed in the open court, that the entire issue of unsecured loans raised in all the appeals is required to be remanded to the file of AO.

5. The second issue relates to **addition on account of agricultural income**. This issue is relevant for the A.Y. 2008-09 to 2010-11.

5.1 We shall examine the facts relating to this issue. Taking the facts from the years relevant to A.Y. 2008-09. Contents of Para No.2.5.1 of the order of CIT(A) are relevant. Assessee claimed agricultural income of Rs.1,41,207/-. The net profit from the agricultural operations worked out to 88.32% of the gross agricultural income. This figure is worked out after netting the agricultural expenses. In the assessment proceedings, the AO came to the conclusion that the agricultural income disclosure is inflated. AO is of the opinion that such high net profit rate is not there in the agricultural operations of the assessee for the past 5 years. On the basis of the assessee's own records on this issue, AO held that net profit rate of 40% of gross agricultural income is reasonable. Accordingly, the AO disallowed the balance based on the internal data of the assessee. The net profit rates of the assessee from the total agricultural income are (1) A.Y. 2007-08-47.78%; (2) A.Y. 2008-09-72.49%; (3) A.Y. 2009-10 -44.83%; (4) A.Y. 2010-11 – 88.32%; and (5) A.Y. 2011-12 – 48.05% respectively. At the end of the proceedings, the AO determined the net agricultural income @40% of the gross agricultural income. However, the CIT(A) granted additional benefit to the assessee by stating that the net agricultural income @65% of the

gross agricultural income should be reasonable. Contents of Para No.2.5.5. of the order of CIT(A) are self explanatory and the same reads as under :

“2.5.5 However, I agree with the learned AO that the net agricultural income @88% of the gross agricultural income is highly excessive and is not in accordance with the reality. It is known that an expense as low as @12% of the gross agricultural income is not prevalent in agricultural activity. Therefore, According to me, this is not the case of the excess agricultural income declared by the Appellant but is the case of suppression of agricultural expenses. Accordingly, in absence of the evidence, I estimate the Appellant’s net agricultural income @65% of the gross agricultural income on ad-hoc basis as against @40% estimated by the learned AO. The learned AO is directed to work out the net agricultural income @65% of gross agricultural income as declared by the Appellant.”

5.2 Before us, Ld. Counsel for the assessee argued that the figures of the assessee are based on the practical expenses of the assessee. Therefore, the order of the CIT(A) should be restored. In this regard, assessee furnished extract of agricultural income and expenses incurred copies of which are placed in pages 297 to 308 of the paper book. Ld. Counsel relied on the decision of Pune Bench of the Tribunal in the case of Arish Shoukat Bhagwan – ITA Nos. 193 to 203/PUN/2013, dated 17-05-2017 and connected appeals. However, considering the adhocism involved in these matters, assessee left the issue to the wisdom of the Bench.

5.3 We heard both the sides and perused the orders of the Revenue. It is the case where the assessee made a claim of agricultural income over the years in the past as well as in the subsequent assessment years. The claim of the assessee was accepted without any change in the claims of the assessee. It is for the first time the AO disturbed the claim of the assessee restricting the agricultural income to 40% of the gross agricultural income leaving the rest of 60% towards the related agricultural expenditure incurred for earning such Agricultural income.

Against the same, the CIT(A) increased the agricultural income from the said 40% to 65% and restricted the agricultural expenditure to the balance of 35%. While it is the decision of the lower authorities, Ld. Counsel for the assessee relied heavily on the order of the Tribunal in the case of Arish Shoukat Bagwan Vs. DCIT (supra). In that case, the crops grown in the fields relate to various cereals, sugarcane, vegetables etc. We find there is requirement of examining the applicability of the said decision of the Tribunal to the facts of the present case. We find Ld. Counsel for the assessee has given concession on deciding the issue as appropriate.

5.4 We find, the following are the ratios decided by the revenue authorities in their respective orders :

AO – Net agricultural income is assessed at 40% of the gross agricultural income
CIT(A) – Net agricultural income is assessed at 65% of the gross agricultural income
Assessee-Net agricultural income is assessed at 88% of the gross agricultural income

Considering the adhocism involved in this matter, we find the average of all the above comes very close to the decision of 65% as held by the CIT(A) in his order. Therefore, we are of the opinion that the decision of CIT(A) is appropriate and it does not call for any interference. Accordingly, the relevant grounds raised by the assessee are dismissed.

6. The third issue relates to **unexplained expenditure on account of Elections**. This issue is relevant for the A.Yrs. 2007-08 and 2010-11. Relevant facts include that the AO made addition of Rs.3.50 crores in the A.Y. 2007-08 and Rs.1,58,06,000/- for the A.Y. 2010-11. There was search and seizure action on the assessee u/s.132 of the Act on 04-02-2011. During the search, certain papers were seized from the office

premises of M/s. Parag Milk and Milk Products Pvt. Ltd. Analysis of the writings on the said papers revealed that the same pertains to the details of the expenditure incurred during the elections of Zilla Parishad and Panchayat. It appears that the assessee incurred the said expenditure on behalf of the candidates who belong to the National Congress Party (NCP) contesting from Ambegaon Constituency of Zunnar block. There was recording of statement on oath from Shri Bangar, Accountant of the assessee. According to his statement Rs.3.50 crores was spent in cash (Para No. 2.2.5 of the order of CIT(A) and Para 5 of the assessment order). In response to Question No.6, Mr. Bangar relying on the summary sheet, stated that the total expenditure on the said elections amounts to Rs.4,03,95,768/-. On the said papers, cash receivable and received from Dilip A. Shah in cash total to Rs.3.50 crores. When the question was raised about the source of this cash receivable and received assessee did not have explanation. Accordingly, the AO treated the same as unexplained expenditure u/s.69C of the Act in his hands. At that point of time, application before the ITSC was not finalized. Therefore, the AO invoked the provisions of section 69C of the Act and made addition of Rs.3.50 crores. Contents of Para No.5 of the assessment order are relevant.

6.1 Similarly, an amount of Rs.1,58,06,000/- in the A.Y. 2010-11 was added. This amount constitutes sum of Rs.1 crore, sum of Rs.56,06,0000/- and Rs.4 lakhs. Further, sum of Rs.4 lakhs was added on this account u/s.69C of the Act during the year for similar reasons. Contents of Para No.7 of the assessment order are relevant.

6.2 During the First Appellate proceedings, assessee made various submissions stating that the so far as the details of expenditure the total

unexplained expenditure works out to Rs.18.50 crores involving entire group cases of Para Milk and Milk Products Pvt. Ltd. It is submitted that the said company filed an application before the ITSC u/s.245 of the Act and finally an amount of Rs.10 crores was offered as additional income. During the assessment proceedings before the ITSC, assessee offered further additional income of 4 crores making the total additional income of Rs.14 crores as against the expenditure of Rs.18.84 crores recorded in the seized material. AO did not consider the said disclosure before the ITSC and made additions. In this regard, written submissions of the assessee are extracted in Para No.2.2.3 of the impugned order. In the said written submissions, assessee made a request to the CIT(A) to give credit of Rs.14 crores against the additions made in the individual members. CIT(A) considered the above submissions of the assessee and gave a finding in favour of the assessee and deleted the addition of Rs.3.50 crores as per the discussion given in Para No.2.2.4 of the impugned order and the is extracted here as under :

“2.2.4 I have considered the facts and arguments of the Appellant. I have also gone through the order of the Honourable Settlement Commission. I find in the para 10.4 of the order of the Honourable Settlement Commission that the Appellant had incurred unaccounted expenditure totaling Rs.5.12 cr. It has been stated the Appellant group had offered income of Rs.14 cr in its settlement application on account of the unaccounted expenditure. Subsequently, the Appellant offered the additional income of Rs.4 cr on this account. Accordingly, I find that this issue is covered by the order of the Settlement Commission. Therefore, I delete the addition of Rs.3,50,00,000 made by the learned AO.”

6.3 Before us, Ld. Counsel for the assessee made written submissions which is found very close to the written submissions made before the CIT(A). Contents of Para No.4.4 to 4.8 of the said written submissions are extracted here as under :

“4.4 In support of our above contention, we also wish to draw kind attention of Your Honour to Para 18 on page 29 and 30 of the order of Settlement Commission wherein our request giving credit of Rs.14 crore against addition made in individual members amounting to Rs.9.90 crs

was made. The Honourable Commission has accepted our request (Refer para 18 on page 29 of the order, page 101 and 102 of PB-1)

Photo copy of the order is enclosed (Refer Page No.73 to 111 of PB-1)

4.5 In the circumstances, since the issue is covered by the Settlement Commission the addition made by the AO on the same issue and the seized papers will amounts to double addition which is not permissible and not justified in law. CIT(A) has deleted the addition made by the AO.

4.6 The said papers have details of expenses incurred and also the persons who contributed. The department had quantified a sum of Rs.9.90 crores as been contributed by the group members – Devendra PS Rs.5.12 crores, Priti S. Rs.0.06 crores and Netra Shah Rs.4.72 crores. To cover up whole of the said amount, the group company had considered a sum of Rs.10 crores as contributed by it which is recorded as having contributed in names of three individuals of the group.

4.7 On final settlement a further sum of Rs.4 crores was admitted as contributed by the group.

4.8 Therefore, no addition is called for in the hands of the assessee.”

From the above, it is evident that the total addition made in the assessee's case amounts to Rs.5.12 crores involving 3 assessment years and the prayer of the assessee is that the above addition stands covered by the disclosure of Rs.14 crores given in the entire group case of Parag Milk and Milk products Pvt. Ltd.

6.4 On the other hand, Ld. DR for the Revenue submitted that there is no comprehensive details as to the assessee-wise bifurcation of the unexplained expenditure over the assessment years. Bringing substantial reference to the assessee's under consideration, Ld. DR submitted that against the addition of Rs.5.12 crores involving 3 assessment years there is no clarify in the order of the ITSC if the entire amount stands offered as additional income in the hands of the assessee or not. He also analysed the fact relating to the quantitative details of disclosure before the ITSC and could not establish that the assessment year specific amount of Rs.14 crores. He also mentioned that the total expenditure is Rs.18.86 crores offer of the assessee is only Rs.14 crores.

Ld. DR could not explain about the balance of Rs.4.46 lakhs stands taxed and the assessment year details.

6.5 We heard both the sides and perused the orders of the Revenue and facts before the ITSC. The seized documents reflect the election expenditure of Rs.18.86 crores. The family members of the assessee are also undisputedly involved in this expenditure. Assessee offered Rs.14 crores in two instalments (Rs.10 cr. + Rs.4 cr.) in the application before the ITSC and the same has been accepted by the ITSC. Thus offer of additional income was made in the hands of the companies. Additional income was not offered in the hands of the names appearing in the seized papers. Going to the bifurcation of this claim of expenditure outside the books of account, the case of the AO is that a sum of Rs.5.12 crores was incurred by Devendra P. Shah (assessee). It is also the claim of the assessee that the entire unexplained expenditure on elections of Rs.5.12 crores was owned up by the company and paid the taxes and the same is evident from the order of ITSC (supra). But it is not clear as to whether the entire sum of Rs.5.12 crores is taxed effectively in the hands of the assessee or not and the reasons for offering the same in the hands of the company are specified. When the questions was raised by us on this issue, both the representatives of the Revenue and Assessee submitted that this is a matter of fact, which require scrutiny of the documents, disclosures made by the other family members as unaccounted expenditure on account of elections, the application before the ITSC, the order of ITSC etc.

6.6 On considering the same, and concurring with the counsels' request, the matter stands remanded to the file of AO for examination of the facts and for want of a fresh order on this issue. AO is directed to

decide the issue in the light of the seized papers on one side and the order of ITSC, disclosures made by the family members, on the other side giving effect to the same after hearing the assessee. AO shall note that order of settlement of ITSC is binding on the Income-tax authorities and not on the Tribunal. With these directions, this entire issue of unexplained expenditure on elections amounting to Rs.5.12 crores stands remanded to the file of AO for fresh adjudication and for passing a speaking order. Accordingly, the relevant grounds raised by the assessee in the appeals are allowed for statistical purposes.

7. **Unexplained investment in land – Rs. 10 lakhs.** This issue is relevant for the **A.Y. 2007-08**. Relevant facts include that the search action resulted in the seizure of Bundle No.7 (Contents of Pages 12 and 13) relating to the receipt on the letter head of “Srusti Sangam” which bears the name of the assessee. According to the contents, the assessee has given short term loan to Srusti Sangam on 28-04-2006 and there is seizure of cheque received by the assessee from the Srusti Sangam. During the recording of a statement on oath, it is admitted that the assessee paid Rs.10 lakhs as loan to Srusti Sangam and the same remained unpaid. AO proposed to make the same as unexplained investment in the loan. In response, assessee furnished a reply stating that the cheque received from the bank was never submitted by Srusti Sangam. Eventually, the AO considered the submission of the assessee and made addition of Rs.10 lakhs stating the following :

“The submissions of assessee is duly considered but not acceptable. Assessee neither during search nor during assessment proceedings, stated that disclosure made on this issue was not correct. Further, assessee made no comments on page No.12, which contains. Receipt on the letter lead of srushti sangam in the name of Devendra Shah against short term loan dated 28.04.06 at Rs.10 lakhs. Inference is drawn that cash was paid by assessee to srushti sangam and the same is also admitted by assessee. Accordingly, Rs.10,00,000/- is added back in the income of assessee being unexplained expenditure. Penalty proceedings

u/s.271(1)(c) is initiated separately for concealment of particulars of income.”

7.1 During the First Appellate proceedings, assessee made various submissions stating that the assessee paid Rs.10 lakhs towards the loan and the loan was never returned. Eventually, the said loan has become irrecoverable resulting in bad debt and, therefore, the assessee requested to allow the claim as deduction as bad debt. He relied on the High Court judgment in the case of Indo Airways Pvt. Ltd. 349 ITR 85 (Delhi) and others. Eventually, the CIT(A) confirmed the addition made by the AO as per the discussion given in Para No.2.4.4. of his order. It is the decision of CIT(A) that assessee retracted the disclosure of Rs.10 lakhs originally offered during the search action and assessee did not offer the same in the return filed u/s.153A of the Act. He rejected the assessee's submission that the amount is not recoverable. Relevant operational Para No.2.4.5. of the order of CIT(A) is extracted here as under :

“2.4.5 I do not find any logic in the Appellant's arguments. According to me, the central issue here is; whether the loan of Rs.10 lakhs advanced by the Appellant is accounted or not. It has nothing to do with repayment capacity of the Shrushti Sangam or the Appellant not encashing the cheque issued by Shrushti Sangam. It is clear that the Appellant had advanced loan of Rs.10 lakhs to Shrushti Sangam. The Appellant has not been able to establish that the loan was advanced out of his accounted sources of income. In these circumstances, the Appellant has not offered any argument or basis on which, relief can be granted to him. Accordingly, I confirm the addition of Rs.10 lakhs made by the learned AO to his total income.”

7.2 Before us, Ld. Counsel for the assessee submitted that the said amount became irrecoverable and therefore, the assessee should be given a benefit of bad debt. In this regard, he filed the written submissions and prayed for deletion of the addition :

“6.1 Discussion about addition is made at para 08 on page No.14 and 15 of the assessment order. The addition is made on the basis of loose papers found at bundle No.7 (Page No.12 and 13, Refer page 112-114 of the PB-1) during the course of search at the office of Bhagyalaxmi Dairy at

Manchar. The Ld. AO has made the addition only on the ground that appellant had disclosed this amount u/s.132(4) and further page number 12 of this bundle is the receipt issued in favour of the appellant.

6.2 *Addition made by the Ld. AO is incorrect since while giving reply u/s.132(4) the appellant had stated that the said amount is unrecoverable as the party is insolvent. Therefore, if part of the statement is considered as correct and relied upon by the AO, then there is no reason to disregard the other part of the statement.*

6.3 *It is settled law that the statement has to be taken as a whole and the AO is not justified in ignoring certain answers which were in favour of the assessee (Refer ITAT decision Ghanshambhai Thakkar 56 TTJ 460 and Chaturvedi & Pithisaria page 4907.*

6.4 *The seized paper page No.13, which is original cheque given by the said party, which is not encashed (Refer Page No.114 of PB-1) and therefore this evidence also supports the contention of the appellant that the said amount is lost and is allowable as deductible. Thus, in totality effect of seized papers nothing can be added in the hands of appellant.*

6.5 *It is submitted before your Honour that the seized material has to be considered in its entirety, including those which favour the assessee, reliance was placed on the decision of Hon'ble Delhi High Court in the case of CIT Vs. Indeo Airways Pvt. Ltd. 349 ITR 85 (Del).*

6.6 *As the amount is irrecoverable, it is a loss which is allowable as deduction and therefore net addition called for is NIL.*

It is submitted that the addition made by AO and confirmed by the CIT(A) be deleted."

7.3 On the other hand, Ld. DR relied on the orders of AO/CIT(A).

7.4 We heard both the sides and perused the orders of the Revenue and the written submissions of the assessee. We find the case of the assessee is that amount of Rs.10 lakhs was paid and the same was never returned by the assessee and therefore, it has become a bad debt. For allowing the bad debt, there is need for fulfilling certain conditions by the assessee. It has to be examined if the assessee is a financier and is regularly engaged in the business of money lending/financing activities. This aspect was not examined by the lower authorities before rejecting the claim of the assessee. There is also need for examining the debtor and the reasons for not returning the said payment of Rs.10 lakhs. Therefore, considering the peculiarity of these facts, we are of the opinion

that this issue should also be remanded to the file of AO with a direction to examine the status of the assessee if he is engaged in the business of money lending and circumstances on the debtor for not returning the amount to the lender. AO should also examine the applicability of decisions cited by the Ld. Counsel for the assessee. Accordingly, the relevant grounds raised by the assessee in the appeals are allowed for statistical purposes.

8. **Unexplained investment in FDRs – Rs.2,30,770/-.** This issue is relevant for the A.Y. 2007-08. Relevant facts include that the AO discussed this issue in Para No.6 of the assessment year. There is reference to the incriminating document seized during the survey action containing the details of the FDRs made by the Parag group of assessees. AO tabulated the entire FD receipts and the total of such FDRs works out to Rs.30,89,850/-. These FDRs are owned up by 5 of the family members :

<i>Name</i>	<i>Amount of FDs</i>
<i>Devendra Shah (HUF)</i>	<i>230970.00</i>
<i>Prakash Shah (HUF)</i>	<i>1315303.00</i>
<i>Rajani Shah</i>	<i>1168174.00</i>
<i>Parag Shah (HUF)</i>	<i>200000.00</i>
<i>Pritam Shah (HUF)</i>	<i>175403.00</i>
Total	3089850.00

From the above, it is evident that the Shri Dilip Shah (HUF)-assessee owns FDRs amounting to Rs.2,30,970/-.

8.1 During the assessment proceedings, the assessee made submissions against making of another addition on this account. AO considered the same and rejected for the following reasons :

“3. *Fixed deposits were made in the name of individual and not in the name of HUF, and both are separate legal entities for income tax purpose. If, the source of income of HUF than investment should have made in HUF status only.*

Therefore, it is apparent that the claim of assessee has no force and it is merely an afterthought exercise. During A.Y., assessee has made investment in fixed deposits of Rs.2,30,970/- and the same is not reflected in regular books. Accordingly, Rs.2,30,970/- is treated as undisclosed income of the assessee as unexplained investment in fixed deposits u/s.69 of the Act.”

Eventually, the AO made addition of Rs.2,30,970/- invoking the provisions of section 69 of the Act. AO held that the investments are not recorded in the books of account of the assessee. AO treated the same as undisclosed income of the assessee as unexplained investment in FDs.

8.2 In the First Appellate proceedings, assessee made various submissions and discussed the details of FDs maintained by the assessee in different banks and Pat Sansthas. CIT(A) noted that the assessee never filed the returns in HUF capacity before the search action. No financial statements of the HUF were also filed. CIT(A) observed that the FDs are held in the individual names not in the name of the HUF. CIT(A) extracted the written submissions of the assessee in Para No.2.3.3. and also considered the additional evidences furnished by the assessee before him. CIT(A) called for the remand report on the said documents. CIT(A) also called for the counter comments from the assessee on the findings of the AO. Eventually, the CIT(A) discussed this issue in Para No.2.3.6 to 2.3.8 and rejected the assessee's contention before confirming the additions of Rs.2,30,970/-. CIT(A) noted in these paras that the assessee's request for subscribing of the additional income against the investments also ruled out. He also ruled out the telescoping of the amount towards the income offered. He also discussed the possibility of matured FDs as source of income for the fresh FDs made subsequently. Nevertheless, the absence of cash flow statement showing such maturity of FDs to act as source for making of the fresh

FDs qua the time factor and observed that the requirement of cash flow statements which were not furnished before him as per the discussion given in Para No.2.3.7 in his order. Eventually, the CIT(A) confirmed the addition as per the discussion given in Para No.2.3.8. The said operational para is extracted here for the sake of completeness :

“2.3.8 The Appellant has not furnished the cash-flow statement, dates of the maturity of the old FDs and date of reinvestment in the new FDs. I find the Appellant’s defence is half-hearted. In the beginning, the Appellant contended that the investment belongs to his HUF and now, he has stated that it is the same funds, which were rotated in the FDs without supporting this contention with the evidence. Therefore, I do not consider his explanation on the source of the investment made in the FDs to be satisfactory in terms of the provisions of the section 69A without the cash-flow statement. I confirm the addition made by the learned AO on this account.”

8.3 Before us, Ld. Counsel for the assessee brought our attention to the statement of FDs, dates of maturity of the said FDs and the possibility of said maturity of FDs to become a source for buying the new FDs. The facts about filing of such documents before the Revenue authorities were also mentioned. As per the Ld. Counsel, if the said cash flow is analysed properly, the addition that is required to be made would be around Rs.79,771/- against the addition of Rs.2,30,970/- in the case of the assessee for the assessment year under consideration.

8.4 On the other hand, Ld. DR for the Revenue relied heavily on the orders of AO and the assessee’s failure to provide cash flow statements before the revenue authorities.

8.5 We heard both the sides, perused the orders of the Revenue and the written submissions filed by the assessee before us. On going through the above facts, we find the source of income for making the FDs worth of Rs.2,30,970/- is the core issue under litigation. It is the case of the assessee that the source for the same is the proceeds received

by the assessee on maturity of the earlier FDs. There is need for furnishing the cash flow of the matured FDs which form part of the new FDs of Rs.2,30,970/-. It is an admitted fact before us that the assessee offered only an amount of Rs.79,771/- as additional income for taxation and not the entire addition of Rs.2,30,970/-. However, Ld. AR firmly submitted that the entire FDs of Rs.2,30,970/- is explainable if time is granted before the AO. In our view, this matter needs examination in the light of the details of the cash flow. In case of availability of sufficient cash balance is demonstrated by the assessee in the remand proceedings, the benefit of excess cash needs to be granted in favour of the assessee. Only exception to this principle is that the AO should examine the likely use of such excess cash for any other expenditure other than for making the said FDs of Rs.2,30,970/- claimed by the assessee. With these directions, the issue raised by the assessee in the appeals is allowed for statistical purposes.

9. In the result, all the appeals of the assessee are partly allowed for statistical purposes.

ITA Nos.793 to 796/PUN/2016
A.Yrs2007-08 to 2010-11

10. When it comes to the Revenue appeals above, as stated earlier, it is evident that the CIT(A) granted part relief on account of (1) unsecured loans and (2) full-relief on account of unaccounted expenditure in elections. Both the grounds of assessee stand remitted to the file of AO while adjudicating the said issues in the appeals by the assessee for all the relevant assessment years under consideration. Therefore, the issues raised by the Revenue in its appeals should also stand remitted to the file of AO for harmonious adjudication of the issues. Accordingly,

the grounds raised by the Revenue in all the appeals are allowed for statistical purposes.

11. In the result, all the appeals of the Revenue are allowed for statistical purposes.

Order pronounced on 12th day of October, 2018.

Sd/-

Sd/-

(विकास अवस्थी /VIKAS AWASTHY) (डी. करुणाकरा राव/D. KARUNAKARA RAO)
न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 12th October, 2018.
Satisfy

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-13, Pune
4. The Pr.CIT (Central), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे/ DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदष्टानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ ITAT, Pune