

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'सी', मुंबई।
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI

श्री जी. मंजूनाथ, लेखा सदस्य, एवं
श्री रविश सूद, न्यायिक सदस्य के समक्ष

Before Shri G. MANJUNATHA, Accountant Member and
Shri RAVISH SOOD, Judicial Member,

ITA NO.2687, 2688 & 2689/Mum/2018
Assessment Year:-2012-13, 2013-14 & 2014-15

M/s Pabal Housing Private Limited, 66B, 3 rd Floor, Podar Chambers, Mumbai Samachar Marg, Mumbai-400001	बनाम/ Vs.	DCIT, CC-1(3), 905, Old CGO Annex Building, M. K. Road, Mumbai-400020
(निर्धारिती /Assessee)		(राजस्व /Revenue)
P.A. No.AAQFM8445I		

ITA NO.2692, 2693 & 2694/Mum/2018
Assessment Year:-2007-08, 2008-09 & 2013-14

Poonam Skyline Construction 66B, 3 rd Floor, Podar Chambers, Mumbai Samachar Marg, Mumbai-400001	बनाम/ Vs.	DCIT, CC-1(3), 905, Old CGO Annex Building, M. K. Road, Mumbai-400020
(निर्धारिती /Assessee)		(राजस्व /Revenue)
P.A. No.AAHFP4019R		

ITA NO.3226 TO 3229/Mum/2018
Assessment Year:-2009-10, 2012-13, TO 2014-15

P.S. Construction 66B, 3 rd Floor, Podar Chambers, Mumbai Samachar Marg, Mumbai-400001	बनाम/ Vs.	DCIT, CC-1(3), 905, Old CGO Annex Building, M. K. Road, Mumbai-400020
(निर्धारिती /Assessee)		(राजस्व /Revenue)
P.A. No.AAKFP4348Q		

ITA NO.2690/Mum/2018
Assessment Year:-2012-13

Poonam Shanti Developers 66B, 3 rd Floor, Podar Chambers, Mumbai Samachar Marg, Mumbai-400001	बनाम/ Vs.	DCIT, CC-1(3), 905, Old CGO Annex Building, M. K. Road, Mumbai-400020
(निर्धारिती /Assessee)		(राजस्व /Revenue)
P.A. No.AAMFP0302N		

ITA NO.2691/Mum/2018
Assessment Year:-2013-14

Poonam Mega Developers 66B, 3 rd Floor, Podar Chambers, Mumbai Samachar Marg, Mumbai-400001	बनाम/ Vs.	DCIT, CC-1(3), 905, Old CGO Annex Building, M. K. Road, Mumbai-400020
(निर्धारिती /Assessee)		(राजस्व /Revenue)
P.A. No.AAMFP4284F		

निर्धारिती की ओर से / Assessee by	Shri Hari S. Raheja & Shri Mani Jain
राजस्व की ओर से / Revenue by	Shir Awungshi Gimson CIT-DR

सुनवाई की तारीख / Date of Hearing :	04/02/2019
आदेश की तारीख /Date of Order:	03/05/2019

आदेश / O R D E R

Per Bench

This bunch of 12 appeals filed by different assessee's and are directed against separate, but identical orders of the Ld. CIT(A), 47, Mumbai, all dated 28/02/2012 and they pertain to Assessment Years 2007-08, 2008-09, 2009-10 & 2012-13, 2013-14 and 2014-15. Since, facts, are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed of by this consolidated order.

ITA NO.2688/Mum/2018

2. All assessee's have more or less filed common grounds of appeal in respective memorandum of appeal. For the sake of brevity, grounds of appeal taken in ITA No.2688/Mum/2018 for Assessment Year 2013-14 of M/s Pabal Housing Pvt. Ltd. is reproduced hereunder:-

- “ 1. On the facts and circumstances of the appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) 47 (CITA) erred in not holding that the Ld. Assessing Officer (AO) has not followed the principles of natural justice by granting effective opportunity of being heard and providing material/record gathered during search/survey proceeding in the third party's case, if any intended to be used against the appellant.*
- 2. On the facts and circumstances of the appellant's case and in law the Ld. CITA erred in not holding that the Ld. AO erred in making the various additions disallowance merely relying on the averments made by Shri Bhanwarlal Jain.*

3. On the facts and circumstances of the appellant's case and in law the Ld. CITA erred in confirming the addition of sum of Rs. 10,45,00,000/- made by the Ld. AO in respect of unsecured loans taken from the persons mentioned herein below as alleged accommodation entries and treating the same as alleged unexplained credits:

Name of the party	Amount
Meridian Jewellery Pvt Ltd	1,50,00,000
Rose Gems	2,45,00,000
Sankhala Exports	70,00,000
Little Diam	40,00,000
Mouli Gems	2,00,00,000
Rose Impex	3,00, 00,000
Nice Diamonds	40,00,000
Total	10,45,00,000

4. On the facts and circumstances of the appellant's case and in law the Ld. CITA erred in confirming the disallowance of Rs. 98,30,414/- being interest paid on unsecured loans borrowed from persons treated as alleged accommodation transactions as per the impugned order or otherwise.

5. On the facts and circumstances of the appellant's case and in law the Ld. CITA erred in confirming the addition of Rs. 20,20,000/- on account of alleged Commission paid on alleged accommodation transactions of unsecured loans as per the impugned order or otherwise.

6. On the facts and circumstances of the appellant's case and in law the Ld. CITA erred in confirming the disallowance aggregating to sum of Rs. 90,81,012/- made by the AO being alleged bogus purchase of Rs. 63,17,640 from M/s Aniket Enterprises and Rs.27,63,372/- from M/s Akash International.

7. On the facts and circumstances of the appellant's case and in law the Ld. CITA erred in confirming the action of the AO in not granting the set-off of loss incurred during the year against the additions/disallowances amounting to Rs. 18,13,250/-.

3. Briefly, stated the facts of the case are that the assessee is engaged in the business of real estate development, filed its return of income for Assessment Year 2013-14, on dated 30/09/2013, declaring total income at Rs.Nil. The case was selected for scrutiny and notice u/s 143(2) and 142(1) Income Tax Act, 1961 (hereinafter 'the Act') were issued. In response to notices, the Authorized Representative of the assessee appeared from time to time and filed various details as called for. During

the course of assessment proceedings, the AO noticed that DDIT(Inv.), Unit-9(2), Mumbai, had intimated vide letter dated 10/03/2014 that the assessee is one of the beneficiary of accommodation entries for loans from various companies controlled and managed by Mr. Bhanwarlal Jain. The said information was further based on search and seizure action conducted by the office of the DGIT(Inv.), Mumbai, on 03/10/2013 in Bhanwarlal Jain Group of cases. During the course of search, copious incriminating material/documents/papers/data were found and seized. During search operation, a statement u/s 132(4) was recorded from Shri Bhanwarlal Jain and several other persons, wherein, it has been admitted by them that they were providing accommodation entries for bogus sales/purchases/import for others, through various benami concerns. The documents/seized materials, were analyzed in detail by Mumbai Investigating Wing, where, it was further noticed that the assessee was also one of the beneficiaries of such accommodation entries for loans provided by Benami Concerns of Bhanwarlal Jain Group.

4. Thereafter, survey operation u/s 133A was carried out on 16/10/2014 on M/s Poonam group of cases to which the assessee belongs, on the basis of information gathered during the course of search in cases of M/s Bhanwarlal Jain Group. During the course of survey on Poonam Group, Shri Ashwin Mehta, who look after the financial matters of the group including raising of funds had accepted in his statement recorded u/s 131 that various concerns belonging to Poonam Group have indeed obtained loans and advances in different year from various concerns managed and controlled by Bhanwarlal Jain and his son Shri Rajesh B. Jain. Further, during the survey u/s 133A of the Act, it was noticed that transactions with regard to unsecured loans and advances obtained from various companies controlled and managed by Shri Bhanwarlal Jain were similar in the nature of accommodation entries without having any commercial sense. It was further noted that necessary documentation including norms which were required to be followed while granting loans and advances were not followed, which is evident from the admission made by Shri Ashwin Mehta in his statement recorded during course of survey.

5. During the course of assessment proceedings, the AO on the basis of report of DGIT(Inv.), coupled with information gathered during the course of survey operation in the group cases of M/s Poonam Group came to the conclusion that the assessee is one of the beneficiaries of bogus unsecured loans taken from companies controlled and operated by Shri Bhnwarlal Jain. Therefore, in order to ascertain the correctness of loan transactions between the parties, called upon the assessee to file complete details of loans and advances taken from M/s Meridian Jewellery Pvt. Ltd., M/s Rose Gems Pvt. Ltd., M/s Sankhala Exports, M/s Little Diam, M/s Mouli Gems, M/s Rose Impex and M/s Nice Diamond appearing in the books of the assessee. In response to notice, the assessee has filed complete details of loans and advances taken from above said concerns including confirmations from the loan creditors, their ITR acknowledgment copies filed for AY 2013-14, Profit & loss account and balance sheet along with bank statements. The assessee has also filed affidavit from the director of the company to support their contentions to claim that unsecured loans taken from above companies are genuine loans which are taken under normal commercial purposes. It was further

contended that loans were taken through proper banking channel and also interest has been paid after deducting necessary TDS applicable as per the provisions of the act. The assessee also repaid said loans in the next financial year, therefore, merely on the basis of information received from some third party source, genuine loans taken from certain parties, cannot be considered as bogus entries, which can be taxed u/s 68 of the Act.

6. The AO, after considering relevant submissions of the assessee and also after thoroughly discussing the modus operandi explained by DGIT(Inv.) during the course of search and survey operations came to the conclusion that the assessee has failed to prove the primary onus by establishing the identity, genuineness of transactions and creditworthiness of the parties. The AO, further observed that information gathered during the course of search in cases of Shri Bhanwarlal Jain and also survey in group cases of M/s Poonam Group clearly established the fact that the transactions between the parties are mere book entries without there being any commercial aspect, therefore, merely for furnishing certain documents to prove the identity and payments by said loans through proper

banking channels would not discharge initial onus cast upon the assessee u/s 68 of the Act. Although, the assessee has filed enormous details in respect of said loans but fact remains that the information gathered during the course of search clearly proves the fact that Mr. Bhanwarlal Jain and its associates are controlled 70 odd companies for providing bogus unsecured loans for various beneficiaries. Mr. Bhanwarlal Jain, himself in his statement admitted this fact before the search party. Although, the assessee has denied any wrong doing by accepting accommodation entries during the course of survey, but the statement of the assessee cannot be considered as sacrosanct, because the person who is involved in providing accommodation entries had categorically admitted in his statement during the course of search that these are book entries without any element of commercial element in the said transactions. The AO thoroughly discussed the issue in his assessment order and also discussed the modus operandi of companies controlled and operated by Mr. Bhanwarlal Jain. Further, the AO also ignored affidavit filed by the assessee and Mr. Bhanwarlal Jain retracting the statement during the course of search on the ground that subsequent events and evidences

are only a self serving documents, which cannot be considered as valid evidences in order to give clean chit to the assessee, when the documents collected during the course of search and survey, proves otherwise. Therefore, he came to the conclusion that the assessee has failed to prove the identity, genuineness of transactions and creditworthiness of the parties. Accordingly, made additions towards unsecured loans taken from above companies u/s 68 of the Act. Similarly, the AO has made additions towards interest paid on unsecured loans taken from above concerns on the ground that since, transaction between the parties are proved as bogus accommodation entries, any interest paid on such loans is also bogus in nature. Therefore, the same is disallowed and added back to the total income of the assessee. Likewise, the ld. AO has made addition of Rs.20,20,000/- towards possible commission paid by the assessee to obtain unsecured loans entries obtained from Shri Bhanwarlal Jain. As regards purchases from M/s Ankit Enterprises and M/s Akash International totalling to Rs. 90,81,012/-, the AO observed that since the primary onus was not established by the assessee, the total purchases from above parties is treated as bogus and accordingly, made additions

towards purchases from above entities to the total income of the assessee. The relevant findings of the AO is reproduced as under:-

“From the case laws cited above and the discussion on evidences / findings of the investigation wing in the preceding paras , the primary onus was and is on the assessee to establish the genuineness of the loans taken by it in which it has miserably failed. It is evident that on perusal of the books of accounts of the assessee company, the information received from the Investigation wing of the department ,Mumbai, regarding the billers name and amounts are matched in-tote and verbatim. Hence the assessee's argument on this lacks any merit and deserves to be rejected.

There is a specific finding the above mentioned parties had issued false bills without delivery of goods unearthed by the independent enquiries conducted by the office of the DGIT (mV), Mumbai. Such crucial findings based on corroborative evidences unearthed during search negate the contention of the assessee. Thus, undisputed fact is that the purchases claimed to have been made from these parties remained unverified. In fact, Self- interest talks in all sorts of tongues and ploys all sorts of roles. The indifference of not producing the party which issued the bill is indicative of the truth. The Revenue is not doubting all the purchases but doubting only those purchases for which the genuineness could not be proved.

The assessee in its reply has not been able to give a satisfactory reply to the stand taken by the Department. The assessee has not commented on the entire modus operandi admitted by the parties concerned. The parties to the transactions and their controlling key persons have categorically admitted before the Department of providing only bogus and accommodation entries for a commission to their clients. The statements were given under oath under the Income tax Act. The evidences gathered clearly proved that these parties have only provided accommodation entries for a consideration/commission to the willing parties. When entire modus operandi of these entities is that of only providing bogus and accommodation entries in the books and in fact the actual purpose of transactions is that of tax avoidance and introduction of unaccounted money in to books, there is no specific need to mention each and every name of the parties to the transactions in the statement itself. The same can be extracted from the books/documents maintained by such entry providers.

It is evident that on perusal of the books of accounts of the assessee, the information received from the Investigation wing of the department ,Mumbai, regarding the billers name and amounts are matched in-toto and verbatim. Hence the assessee's argument on this lacks any merit and deserves to be rejected.

Further, reckoning the modus operandi enunciated above, details available on record and findings on record, it is not difficult to understand the manner in which the whole transaction of bogus loans have taken place. The logical corollary the above fact leads to the conclusion that accommodation entry for

loans are taken by investing the assessee's own unaccounted cash for which the assessee has not offered any explanation regarding its nature and source.

In view of the assessee's failure to furnish plausible explanation with cogent evidences, unexplained loans amounting to to furnish plausible explanation with cogent evidences, unexplained loans amounting to Rs. 10,45,00,000/- (M/s. Meridian Jewellery Pvt. Ltd Rs. 1,50,00,000/-, M/s Rose Gems Rs. 2,45,00,000h M/s Sankhala Exports Rs. 70,00,000/-, M/s Little Diam Rs. 40,00,000/-, M/s Mouli Gems Rs. 2,00,00,000/-, M/s Rose Impex Rs. 3,00,00,000/-, M/s Nice Diamonds Rs.40,00,0000/-) taken during the year in respect of which assessee has sought accommodation entries is disallowed and brought to tax. Accordingly it is also held that inaccurate particulars of income has been filed to conceal income chargeable to tax and penalty u/s.271(1)(c) is separately initiated.

Since the unsecured loans in question have been held to be mere accommodation entries i.e. bogus in view of the categorical findings discussed above, the interest paid on the same is also not an allowable expenses under the provisions of Income Tax Act. Accordingly the interest debited on this account amounting to Rs. 98,30,414/- paid to parties belonging to Shri Bhanwarlal Jain group (Which includes interest paid to M/s. Maridian Jewellery Pvt. Ltd, M/s Rose Gems, M/s Sankhala Exports, M/s Little Diam, M/s Mouli Gems M/s Rose Impex for the loan taken during the F.Y.2012-13 and old loans from M/s Mahalaxmi Gems Pvt. Ltd, M/s Look at me real Pvt. Ltd, M/s A-2 Jewels) is also disallowed and added back to the total income.

Further, the commission element for procuring the accommodation bills is also to be considered and the same need to be worked out and added back. It is known practice that accommodation bills for bogus loans are obtained by giving a commission. As discussed above in the preceding Para and admitted by Shri. Bhanwarlal Jain, in his statement , the commission received by him on bogus loan entry is 0.2% per month i.e. 20 paise per Rs. 100/-.

In this case, Since there is no actual loan, the commission paid is also not allowable and is brought to tax and the percentage of commission paid is taken @ 0.2% per month. Thus commission paid on these bogus loans -@ 0.2% on proportionate basis considering the period amounting to Rs. 20,20,000/-is also disallowed.)

Similarly with regard to the purchases from M/s. Aniket Enterprises of Rs. 63,17,640/- & from M/s. Akash International of Rs. 27,63,372/- totalling to Rs. 90,81,012/-, it is clear that the primary onus was/is on the assessee to establish the genuineness of the purchase claimed by it in which the assessee has miserably failed. As such, After carefully going through the legal instances discussed above on this issue, the purchase shown from the above party namely M/s. Aniket Enterprises of Rs. 63,17,640/- & from M/ S. Akash International of Rs. 27,63,372/- totalling to Rs. 90,81,012/-, is held to be bogus. The same therefore, is brought to Tax and added to the total Income declared. Accordingly it is also held that inaccurate particulars of income has been flied to conceal income chargeable to tax and penalty u/s. 271(1)(c) of the I.T. Act is separately.

7. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee has filed elaborate written submission on the issue, which has been reproduced at para-11 on pages 11 to 17 of the Ld. CIT(A)'s order. The sum and substance of arguments of the assessee before the Ld. CIT(A) are that the AO has made addition towards unsecured loans taken from various companies belonging to Mr. Bhanwarlal Jain only on the basis of information gathered during the course of search in case of Bhanwarlal Jain Group of companies without bringing on record any further evidences to link those evidences to unsecured loans entries found in the books of account of the assessee so as to treat the said loans are accommodation entries. The assessee further submitted that the AO completely went wrong to reach to the conclusion that the assessee is one of the beneficiaries of accommodation entries of unsecured loans provided by various companies of Bhanwarlal Jain, without appreciating the fact that said loans have been taken under normal business circumstances and also these loans are taken on normal rate of interest. The assessee has paid interest after deducting necessary TDS applicable as per law. These

loans were repaid in next Financial Year. All these evidences were part of assessment record. During the course of survey, in group cases of M/s Poonam Group, no contrary evidence was found to link evidences gathered during the course of search in case of Bhanwarlal Jain to the credits found in the books of accounts of the assessee except stating that Mr. Bhanwarlal Jain has admitted in his statement that he is involved in providing bogus entries and the assessee is one of the beneficiary of such bogus entries. Similarly, the AO has made addition towards purchase without considering the explanation furnished by the assessee to justify those purchases in light of various evidences.

8. The Ld. CIT(A), after considering the submissions of the assessee and also by relied upon plethora of judicial precedents, including the decision of the Hon'ble Supreme Court in the case of Sumati Dayal (1995) 214 ITR 801(SC) held that the assessee has failed to prove the identity, creditworthiness and genuineness of unsecured loans taken from concerns of Bhanwarlal Jain and thus, the AO has rightly made additions towards unsecured loans u/s 68 of the Act. The Ld. CIT(A) has discussed the issue extensively in his order in

light of facts brought out by the AO in his assessment order. The Ld. CIT(A) also deliberated upon the evidences gathered during the course of search in case of Bhanwarlal Jain and also survey in the case of Poonam Group to come to conclusion that transactions between the assessee and companies belonging to Bhanwarlal Jain are bogus transactions which are failed the test of genuineness in light of provisions of section 68 of the Act. The Ld. CIT(A) heavily relied upon the statement of Shri Bhanwarlal Jain given during the course of search to come to conclusion that when the person who gave loan admitted the fact that these entries are accommodation entries, no matter whatever details have filed by the assessee which are only self serving documents to circumvent the findings of the fact recorded by the AO during the course of assessment proceedings, therefore, the same cannot be admitted as evidences in order to give clean chit to the assessee. Accordingly, the Ld. CIT(A) has confirmed additions made by the AO towards unsecured loan taken from companies controlled and operated by Shri Bhanwarlal Jain. Similarly, the Ld. CIT(A) has confirmed additions made by the AO towards interest debited in the profit & loss account in the name of

various parties belonging to the Bhanwarlal Jain Group on the ground that once unsecured loans have been treated as bogus entries, corresponding interest payment on such loan also needs to be treated as bogus, accordingly there is no error in the findings of the AO while making additions towards interest. Likewise, the Ld. CIT(A) confirmed the additions made by the AO towards 0.2% commission expenditure incurred by the assessee to obtain unsecured loans from the companies controlled and managed by Shri Bhanwarlal Jain on the ground that Shri Bhanwarlal Jain has consistently stated in his statement, during the course of search that he had charged commission at two paise for Rs.100 per transaction on loan amount and this commission has not been recorded in the books of accounts of the concerns. Insofar as, purchases from firms controlled by Bhanwarlal Jain, the Ld. CIT(A) by following the decision of the Hon'ble Supreme Court in the case of N. K. Proteins Ltd. in SLP 759 of 2017, dated 16/01/2017 affirmed the findings of the Ld. AO in confirming alleged bogus purchases on the ground that when notices u/s 133(6) were issued to those parties, all notices were returned back with remark "not known". Further, when the AO deputed Inspector

attached to the office for verification, the Inspector gave report that none of the parties were available in the given address. When the evidences gathered during the course of assessment proceedings, clearly proved the fact that those parties are not available in the given address, then whatever documents were furnished by the assessee are self-serving documents which cannot be given much importance, therefore, there is no error in the findings of the AO in making addition towards bogus purchases. The relevant findings of the Ld. CIT(A) are as under:-

12.116 The Appellant has relied on various judicial pronouncements, during the course of the appellate proceedings. However, most of the case laws relied upon by the appellant doesn't relate to entry operator and hence are distinguishable on facts, which have been discussed above in an elaborate manner. On the other hand, there are various binding precedents of the Hon'ble Supreme Court and High Courts in favour of the Revenue, which have been discussed above, in details in this appellate order.

12.117 In these facts and circumstances and in view of the various judicial pronouncements discussed above, the documentation filed by the appellant like confirmation, financials, bank statements, income-tax returns etc. of the entry providing concerns of the Bhanwarlal Jain Group have no evidentiary value. The I.T. Department has already held that the various concerns of Bhanwarlal Jain Group are just dummy concerns, which have been floated for the sole purpose of providing accommodation entries.

12.118 To sum up, the appellant has failed to establish the true identity, creditworthiness and genuineness of the unsecured loans taken from the concerns of Bhanwarlal Jain and thus, has rightly been added back u/s 68 of the Act, being accommodation

entries taken from the Bhanwarlal Jain Group. Accordingly, it is held that the unexplained loans amounting to Rs. 10,45,00,000/- (M/s. Meridian Jewellery Pvt. Ltd Rs. 1,50,00,000/- M/s. Rose Gems Rs. 2,45,00,000/-, M/s Sankhala Exports Rs. 70,00,000/-, M/s. Little Diam Rs. 40,00,000/-, M/s. Mouli Gems Rs. 2,00,00,000/-, M/s Rose Impex Rs. 3,00,00,000/-, M/s. Nice Diamonds Rs. 40,00,000/-) taken during the year under consideration has been rightly taxed by the A.O. u/s 68 of the Act, being proven accommodation entries.

12.119 I n view of the above facts and circumstances of the case, as also the various judicial pronouncements, the **Ground No. 3** of the present appeal is hereby **dismissed**.

Decision on Ground No. 4

13.0 I have considered the facts of the case, submissions of the appellant, the observations of the AO contained in the assessment order and the other materials on record on this issue.

13.1 On this issue, it may be noted that I have confirmed the addition made by the A.O. on account of unsecured loans, which have been held to be bogus and mere accommodation entries. Since, the principal amount of loan has been held to be bogus in nature, the interest paid / payable on the same also needs to be disallowed.

13.2 It is also brought on record that a detailed analysis of the seized material found during the course of the search operation on the Bhanwarlal Jain Group has revealed that even the interest portion paid through cheque and duly recorded in the books of account at both the ends, has also been settled in cash. Thus, against the amount of interest paid by the borrower by cheque / RTGS, an equivalent amount of unaccounted cash is received back by the borrower from the respective Bhanwarlal Jain Group concern.

13.3 Accordingly, it is held that the interest debited in the P&L Account amounting to Rs. 98,30,414/- in the name of various parties belonging to the Bhanwarlal Jain Group, on the accommodation entries of loans has been rightly disallowed by the A.O. and is upheld. Hence, the Ground No. 4 of the present appeal is hereby dismissed.

14.13 Thus, the application of a rate of 20 paise per Rs. 100 per month, as commission on accommodation entries of loans / advances by the Assessing Officer is duly corroborated by the seized material found in the case of Shri Bhanwarlal Jain. It is

clear from the material on record that Shri Bhanwarlal Jain has charged commission @ 0.2% per month in cash on the outstanding amount of the accommodation entries, for the entire period for which such entry has remained outstanding. It needs to be emphasized here that it is not the case that Shri Bhanwarlal Jain has charged commission only at the time of giving of the accommodation entry of loan. The fact is that Shri Bhanwarlal Jain has charged commission on a regular monthly basis for the entire period for which the loan entry has remained outstanding with the Appellant.

14.14 Needless to emphasize here that the addition made by the A.O. on account of unaccounted commission expenses is not a notional disallowance or addition, but is based on voluminous incriminating seized material found during the course of the search operation on Shri Bhanwarlal Jain. During the course of the search operation on Shri Bhanwarlal Jain, complete ledger account of commission received from each and every party has been recorded in the parallel books of account found on the pen-drive. Such commission accounts have already been discussed in details above and hence the same discussion is not repeated here again.

14.15 In these facts and circumstances, there is no reason to interfere with the addition made by the A.O. in the assessment order on account of unaccounted commission expenses incurred in cash by the Appellant on the accommodation entries of loans and the same stands confirmed in entirety.

Decision on Ground No. 6:

18.0 I have considered the facts of the case, submissions of the appellant, the observations of the AO contained in the assessment order and the other materials on record on this issue.

18.1 During the course of survey action on the Poonam Group it was found that eleven concerns engaged in the business of providing fictitious purchase bills, have in fact provided bogus purchase entries to the various concerns of Poonam Group. These 11 entry operating concerns were found to be managed and controlled by four persons namely, Shri Trilok Jain, Shri Kanakraj Pareekh, Shri Jitendra C. Jain and Shri. Manoj C. Jain. During the course of the survey action, statements were recorded of the persons managing the entry operating concerns. The relevant extracts of statement of Shri Jitendra Champalal Jain recorded on 16th October 2014 are reproduced hereunder:-

"Q10. Were the above RTGS payments made to you for any material supplied by you to the Poonam Group of companies?"

Ans: The RTGS was done against any material supplied by me. In fact, I am a commission agent and not involved in any supply of any material to any company. I just received the RTGS amounts in my accounts and remit the same to the accounts which the above mentioned agents direct me to do so. There has been no supply of any material or services to the Poonam group by me whatsoever.

Q.11. Do you have a TIN no? Have you been registered in the Service tax Department?

Ans: I do not have any TIN No. nor have I been registered in the Service Tax Department.

Q.14. Please explain the transactions which you have carried out with M/s. Poonam Group of companies.

Ans: I only do the transactions in the Poonam group as directed by my broker, Kanakbhai. I do not carry out any genuine business transaction with the Poonam group of companies. I only give accommodation entries to the Poonam group and various other groups which are reflected in my bank accounts.

Q.16: Please state when you are doing the business of bill/cheque discounting for M/s Poonam Group?

Ans: I am doing the business of cheque discounting for M/s Poonam Group for the last 5-6 years.

18.2 In the above statement, Shri Jitendra Champalal Jain has clearly admitted that he is just a commission agent and no material has been supplied to the concerns of Poonam Group. It has been further stated by him that he has only given accommodation entries to the Poonam Group. Further, Shri Jitendra Champalal Jain has stated that all the entries reflected in the bank account are just accommodation entries.

18.3 The Appellant has taken accommodation entry for purchase from various bogus billers i.e. M/s. Aniket enterprises of Rs. 63,17,640/- & from M/s. Akash International of Rs. 2 7,63,372/- and thus are not genuine transactions.

18.4 I have noted that the Investigation Wing, Mumbai has unambiguously stated that the impugned purchases are just entries

provided by bogus billers. Further, the A.O. has issued notices u/s. 133(6) of the Act to the various parties to verify their genuineness. These notices have been returned back unserved by the postal authorities with remarks "NOT KNOWN". In these circumstances, an inspector attached to the A.O. was deputed to make further local enquiries with regard to the above-mentioned parties. The local enquiries conducted by the Inspector have also revealed that no such party / firm / company is in existence at the address given by the appellant.

18.5 During the course of the appellate proceedings, no details of the stock register were filed. Further, there is no record evidencing utilization of the so called bogus purchases. In these circumstances, it is clear that such bogus purchases have gone to reduce the profits of the appellant by that amount. In view of these facts and circumstances of the case, the entire 100% of the bogus purchases disallowed by the A.O. needs to be confirmed. In this regard, reliance is placed on the decision of Hon'ble Supreme Court in the case of NK Proteins Ltd. in SLP 759 of 2017, dated 16-01-2017, wherein it was held that once it is proved that the purchases are bogus, then the addition should be made for the entire purchases and not for profit element embedded in such purchases.

18.6 The various judicial pronouncements in relation to the entry operator have already been discussed in details in the earlier part of this appellate order and are not repeated here again for the sake of brevity.

18.7 Thus, the accommodation entries of purchases from M/s. Aniket Enterprises of Rs. 63,17,640/- & M/s. Akash International of Rs. 27,63,372/- totaling to Rs. 90,81,012/- has been rightly disallowed by the A.O. and are accordingly confirmed. Accordingly, this Ground of Appeal No. 6 of the Appellant is dismissed."

9. The first issue that came up for our consideration from assessee's appeal is additions towards unsecured loans of Rs.10,45,00,000/- taken from companies controlled and operated by Shri Bhanwarlal Jain and his associates. The Ld. AR for the assessee submitted that ld. CIT(A) was erred in

confirming additions made by the AO towards unsecured loan taken from companies belonging to Bhanwarlal Jain without appreciating the fact that the assessee has proved all ingredients provided u/s 68 of the Act. The Ld. AR further submitted that the assessee has filed enormous documents in order to prove the identity, creditworthiness of the parties and genuineness of transactions. In fact, the AO never disputed identity of loan creditors. The AO has categorically admitted that assessee has filed various documents including confirmation letter, PAN, ITR acknowledgment along with financial statement, bank statement of loan creditors and also affidavit from director/partner/proprietor of those companies/firms to prove the identity, genuineness of transactions and creditworthiness of the parties. The Ld. AR further submitted that the assessee also filed various details in order to prove genuineness of transactions in the backdrop of admission of Shri Bhanwarlal Jain in his statement recorded u/s 132(4) of the Act and submitted that Shri Bhanwarlal Jain has filed an affidavit before the income tax authorities along with a letter retracting his statement given u/s 132(4) of the Act, Therefore, when the person who gave the statement has

retracted his statement with an affidavit, then the statement recorded during the course of search does not have any evidentiary value. Therefore, the same cannot be considered as sacrosanct to come to the conclusion that the transactions were bogus in nature. The Ld. AR further submitted that the sole basis for the AO to make additions towards unsecured loans is a statement of Shri Bhanwarlal Jain, which was subsequently retracted by him. Further, in spite of specific request, the AO declined to provide the statements or evidence relied upon and also declined to give opportunity to cross examine the parties. The Ld. AR further submitted that during the course of survey in the group cases of assessee, no incriminating material was found to link credits found in the books of account of the assessee and also to evidences collected from Shri Bhanwarlal Jain group cases during the search. The AO as well as the Ld. CIT(A) were given much importance to the modus operandi and evidence collected during the search in the case Shri Bhanwarlal Jain ignoring the evidences filed by the assessee during the assessment proceedings. Therefore, when the assessee discharged initial burden by filing enormous documents to prove the identity, genuineness of transactions,

creditworthiness of the parties, additions could not be made u/s 68 of the Act, only on the basis of evidences collected from third party's information. In this regard, he relied upon various judicial precedents. The case was relied upon by the assessee are reproduced hereunder:-

- i. CIT vs. Goa Sponge and Power Ltd (13/02/2012) Tax Appeal No. 16 of 2012 (High Court-Bombay)
- ii. CIT vs. Creative World Tele films Ltd (2011) 333 ITR 100 (Born-High Court)
- iii. CIT vs. Lovely Exports (P) Ltd (2008) 216 CTR 195 (SC)
- iv. CIT vs. Steller Investment Ltd (2001) 251 ITR 263 (SC) (civil appeal)
- v. CIT vs. Nav Bharat Duolex Ltd (2013) 35 Taxmann.com289 (All-High Court)
- vi. CIT vs. JayDee Securities & Finance Ltd (2013) 32 Taxmann.com91 (All-High Court)
- vii. ACIT vs. Venkateshwarlspat Pvt Ltd (2009) 319 ITR 393 (Chhatisgarh-High Court)
- viii. Mod Creations Pvt Ltd vs. /TO (2013) 354 ITR 282 (Del-High Court)
- ix. CIT vs. Al Anam Agro Foods (P.) Ltd (2013) 38 Taxmann.com 375 (All-High Court)
- x. CIT vs. Dwarkadhish Investment (P) Ltd (2011) 330 ITR 298 (Del-High Court)
- xi. CIT vs. Namastey Chemicals Pvt Ltd (2013) 33 Taxmann.com271 (Guj-High Court)
- xii. CIT vs. Peoples General Hospital Ltd (2013) 356 ITR 65 (MP-High Court)

- xiii. CIT vs. Shree Rama Multi Tech Ltd (2013) 34 Taxmann.com177 (Guj-HC)
- xiv. CIT vs. Nikunj Eximp Enterprises (P.) Ltd (2013) 35 Taxrnann.com384 (Bom)
- xv. CIT vs. Samir Bio- Tech Pvt Ltd (2010) 325 ITR 294 (Del-High Court)

10. The Ld. DR on the other hand strongly supported the order of the Ld. CIT(A) and submitted that the AO as well as the Ld. CIT(A) brought out clear facts to the effect that the assessee is one of the beneficiaries of accommodation entries provided by Bhanwarlal Jain group companies. The assessee neither controverted findings of the AO as well as the Ld. CIT(A) nor filed any valid evidence to prove that unsecured loans taken from the above companies are genuineness transactions. Mere furnishing certain paper documents including bank statements would not sufficient enough to come out of shadow of provisions of section 68 of the Act, when the evidences collected during the search as well as survey clearly shows that transactions between the parties are not genuine transactions, therefore, there is no error in the findings recorded by the lower authorities. Accordingly, additions made by the AO should be upheld.

11. We have heard both the parties, perused the material available on record and gone ground through the orders of authorities below. The solitary issue that needs to be resolved under given facts and circumstances of this case is whether unsecured loans taken from certain companies controlled and managed by Shri Bhanwarlal Jain is unexplained cash credit, which comes under the provisions of section 68 of the Act or not. The AO has made additions of Rs.10,45,00,000/- towards unsecured loans taken from certain companies controlled and managed by Shri Bhanwarlal Jain u/s 68 of the Act, on the ground that the assessee has failed to file necessary documents in order to prove identity, genuineness of transactions and creditworthiness of the parties. The AO has extensively discussed the issue in his assessment order in light of facts gather during the course of search in case of Bhanwarlal Jain group of cases and survey in the case of assessee's group concern. Accordingly, the AO, opined that although the assessee has furnished various documents including confirmations from the loan creditors and their ITR acknowledgment, but failed to prove the genuineness of transactions and creditworthiness of the parties in order to

come out the provisions of section 68 of the Act. The AO further was of the opinion that mere furnishing certain paper documents is not sufficient enough in light of various facts gathered by the department during the course of search. The AO further was of the opinion that payment through proper banking channel and interest payment to those unsecured loans is not sacrosanct because all these shell companies/hawala operators would keep necessary paper document in order to give colour of genuineness to their transactions. Therefore, he opined that the transactions between the parties are failed to pass the test of genuineness and accordingly made additions u/s 68 of the Act.

12. The provisions of section 68 of the Act deals with the cases, where any sum found credited in the books of account of the assessee in any Financial Year, and the assessee offers no explanation about the nature and source thereof or explanation offered by the assessee is not in the opinion of the AO satisfactory, then the sum so credited may be charged to income tax as the income of the assessee of that previous year. A plain reading of section 68 makes it very clear that in order to fix any credit within the ambit of section 68 of the Act, the AO

needs to examine three ingredients i.e. identity, genuineness of transactions and creditworthiness of the parties. If the assessee proves all ingredients provided u/s 68 of the Act, then the onus shifts to the AO to prove otherwise. In this legal background, if you examine the identity of the assessee in light of findings recorded by the AO in his assessment order, one has to examine whether the assessee has discharged burden caste upon it u/s 68 of the Act in respect of unsecured loan received from certain companies controlled and managed by Shri Bhanwarlal Jain. The AO never disputed the fact that the assessee furnished various evidences to prove identity of the loan creditors. The AO has categorically admitted that the assessee has filed various details including PAN Card, ITR acknowledgment, financial statements, bank statements, confirmation letters and affidavit from the parties from whom loan has been taken. The AO has disputed the genuineness of transactions and creditworthiness of the parties. The sole basis for the AO to doubt the genuineness of transaction is search conducted in the cases of Bhanwarlal Jain by the DGIT(Inv.), Mumbai unit, where certain incriminating material found and seized as per which Bhanwarlal Jain and his

associates were involved in providing accommodation entries and the assessee is one of the beneficiaries of such accommodation entries. The AO has taken note of statement recorded by the department from Shri Bhanwarlal Jain and his associates. The AO has taken note to survey proceedings conducted in the group cases of assessee and statement recorded from directors and employees of the assessee group cases. Except this, no contrary evidences has been brought on record by the AO to disprove the claim of the assessee that these are genuine transactions and unsecured loan taken under normal business circumstances. Therefore, under these factual matrix, we have to examine whether the credits found in the books of accounts of the assessee are hit by the provisions of section 68 of the Act or not. The sole basis for the AO to make additions is statement of Shri Bhanwarlal Jain recorded u/s 132(4) of the Act, where he was admitted that he is involved in providing bogus unsecured loans entries to various beneficiaries. The statement given by Shri Bhanwarla Jain has been retracted by himself by filing affidavits before the income tax authorities. Therefore, there is no reason for the AO to go only on the basis of statement of Shri Bhanwarlal Jain so as to

treat unsecured loan taken by the assessee from the firm and companies controlled and managed by Shri Bhanwarlal Jain and his associates.

13. Having said so, let us examine what is the basis for the AO to arrive at conclusion that the transactions between the parties are not genuine and which are hit by the provisions of section 68 of the Act. The AO never brought out any further facts to link credits found in the books of accounts of the assessee to the evidences found during the course of search in the case of Shri Bhanwaral Jain except statement of Shri Bhanwaral Jain. Even during the course of survey in group cases of assessee, no incriminating material was found which can be linked to evidences collected during the course of search in case of Shri Bhanwarlal Jain. Further, during the course of survey in assessee's group cases, the directors and employees have categorically admitted that they have personally visited office of Shri Bhanwarlal Jain Group Companies for arranging loans. The AO did not controvert this fact by bringing any other evidences. On the other hand, the assessee has filed complete details including confirmations from loan creditors, their PAN details, master data, affidavit from the directors/partners/

proprietors of those companies, income tax acknowledgments receipts along with financial statements, bank statements of loan creditors in order to prove the identity, genuineness of transaction and creditworthiness of the parties.. We, further, noted that all these loans have been taken through proper banking channels. The assessee has paid interest after deducting applicable TDS as per the law. These loans have been repaid during next financial year. All these documents are part of assessment proceedings. The AO has never disputed these factual aspects. Therefore, once the assessee has discharged its initial burden by filing necessary evidences in order to prove identity, genuineness of transactions and creditworthiness of the parties, then there is no reason for AO to suspect the transactions between the parties only on the ground that the person who gave unsecured loan had admitted in his statement u/s 132(4) of the Act that these transactions are accommodation entries, more particularly when the person who gave the statement retracted his statement by filing affidavit. Further, the AO failed to carry out further enquiries in light of evidences gathered during the course of search and survey to establish the fact that in fact these transactions are

non-genuine, but merely relied upon the statement of Shri Bhanwarlal Jain to make additions u/s 68 of the Act. No doubt, the AO is having every right to suspect the transactions but, that by itself would not give rise an occasion for the AO to make additions u/s 68 of the Act, when the evidences filed by the assessee clearly proves the facts that these transactions were genuine transactions which are undertaken under normal commercial business circumstances. Therefore, we are of the considered view that the AO was erred in making additions towards unsecured loan taken from companies controlled and managed by Shri Bhanwarlal Jain u/s 68 of the Act.

14. Coming to the cases relied upon by the assessee, the assessee has relied upon various judicial precedence including the decision of the Hon'ble Supreme Court in the case of CIT vs Lovely Export Pvt. Ltd. (2008) 216 CTR 195. The case laws relied upon by the assessee has been dealt as under:-

CIT vs. Goa Sponge and Power Ltd (13/02/2012) Tax Appeal No. 16 of 2012 (High Court-Bombay)

"Once the authorities have got all the details, including the name and addresses of the shareholders, their PAN/GIR number, so also the name of the Bank from which the alleged investors received money as share application, then, it cannot be termed as "bogus". The controversy is covered by the judgements rendered by the Hon'ble Supreme Court in the case of Lovely Exports Pvt Ltd, vs. CIT, (2008) 216 CTR (SC) 195, as also by this Court in CIT vs. Creative World Tele films Ltd, (2011) 333 ITR 100 (Bom). In such circumstances, we are of the view that the Tribunal's finding that there is no justification in the addition made under

Section 68 of the Income Tax Act,, 1961 neither suffers from any perversity nor gives rise to any substantial question of law."

CIT vs. Creative World Tele films Ltd (2011) 333 ITR 100 (Born-High Court)

"The question sought to be raised in the appeal was also raised before the Tribunal and the Tribunal was pleased to follow the judgment of the apex Court in the case of CIT vs. Lovely Exports (P) Ltd. (2008) 216 CTR (SC) 195. wherein the apex Court observed that if the share application money is received by the assessee-company from alleged bogus shareholders, whose names are given to the AO, then the Department can always proceed against them and if necessary reopen their individual assessments. In the case in hand, it is not disputed that the assessee had given the details of name and address of the shareholder, their PAN/GIR number and had also given the cheque number, name of the bank. It was expected on the part of the AO to make proper investigation and reach the shareholders. The AO did nothing except issuing summons which were ultimately returned back with an endorsement "not traceable In our considered view, the AO ought to have found out their details through PAN cards, bank account details or from their bankers so as to reach the shareholders since all the relevant material details and particulars were given by the assessee to the AO. In the above circumstances, the view taken by the Tribunal cannot be faulted."

CIT vs. Lovely Exports (P) Ltd (2008) 216 CTR 195 (SC)

"If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company."

CIT vs. Steller Investment Ltd (2001) 251 ITR 263 (SC) (civil appeal)

"That the increase in subscribed capital of the respondent company could not be a device of converting black money into white with the help of formation of an investment company, on the round that, even if it be assumed that the subscribers to the increased capital were not genuine, under no circumstances could the amount of share capital be regarded as un disclosed income, an appeal was taken by the Department to the Supreme Court. The Supreme Court dismissed the appeal holding that the Tribunal had come to a conclusion on facts and no interference was called for."

CIT vs. Nav Bharat Duolex Ltd (2013) 35 Taxmann.com289 (All-High Court)

"We have considered the arguments of the counsel for the parties. CIT(A) found that five companies subscribing the equity shares amounting to Rs. 25,00,000/- were identified and they had submitted their bank statements, cash extracts and returns filing receipts. As such identity of the share applicant companies and purchase of share had been proved by the assessee. Supreme Court in the cases of CIT v. Steller Investments Ltd. [2001] 251 ITR 263 and Lovely Exports case (supra), has held that the identity of the shareholder alone

is required to be proved, in case of the capital contributed by the shareholders. Accordingly CIT(A) and the Tribunal has not committed any illegality in allowing the appeal of the assessee. We do not find any illegality in the judgment of the CIT(A) and the Tribunal."

CIT vs. JayDee Securities & Finance Ltd (2013) 32 Taxmann.com91 (All-High Court)

"The Tribunal recorded findings that the assessee had produced the return of income filed by the relevant shareholders who had paid share application money. The assessee had also produced the confirmation of share holders indicating the details of addresses, PAN and particulars of cheques through which the amount was paid towards the share application money. The Tribunal thereafter relied upon the judgment of the Supreme Court in CIT V. Lovely Exports (P.) Ltd wherein it was held that if the assessee produces the names, addresses, PAN details of the share holders then the onus on the assessee to prove the source of share application money stands discharged. If the Assessing Authority was not satisfied with the creditworthiness of the shareholders, it was open to the Assessing Authority to verify the same in the hands of the shareholders concerned, The Tribunal has relied upon an order of the Supreme Court in case of CIT v. Divine Leasing & Finance Ltd. In view of the decision of the Supreme Court, we dismiss the appeals with observations that the department is free to proceed to reopen their individual assessments of the shareholders whose names and details were given to the Assessing Officer."

ACIT vs. Venkateshwarispvt Pvt Ltd (2009) 319 ITR 393 (Chhatisgarh-High Court)

"If the share applications are received by the assessee from alleged bogus shareholders, whose names are given to the Assessing Officer, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as the undisclosed income of the assessee."

Mod Creations Pvt Ltd vs. /TO (2013) 354 ITR 282 (Del-High Court)

"Held, allowing the appeal, (i) that the assessee had discharged the initial onus placed on it. In the event the Revenue still had a doubt with regard to the genuineness of the transactions in issue or as regards the creditworthiness of the creditors, it would have had to discharge the onus which had shifted on to it. A bald assertion by the Assessing Officer that the credits were a circular route adopted by the assessee to plough back its own undisclosed income into its accounts, could be of no avail. The Revenue was required to prove this allegation. An allegation by itself which is based on assumption will not pass muster in law. The Revenue would be required to bridge the gap between the suspicions and proof in order to bring home this allegation. The Tribunal without adverting to the principle laid stress on the fact that despite opportunities, the assessee and/or the creditors had not proved the genuineness of the transaction. Based on this it construed the intentions of the assessee as being mala fide. The Tribunal ought to have analysed the material rather than be burdened by the fact that some of the creditors had chosen not to make a personal

appearance before the Assessing Officer. If the Assessing Officer had any doubt about the material placed on record, which was largely bank statements of the creditors and their income-tax returns, it could gather the necessary information from the sources to which the information was attributable.....If it had any doubts with regard to their creditworthiness, the Revenue could always bring the sum in question to tax in the hands of the creditors or sub-creditors."

CIT vs. Al Anam Agro Foods (P.) Ltd (2013) 38 Taxmann.com 375 (All-High Court)

Tribunal, however, held that since identity of shareholders stood proved on record, amount of share application money could not be added to income of assessee. According to Tribunal, in such a case amount could be taxed in hands of persons who had invested"

CIT vs. Dwarkadhish Investment (P) Ltd (2011) 330 ITR 298 (Del-High Court)

"Just because the creditors/share applicants could not be found at the address given, it would not give the Revenue the right to invoke s. 68—Revenue has all the power and wherewithal to trace any person—Moreover, it is settled law that the assessee need not to prove the 'source of source'— In the instant case, the Tribunal has confirmed the order of the CIT(A) deleting the impugned addition holding that the assessee has been able to prove the identity of the share applicants and the share application money has been received by way of account payee cheques."

CIT vs. Namastey Chemicals Pvt Ltd (2013) 33 Taxmann.com 271 (Guj-High Court)

"In the present case also, the respondent assessee has received share application money from different subscribers. It was found that large number of subscribers had responded to the letters issued by the Assessing Officer or summons issued by him and submitted their affidavits. In some cases such replies were not received through posts. Rs. 9 lacs represented those assesseees who denied having made any investment altogether. The issue thus would fall squarely within the ambit of the judgment of the Supreme court in the case of Lovely Exports (supra). No error of law can be stated to have been committed by the Tribunal. Tax Appeal is therefore dismissed."

CIT vs. Peoples General Hospital Ltd (2013) 356 ITR 65 (MP-High Court)

"Held, dismissing the appeals, that if the assessee had received subscriptions to the public or rights issue through banking channels and furnished complete details of the shareholders, no addition could be made under section 68 of the Income-tax Act, 1961, in the absence of any positive material or evidence to indicate that the shareholders were benamidars or fictitious persons or that any part of the share capital represented the company's own income from undisclosed sources. It was nobody's case that the non-resident Indian company was a bogus or non-existent company or that the amount subscribed by the company by way of share subscription was in fact the money of the assessee. The assessee had established the identity of the

investor who had provided the share subscription and that the transaction was genuine. Though the assessee's contention was that the creditworthiness of the creditor was also established, in this case, the establishment of the identity of the investor alone was to be seen. Thus, the addition was rightly deleted."

CIT vs. Shree Rama Multi Tech Ltd (2013) 34 Taxmann.com177 (Guj-HC)

"It is noted that Commissioner (Appeals) as well as the Tribunal have duly considered issue and having found complete details of the receipts of share application money, alongwith the form names and addresses, PAN and other requisite details, they found complete absence of the grounds noted for invoking the provision of section 68. Moreover, both rightly had applied the decision of CIT vs. Lovely Exports (P) Ltd to the case of the assessee. Therefore, no reason was found in absence of any illegality much less any perversity too to interfere with the order of the both these authorities, who had concurrently held the due details having been proved. The assessee company had presented the necessary worth proof before both the authorities and it was not expected by the assessee company to further prove the source of the deceased."

CIT vs. Nikunj Eximp Enterprises (P.) Ltd (2013) 35 Taxrnnann.com384 (Bom)

"Whether merely because suppliers had not appeared before Assessing Officer or Commissioner (Appeals), it could not be concluded that purchases were not made by assessee - Held, Yes.... Further, there were confirmation letters filed by the suppliers, copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were in fact made. In our view, merely because the suppliers have not appeared before the Assessing Officer or the CIT(A), one cannot conclude that the purchases were not made by the respondent- assessee"

CIT vs. Samir Bio- Tech Pvt Ltd (2010) 325 ITR 294 (Del-High Court)

"Identities of the subscribers are not in doubt. The transactions have also been undertaken through banking channels inasmuch as the application money for the shares was given through account payee cheques. The creditworthiness has also been established, as indicated by the Tribunal. The subscribers have given their complete details with regard to their tax returns and assessments. In these circumstances, the Department could not draw an adverse inference against the assessee only because the subscribers did not initially respond to the summons. The subscribers, however, subsequently gave their confirmation letters as would be apparent from the impugned order. The identity of the subscribers stands established and it is also a fact that they have shown the said amounts in their audited balance sheets and have also filed returns before the IT authorities. The decision of the Tribunal deleting the addition cannot be faulted."

15. The assessee has also relied upon various decision of the Co-ordinate Bench of ITAT, Mumbai. We find that the coordinate Bench of ITAT Mumbai, in number of cases has considered an identical issue in light of search and seizure operations as well as survey conducted by the department in light of statement of Shri Bhanwarlal Jain recorded during the course of search u/s 132(4) of the Act. The Tribunal after considering the relevant facts and also considering the retracted statements filed by Shri Bhanwarlal Jain came to the conclusion that one documents filed by the assessee to prove the identity, genuineness of transactions and creditworthiness of the parties are clearly established the fact that the transactions between the parties are genuine which are undertaken under normal commercial business, no reason for the AO to make additions u/s 68 of the Act.

16. We further noted that in most of the cases, the Tribunal has considered the companies controlled and operated by Shri Bhanwarlal Jain in light of observations made by the AO to make addition u/s 68 of the Act. We further noted that the Coordinate Bench of ITAT, Mumbai, in the case of Shri Sumit J. Jain vs ACIT in ITA No.145/Mum/2017 had an

occasion to consider identical issue in light of unsecured loans taken from companies controlled and managed by Shri Bhanwarlal Jain. The Coordinate Bench, after considering the relevant facts, has held that when assessee has filed various documents to prove three ingredients provided u/s 68 of the Act, there is no reason for the AO to make additions towards u/s 68 of the Act only on the basis of statement of Shri Bhanwarlal Jain. The relevant findings of the Tribunal are as under:-

“3. I have considered the rival submissions and perused the material available on record. The facts in brief are that the assessee an individual engaged in the business of builder and developer declared loss of Rs. 1,29,68,736 in his return on 15.09.2009. The assessment was completed u/s 143(3) of the Act on 30.11.2011 assessing the loss at Rs. 1,13,73,448. The assessee carried the matter in appeal before the learned CIT(A) wherein vide order dated 03.02.2014, part relief was granted to the assessee. Later on, the case of the assessee was re-opened u/s 147 on the basis of information that the assessee has received accommodation entry of unsecured loan from M/s. Laxmi Trading Company, M/s. Mouli Gems, M/s. Minal Gems, M/s. Naman Exports and M/s. Prime Star, pertaining to Bhawarlal Jain Group. As per the assessee, during the assessment proceedings, documentary evidences pertaining to loan from aforementioned parties like confirmation, bank statement and acknowledgment of return of income of loan, bank statement of the assessee reflecting the amounts and genuineness of transactions were filed. However, the learned Assessing Officer treated the loan as unexplained cash credit on the plea that the assessee could not produce the parties. Thereafter, the learned Assessing Officer computed the peak of unsecure loan amounting to Rs. 1,91,00,000 and made addition of Rs. 40,00,000 u/s 68 of the Act. On appeal, before the learned CIT(A), the addition so made was directed to be deleted. The assessee is in appeal before the Tribunal.

4. If the observations made in the assessment order leading to the addition and the conclusion arrived at in the impugned order, if kept in juxtaposition, and analysed there is a factual finding in Para-5.3 that the assessee discharged the primary onus as the lender had responded to notices issued u/s 133(6) of the Act confirming the transaction. The learned Assessing Officer did not controvert the claim of the assessee. The loans were taken through banking channel and the receipt of taking the loan has been duly examined in Para-5.3 (Page-13) of the impugned order. The loans were duly reflected in the loans and advances column in the Balance Sheet and there is further factual recording that there was neither any cash deposit nor any withdrawal in any bank account castigating the same as accommodation entries. It is further noted that the assessee duly paid the interest on the loan amount and deducted. Copy of Form no.16A was also filed and the learned Assessing Officer has not brought on record any evidence / reason to disbelieve the evidence filed by the assessee. I am satisfied with the reasoning of the learned CIT(A) that the addition was merely made on the basis of presumption that all the five concerns from whom loan was taken were managed and controlled by Shri Bhawarlal Jain. The statement was also recorded wherein there is no mention that any accommodation entry was obtained. Rather, the case of the assessee is fortified by the reply to question no.40 and 41 wherein it has been tendered that the loan was advanced and interest @ 9% p.a. was charged. The name of the assessee is nowhere mentioned in the list of suspicious dealer / person. Thus, I find no infirmity in the conclusion of the learned CIT(A), resulting into dismissal of the impugned ground raised by the Revenue.

5. The next ground pertained to deletion of addition of Rs. 5,78,278, made on account of interest expenditure on alleged bogus loans. The learned D.R. defended the addition, whereas, the learned Counsel for the assessee invited my attention to the finding recorded in Para-6.1 of the impugned order. On a perusal of record and the assertions made by the respective Counsels. There is a finding in the impugned order that the assessee duly produced the bank statement from where interests were paid also copies of form no.16A evidencing the TDS made and deposited into the Government account with respect to payment of interest. Since in earlier paras of this order since I have upheld the order of the learned CIT(A), therefore, the issue of interest is consequential in nature, therefore, the conclusion drawn in the impugned order is upheld.”

17. Coming to the cases relied upon by the Ld. DR in light of various case laws discussed by the AO as well as the Ld. CIT(A). We have considered the cases relied upon by the Ld. DR as well as the Ld. CIT(A) in light of facts of present case and we found that the case laws considered by lower authorities were rendered under different set of facts which cannot be applied to the facts of the present case. Accordingly, the cases relied upon by the Ld. DR are rejected.

18. In this view of the matter and considering the ratio of case laws discussed hereinabove, we are of the considered view that the assessee has discharged initial burden by filing various documents to prove identity, genuineness of transactions and creditworthiness of the parties. Therefore, we are of the considered view that the AO was erred in making additions towards unsecured loan u/s 68 of the Act. The Ld. CIT(A) without appreciating these facts simply confirmed the addition made by the AO. Hence, we reverse the findings of the Ld. CIT(A) and direct the AO to delete the additions made towards unsecured loans u/s 68 of the Act.

19. The next issue came up for our consideration is disallowance of interest and estimation of commission on

unsecured loans obtained from companies controlled and operated by Shri Bhanwarlal Jain. The AO has disallowed interest paid on unsecured loans on the ground that once loans have been treated as bogus accommodation entries, then any interest paid on such unsecured loans also needs to be treated as bogus and accordingly disallowed total interest paid on unsecured loans. Similarly, the AO has estimated 0.2% commission on total unsecured loans taken from companies on the basis of statement of Shri Bhanwarlal Jain where he had admitted that he charged 0.2% commission on all accommodation entries. We noted that the issue of unsecured loans has been decided in preceding paragraphs, where we held that the transactions between the parties are genuine which cannot be considered as unexplained cash credit u/s 68 of the Act, consequently, additions made towards disallowance of interest and estimation of commission on such unsecured loans is also needs to be considered in the light of discussions in the preceding paragraphs. Therefore, we are of the considered view that the AO as well as the Ld. CIT(A) was erred in making additions towards interest on unsecured loans and commission on such unsecured loans. Accordingly, we direct

the AO to delete the additions made towards disallowance of interest and estimation of commission.

20. The next issue that came up for our consideration from assessee's appeal is additions towards alleged bogus purchases from M/s Ankit Enterprises and M/s Akash International. The AO has made additions towards purchases on the ground that although the assessee has filed basic evidences including confirmations from the parties, but when notice u/s 133(6) were issued, such notices were returned unserved with a remark "address not known". The AO further observed that when notices were returned unserved, Inspector attached to the office was deputed to make further local enquiries with regard to the above mentioned parties. The enquiries conducted by the Inspector have also revealed that no such parties/firm/companies are in existence at the address given by the assessee. It is a contention of the assessee that it has filed entire documentary evidences of the vendor such as invoices, ledger confirmations, bank statements, delivery challans to prove genuineness of the purchases. The AO neither pointed out any discrepancy in the books of accounts or evidences filed by the assessee nor made out a case of sales

outside the books of accounts. The sole basis of alleging the purchase transaction to be accommodation entries is statement of various parties. But, in spite of specific request, the AO declined to provide the statement and evidences relied upon and also denied opportunity to cross examines those parties. The assessee further contended that in absence of any incorrectness in the books of accounts and sales made outside the books of account, no adverse inference could be drawn so as to treat the purchases from certain parties are bogus when assessee has furnished complete details including confirmations from the parties.

21. We have heard both parties, perused the materials available on record and gone through orders of the authorities below. It is an admitted fact that the assessee has filed complete information including purchase bills, payment proof, against such purchases through proper banking channels and also confirmations from the parties. It is also an admitted fact that when the AO issued notice u/s 133(6), such notices were returned unserved by the postal authorities. The AO observed that the report of Inspector attached to the office of the AO also confirmed the fact that parties were not available at the given

addresses. Under these factual backgrounds, the issue needs to be examined whether the purchases from above two parties can be considered as bogus and if at all purchases are bogus what is the additions to be made u/s 69C of the Act. The AO claims that the assessee failed to prove the purchases with necessary evidences. It is claim of the assessee that it has filed complete details of purchases including confirmations from the parties. We find that the AO neither carried out full enquiry to reach to the conclusion that the purchases from above parties are bogus purchases nor made out a case of discrepancy in the books of accounts. When the AO has not pointed out any discrepancies in the books of accounts or stock details filed by the assessee merely for the reason that notices issued u/s 133(6) were returned unserved, no adverse inference could not be drawn against the assessee, when assessee has filed sufficient material in order to prove the purchases from the above parties, no doubt, it is an admitted fact that the parties were never responded to notice u/s 133(6), but that by itself would not be a ground for holding the purchases as bogus in nature, that too when materials furnished by the assessee proves otherwise. The assessee has done its at best and filed whatever

information available with it. The appearance of the parties is not within the control of the assessee. Further, when the parties are not appeared before the AO in response to notices, then separate procedure is provided under the Act to deal with those parties. For this purpose, the assessee cannot be blamed or made responsible for non-appearance of parties and also purchase from the parties cannot be considered as bogus when the assessee has filed all other evidences to prove the purchases from the parties. In this case, the assessee filed complete details including confirmations from the parties. The AO never disputed this fact. The AO also accepted sale declared by the assessee. Therefore, we are of the considered view that it is difficult to accept the arguments of the AO that purchases from above parties are bogus in nature.

22. Having said so, let us examine what is the amount of additions required to be made when both parties failed to conclusively prove the purchases in their favour. We find that this issue is recurring issue which is subject matter of deliberations by the Co-ordinate Bench of ITAT, Mumbai, in number of cases. The Tribunal, after considering the relevant facts and also taking note of nature of business carried out by

the parties came to the conclusion that when both parties are failed to prove their contention, then only profit element embedded in those purchases needs to be taxed in order to settle the dispute between the parties. The Hon'ble Gujarat High Court in the case of *Ld. Vijay Proteins vs CIT (2015) 58 taxmann.com 44(Guj.)* had taken similar view in light of facts brought by the parties and held that where purchases are considered to be bogus, then only profit element embedded need to be taxed. In these cases, the assessee is in the business of real estate development. The profit element of real estate business is in the range of 8 to 15% depending upon the type of projects and places where project is executed by the parties. Therefore, considering the facts and circumstances of this case and also consistent with view taken by the coordinate Bench in the number of cases in order to resolve the dispute, we deem it appropriate to direct the AO to estimate 12.5% profit on alleged bogus purchases. Accordingly, we direct the AO to estimate 12.5% profit on total alleged bogus purchases.

23. In the result, appeal filed by the assessee for AY 2013-14 is partly allowed.

ITA No.2687/Mum/2018 & 2689/Mum2018

24. The facts and issues involved in these two appeals is identical to the first issue which we have considered in ITA No.2688/Mum/2018 for AY 2013-14. The reasons given by us in preceding paragraphs shall mutatis mutandis applies to this appeal also. Therefore, for detailed reasons given in preceding paragraphs, we direct the AO to delete additions made towards unsecured loans u/s 68 of the Act and consequent disallowance of interest on unsecured loan and estimated commission payment on such unsecured loans.

25. In the result, both appeals filed by the assessee are allowed.

ITA Nos.2690 to 2694/Mum/2018 & ITA Nos. 3226 to 3229/Mum/2018

26. The facts and issues involved in these appeals are also identical to the facts and issue which we have already considered in ITA No.2688/Mum/2018. The reasons given by us in preceding paragraphs shall mutatis mutandis apply to these appeals also. Therefore, for the detailed reasons given in preceding paragraphs in ITA No.2688/Mum/2018, we direct the AO to delete the additions made towards unsecured loans

taken from companies controlled and managed by Shri Bhanwarlal Jain and consequent disallowance of interest paid on such unsecured loans and also addition towards estimation at 0.2% commission on such unsecured loans.

27. Finally,

- i. ITA No.2688/Mum/2018 is partly allowed.
- ii. ITA No.2687/Mum/2018 is allowed.
- iii. ITA No. 2689/Mum/2018 is allowed.
- iv. ITA No.2692/Mum/2018 is allowed.
- v. ITA No.2693/Mum/2018 is allowed.
- vi. ITA No.2694/Mum/2018 is allowed.
- vii. ITANo.3226/Mum/2018 is allowed.
- viii. ITANo.3227/Mum/2018 is allowed.
- ix. ITANo.3228/Mum/2018 is allowed.
- x. ITANo.3229/Mum/2018 is allowed.
- xi. ITANo.2690/Mum/2018 is allowed.
- xii. ITANo.2691/Mum/2018 is allowed.

Order pronounced in the open court on .03/05/2019.

Sd/-

(Ravish Sood)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated :03/05/2019

Shekhar, P.S./नि.स.

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

Sd/-

(G. Manjunatha)

लेखा सदस्य / ACCOUNTANT MEMBER

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**