

आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में।**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI****BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.4929/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2011-12)

ITO- 11(3)(4), Room no 429, Aayakar Bhavan, 4 th Floor, M.K. Marg, Mumbai-400020	बनाम/ v.	M/s. Western Imaginary Transcon Private Ltd., 101, Shreeji Darshan, Dixit Cross Road No. 1, Vile Parle (E), Mumbai-400057
स्थायी लेखा सं./PAN: AAACW8917H		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri. Satyanathan Raju (Sr. AR)	
Assessee by:	Shri. Bhavesh P. Shah	

सुनवाई की तारीख /**Date of Hearing** : 17.06.2019घोषणा की तारीख /**Date of Pronouncement** : 20.08.2019आदेश / ORDER**PER RAMIT KOCHAR, Accountant Member:**

This appeal filed by Revenue, being ITA No. 4929/Mum/2017, is directed against appellate order dated 08.03.2017 in Appeal No. CIT(A)-18/IT-108/ITO-8(3)(4)/14-15, passed by learned Commissioner of Income Tax (Appeals)-18, Mumbai (hereinafter called "the CIT(A)"), for assessment year(ay) 2011-12, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 27.03.2014 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for ay: 2011-12.

2. The grounds of appeal raised by Revenue in memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

1.a) *"Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in granting relief of Rs. 1,90,95,000/- to the assessee by ignoring the fact that the assessee has not proved the nature and source of the cash credits within the meaning of section 68 of the Income-tax Act, 1961?"*

b) *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in granting relief of Rs. 1,90,95,000/- to the assessee by ignoring the fact stated under Rule 46A that the appellant shall not be entitled to produce before the Ld. CIT(A), any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the AO, except in circumstances mentioned in Rule 46A(i) (a) to (d)?"*

2.a) *"Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in restricting the disallowance on bogus purchases to 12.5% i.e. Rs.40,74,835/-thereby granting a relief of Rs. 92,54,561/- by ignoring the fact that neither the party nor the confirmation letter was produced during the course of assessment proceedings which would prove that the purchases alleged to have been made were genuine?"*

b) *"Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in restricting the disallowance of the purchases made from various parties who was proven accommodation entry provider as per the findings made by the Sales Tax authorities in consequence to the investigation carried out.?"*

c) *"Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in appreciating the facts that the assessee himself had categorically admitted, during the course of appellate proceedings, that they were not in a position to produce the parties for verification about the genuineness of the purchases, resulting in failure to discharge the onus cast upon it to prove the genuineness of the purchase. In this regard, it is worthwhile to mention here a test that has been prescribed by the jurisdictional Hon'ble ITAT, 'D' Bench in a decision in ITA No 6727/Mum/2012 in the case of DCIT Vs Rajeev G. Kalathil as one of the indicators to check whether the alleged purchase party is genuine?"*

d) *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not considering the latest decision of apex court in the case of N.K Proteins Ltd., Vs DCIT 2017(1) TMI 1090 – Supreme Court, in which 100% of bogus purchases are disallowed?"*

3. The brief facts of the case are that the assessee is engaged in the business of execution of contracts for transportation of waste, waste management, works contracts and sub-contracts. There are two effective issues in this appeal filed by Revenue, the first grievance of Revenue is with respect to additions to the income to the tune of Rs.

1,90,95,000/- made by the AO by invoking provisions of Section 68 of the 1961 Act towards cash credits appearing in books of accounts of the assessee, which stood later deleted by learned CIT(A) in its appellate order dated 08.03.2017. The second grievance of the Revenue is with respect to additions to the income towards alleged bogus purchases to the tune of Rs. 3,25,98,680/- which were added by the AO being 100% of the alleged bogus purchases which stood later reduced to 12.5% of the alleged bogus purchases by Ld. CIT(A), vide its appellate order dated 08.03.2017 .

3.2 The case of the assessee was selected by Revenue for framing scrutiny assessment u/s 143(2) r.w.s. 143(3) of the 1961 Act. During the course of aforesaid assessment proceedings, the AO observed that the assessee has received various receipts which stood credited to bank account of the assessee by way of unsecured loans to the tune of Rs. 2,88,60,868/- . The assessee submitted some details before the AO with respect thereto and finally the assessee was show caused by the AO as to why following unsecured loans totalling to Rs. 1,90,95,000/- be not added as income of the assessee as cash credit within the provisions of Section 68 of the Act, as detailed under:-

Sr. No.	Name of the parties as per submission	Date of transaction	Amount credited (Rs.)	Remark
1.	Ambition Plaza Pvt. Ltd.	21.10.2010	10,00,000	Bank Entry Details: RTGS: Ambition Plaza Pvt. Ltd. UTR No. HDFCH102494425365 Sender Bank: HDFC Bank Ltd. Sender Branch: Buraqbazar Kolkata/HDFC0000219
2.	Atul Ratilal Shah	19.04.2010	1,00,000	RTGS ATUL RATILAL SHAH BARBH10109828280
3.	Big Shipping Scale Pvt. Ltd.	25.10.2010	40,00,000	RTGS: 3 rd floor, KOHIAR HOUSE 4 th MARINE S UTR NO. PUNBH 10298064724 Sender Bank: PUNJAB NATIONAL BANK SENDER BRANCH; BOMBAY ILACO HOUSE FORT SPJM,/PUNB0006100

4.	Roof & Proof	20.10.2010	9,00,000	Rs. 15.00 lacs received on 20.10.2010 and Rs. 6.00 lacs paid on 23.03.2011,
5.	Seva Bhavan Pvt. Ltd.	20.10.2010	20,00,000	RTGS: SEVA BHAVAN PRIVATE LIMITED UTR No. HDFCH10298478806 Sender Bank: HDFC Bank Ltd. Sender Branch: Buraqbazar Kolkata/HDFC0000219
6.	Shubhlabh Vinimay P. Ltd	27.07.2010	67,00,000	Total receipt Rs. 160.00 lacs less paid Rs. 13.00 & 15.00 lacs on 20.10.2010 and Rs. 65.00 lacs on 26.10.2010
7.	Snow Pack Tieup Pvt. Ltd.	27.07.2010	40,00,000	Bank Entry Details: RTGS: KOHIAR HOUSE 4™ MARINE S UTR NO. PUNB 10208072087 Sender Bank: PUNJAB NATIONAL BANK SENDER BRANCH; BOMBAY ILACO HOUSE FORT SPM,/PUNB0006100
8	Veenaben Babulal Shah		3,95,000	Out of total receipt of Rs. ' 7,45,000/-, Rs. 3,50,000/- paid during the year and Rs. 3,95,000/- remained as unpaid.
		Total	1,90,95,000	

3.3 The assessee submitted before the AO during the course of aforesaid assessment proceedings , as under:-

"We had carried out various works of Municipal Corporation of Greater Mumbai and Thane Municipal Corporation in the role of subcontractor. We had taken finance from market to carry out the said works and expand our business in the period. The said finance was obtained with a vision of Long term venture for carrying out such Government contract work jointly. We also got some contracts but due to some unavoidable circumstances, the works were not going towards attaining fruitful bottom Line results. The situation Landed us in disapproval of views and non working of terms for future business with the finance partners. This also lead to disturbance in managing the business and completing the works on hand. It was then mutually decided between us and the finance partner that we will complete the works on hand and repay them investments when we received the same for government /sub contractor without any

appreciation or interest on money. The finance partner understood the situation of business and agreed for the same.

The said money was funded to our company with view of long term merger and tie up, hence, was given as share application money. While filing our returns for said period in September 2011, we were notified by our auditor that the said money can not be technically shown as share application money as our company did not have required authorized capital.

We had asked the investors to give confirmation of accounts and other details which was not give as in their books of account said money was shown as share application money. Thus to this contradiction they did not provide us any further details also.

This money which was taken from investors .was further paid by us as additional security deposits for works to Shayona Corporation which they further paid to Muncipal Corporation. The said deposit was refunded to us by M/s. Shayona Corp. On receipt of same from corporation as and when refunded. The same was paid back to us and we refunded the same to investors immediately as per the commitments made to them.

We have received payment from M/s. Shayona Corporation dated 12/07/2012 vide transfer in our PNB Thane Account which was paid back by us immediately on the same day which can be confirmed with our bank statements (attached at Page C-1-Pg. C2).

3.4 The AO observed that vide letter dated 20.03.2014, the assessee has furnished name and addresses , PAN no. of the above eight parties.

3.5 The AO observed that confirmations were submitted by assessee in respect of following three parties , detailed as hereunder:-

- (i) Roof and Proof, Mumbai*
- (ii) Ambition Plaza Private Limited, Kolkatta*
- (iii) Seva Bhavan Private Limited, Kolkata*

3.6 The AO further observed that with respect to the following two parties, the assessee has furnished ledger account claiming to be countersigned by these two parties , detailed as hereunder:-

- (i) *Shubh Labh Vinmay Private Limited, West Bengal*
- (ii) *Snow Pack Tieup Pvt. Ltd., West Bengal*

3.7 The AO further observed that the assessee has not furnished confirmation of account or ledger account of following three parties, detailed as hereunder:-

- (i) *Atul Ratilal Shah & Sandhya Atul Shah, Mumbai*
- (ii) *Big Scale Shipping Private Limited, Mumbai*
- (iii) *Veenaben Babulal Shah, Mumbai*

3.8 The AO further observed that the assessee has furnished confirmation of account in respect of following three parties which requires verification , detailed as hereunder:-

- (i) *Roof and Proof, Mumbai*
- (ii) *Ambition Plaza Private Limited, Kolkata*
- (iii) *Seva Bhavan Private Limited, Kolkata*

3.9 The AO observed that most of these parties are from outside Mumbai . The AO observed that the assessee was repeatedly asked to explain nature and source of these cash credits but assessee avoided to comply with several notices and reminders issued by the AO and now at fag end when the assessment was getting time barred on 31.03.2014, the assessee has filed three confirmations as detailed above, only on 22.03.2014 which happened to be Saturday and there is no time for verification of these three confirmations and to make necessary enquiries as to genuineness of these parties and loans, as the assessment is getting time barred on 31.03.2014. The AO further observed that the assessee has failed to file confirmations with respect to remaining five parties. The aforesaid factual matrix led AO to make additions to the income of the assessee to the tune of Rs.

1,90,95,000/- as cash credits u/s 68 of the 1961 Act, vide assessment order dated 27.03.2014 passed by the AO u/s 143(3) of the 1961 Act.

4. Aggrieved by an assessment framed by the AO u/s 143(3) of the 1961 Act vide assessment order dated 27.03.2014, the assessee filed first appeal before Ld. CIT(A) . The assessee claimed before learned CIT(A) that it proved genuineness of loan transactions before the AO but assessee's contentions were not considered by the AO. The assessee claimed that it filed letters on 29.02.2014 , 02.03.2014 and on 20.03.2014 wherein all details were submitted but reply dated 20.03.2014 was not considered by the AO while framing assessment order dated 27.03.2014.

4.2 The assessee submitted before learned CIT(A) that submissions before the AO were delayed due to following reasons:-

“1) Loan from Sandhya Ratilal Shah was shown in the books of Appellant in the name of Atul Ratilal Shah. Likewise loan from Jayesh B. Shah was shown in the books of Appellant in the name of Veenaben Shah. Thus the confirmations were delayed for reconciliation.

2) Now, amount received from Ambition Plaza Private Limited and Seva Bhawan Private Limited was received as share application money for future expansion. Though, subsequently it was found that the Appellant was not permitted to issue shares due to restriction of Authorized Share Capital. Thus the Appellant had undergone a dispute with the said parties, precisely - Ambition Plaza Private Limited and Sewa Bhawan Private Limited due to delay in repayment. Other parties, precisely - Shubh Labh Vinimay Private Limited, Snow Pack Tieup Private Limited and Big Scale Shipping Private Limited are the same group of companies. Thus, these parties had delayed the ledger confirmations.

3) The Appellant would highlight the fact that even the AO had sent notice to the known parties u/s 131 read with section 134 of Income Tax Act, 1961 for which the AO did not receive any confirmation from the said parties. This fact clearly suggests that the confirmations were delayed by the said parties. And the fact has not been mentioned in the Assessment Order.

The Appellant is once again submitting Ledger Confirmations along with PAN number and full address of following 8 parties to prove the genuineness of the transactions.

Sr. No.	Name of the party	Amount involved
1	Roof & Proof	9,00,000/-

2	<i>Ambition Plaza Private Limited</i>	10,00,000/-
3	<i>Seva Bhawan Private Limited</i>	20,00,000/-
4	<i>Shubh Labh Vinimay Private Limited</i>	67,00,000/-
5	<i>Snow Pack Tieup Pvt. Ltd.</i>	40,00,000/-
6	<i>Sandhya Ratilal Shah (In our books of Accounts-Atul Rathilal Shah)</i>	1,00,000/-
7	<i>Jayesh B. Shah (In our books of Accounts-Veenaben Babulal Shah)</i>	3,95,000/-
8	<i>Big Scale Shipping Private Limited</i>	40,00,000/-
	<i>Total</i>	1,90,95,000/-

The appellant prays to your honour to cancel the contention to add back disputed unsecured loans on the grounds of genuineness of above transactions.”

4.3 The assessee submitted before learned CIT(A) that it had submitted following documents from to time , as under:-

“ 1. *Following details were submitted by us on time to time basis. A copy of the same has been enclosed herewith for your perusal:*

i. Copy of Covering letter of Submissions dated 30th January, 2013 which was submitted on 13th November, 2013.

ii. Copy of covering letter dated 25th November, 2013.

iii. Copy of Justification letter submitted on 28th February, 2014.

iv. Copy of Covering letter of Submissions dated 20th March, 2014.

v. Copy of Covering letter of Submissions dated 21st March, 2014

2. The Appellant is submitting Ledger Confirmations duly signed and stamped (wherever required) along with PAN number and full address of following 8 unsecured loan parties to prove the genuineness of the transactions.

3. Further, the Appellant is submitting ledger confirmations and bills of 12 purchase parties.

Submission dated 19th February 2016

With reference to above, we have to state that we had received your notice dated 02nd February, 2016 on 5th February, 2016 for the Appeal No. CIT(A)-18/IT-108/ITO-8(3)(4)/ 14-15 regarding submission of documents.

The documents being submitted are as follows:

- 1. Copy of Ledger Confirmation of 8 parties as mention in Notice.*
- 2. Copy of Covering Letters of Submissions made to the Assessing Officer.*
- 3. Copy of Ledger Confirmations along with bills of Purchase of 12 parties mentioned in the notice.”*

4.4 The assessee also claimed before learned CIT(A) that the AO has not granted reasonable opportunity and time to produce evidences and passed an assessment order making aforesaid additions to the income of the assessee. The assessee submitted additional evidences before learned CIT(A) by invoking Rule 46A of the Income-tax Rules, 1962 and prayers were made for admission of these additional evidences, the details of which are as under:-

- “1. Copy of Ledger Confirmation of 8 parties.*
- 2. Copy of ITR Acknowledgement of the Parties for the A. Y. 2011-12.*
- 3. Bank Statement of the Parties showing the details of transactions entered during the year under Appeal.*
- 4. Copy of Balance Sheet of the Parties with detailed loan schedule which shows name of Company for said amount.”*

4.5 The Ld. CIT(A) after considering the submissions of the assessee and remand report submitted by the AO decided the issue in favour of the assessee vide appellate order dated 08.03.2017, by holding as under:-

“Ground No. 2

Under this ground of appeal the Appellant has agitated addition of Rs.1,90,95,000/- on account of unexplained Cash credit. I peruse the assessment order and find that the Assessing Officer made the addition due to non-

furnishing of confirmation in respect of three parties. Assessing Officer also observed that the appellant furnished copies of ledger account in respect of two parties. The Assessing Officer further observed that in respect of remaining three parties confirmation were produced. Since the assessment was getting time barred the Assessing Officer ended the same as unexplained cash credit. On the other hand the appellant submitted that the Assessing Officer did not verify confirmation and ledger copies furnished by the appellant by holding that the same were filed late. The appellant also clarified that the delay in obtaining confirmation and PAN was due to business dispute between the appellants and loan creditors. It was also explained that Assessing Officer disregarded the repayment of loans already made. The appellant filed additional evidence vide letter dated 14.12.2016. Subsequently remand report was called for from the Assessing Officer to verify the cash credit amounting to Rs.1,90,95, 000/-. In response to the same the Assessing Officer vide remand report bearing reference no. ITO 11 (3) (4) /Remand Report/2016-17 dtd 12.01.2017 in which the Assessing Officer mentioned as follows:

"a) I stick to and rely upon facts of assessment order. Assessment is completed within prescribed time limit by complying the Income Tax Act, 1961 and Income Tax rule, 1962, keeping the circumstance in mind, giving assessee full opportunity of being heard and submit his reply/submissions, minutely scrutinizing and verifying the facts and so on.

b) Any evidence not submitted during the course of assessment proceedings may kindly be treated as additional evidence as per Income Tax Act, 1961. Admissibility may kindly be considered as per Income Tax Act 1961 and Income Tax Rule 1962.

c) No."

The said remand report was confronted to the appellant and vide letter dated 08.03.2017 stated as follows:

"The Assessing Officer has not given us reasonable opportunity and time to produce evidence in loan confirmations and got delayed due to dispute between the loan parties and company. The reason was known to Assessing Officer though order has been passed disallowing the same. The confirmation we were unable to submit was due to dispute about the either for holding stake in company or for the rate of interest. The above

additional information goes to root of the cause of addition and therefore it is a humble request to your honour to admit additional evidence under Rule 46A of the Income Tax i.e. the confirmation which we could not submit to Assessing Officer before passing the order or which were not considered by the Assessing Officer at the time of Assessment u/s 143(2).

I have carefully considered the rival submissions and find that the Assessing Officer has rejected the additional evidence without any verification. On perusal of the additional evidence I find that the same is sufficient to discharge the burden cast upon the appellant by way of confirmation, PAN no. etc. The Assessing Officer has not brought any further material on record to disprove the correctness of additional evidence filed by the appellant. I am therefore of the opinion that the addition made by the Assessing Officer deserve to be deleted. I direct the Assessing Officer to delete the addition of Rs.1,90,95,000/- made by way of cash credit. This ground of appeal succeeds”.

5. Being aggrieved by an appellate order dated 08.03.2017 passed by learned CIT(A), the Revenue has now filed an appeal before the tribunal . The Ld. DR drew our attention to assessment order framed by the AO and submitted that additions were made to the tune of Rs. 1.90 crores by the AO by invoking provisions of Section 68 of the 1961 Act. It was submitted by learned DR that Ld. CIT(A) held additional evidences to be sufficient for granting relief to the assessee which is not as per mandate of the law as laid down u/s. 68 of the Act. It was submitted that assessment order passed by the AO makings additions be upheld and the appellate order passed by learned CIT(A) granting relief to the assessee be set aside on this issue.

5.2 The Ld. Counsel for the assessee drew our attention to paper book filed by assessee containing 277 pages . The said paper book is now placed in file. It was submitted that additional evidences were filed before Ld. CIT(A). It was submitted that the AO did not carry out verifications . Our attention was drawn by Ld. Counsel for the assessee to paper book at page no. 53-54 , wherein copy of acknowledgment of ITR for ay: 2011-12 and Balance Sheet of

Ambition Plaza Private Ltd. as at 31.03.2011 are placed. Our attention was also drawn to page no. 58 and 59 wherein the copy of acknowledgment of ITR and Balance Sheet of Seva Bhawan Private Ltd. as at 31.03.2011 are placed. Our attention was drawn to page no. 63 and 65 of the paper book wherein Balance Sheet of Shubh Labh Advertising Private Ltd. and Snowpack Tie-Up Private Ltd., both as at 31.03.2011, are placed.

6. We have carefully considered rival contentions and perused the material on record . We have observed that the assessee is engaged in the business of execution of contracts for transportation of waste, waste management, works contracts and sub-contracts. We have observed that the assessee had carried out various works of Municipal Corporation of Greater Mumbai and Thane Municipal Corporation as subcontractor. We have observed that the assessee has received share application money/unsecured loans to the tune of Rs. 1,90,95,000/- from eight parties which stood credited to its bank account which is a subject matter of dispute between rival parties as to satisfaction of mandate of Section 68 of the 1961 Act. The AO while framing assessment u/s 143(3) concluded that the assessee had failed to discharge its onus u/s 68 of the 1961 Act with respect to these cash credits leading to additions being made in the hands of the assessee towards income of the assessee to the tune of Rs. 1,90,95,000/- u/s 68 of the 1961 Act as unexplained cash credits, while learned CIT(A) after considering additional evidences as well remand report submitted by the AO during the course of first appellate proceedings , concluded that the assessee has duly discharged its onus as is cast u/s 68 of the 1961 Act . The details of share application money/unsecured loans to the tune of Rs. 1,90,95,000/- received by the assessee from the aforesaid eight parties are as under:-

Sr. No.	Name of the parties as per submission	Date of transaction	Amount credited (Rs.)	Remark

1.	Ambition Plaza Pvt. Ltd.	21.10.2010	10,00,000	Bank Entry Details: RTGS: Ambition Plaza Pvt. Ltd. UTR No. HDFCH102494425365 Sender Bank: HDFC Bank Ltd. Sender Branch: Buraqbazar Kolkata/HDFC0000219
2.	Atul Ratilal Shah	19.04.2010	1,00,000	RTGS ATUL RATILAL SHAH BARBH10109828280
3.	Big Scale Shipping Pvt. Ltd.	25.10.2010	40,00,000	RTGS: 3 rd floor, KOHIAR HOUSE 4 th MARINE S UTR NO. PUNBH 10298064724 Sender Bank: PUNJAB NATIONAL BANK SENDER BRANCH; BOMBAY ILACO HOUSE FORT SPJM,/PUNB0006100
4.	Roof & Proof	20.10.2010	9,00,000	Rs. 15.00 lacs received on 20.10.2010 and Rs. 6.00 lacs paid on 23.03.2011,
5.	Seva Bhavan Pvt. Ltd.	20.10.2010	20,00,000	RTGS: SEVA BHAVAN PRIVATE LIMITED UTR No. HDFCH10298478806 Sender Bank: HDFC Bank Ltd. Sender Branch: Buraqbazar Kolkata/HDFC0000219
6.	Shubhlabh Vinimay P. Ltd	27.07.2010	67,00,000	Total receipt Rs. 160.00 lacs less paid Rs. 13.00 & 15.00 lacs on 20.10.2010 and Rs. 65.00 lacs on 26.10.2010
7.	Snow Pack Tieup Pvt. Ltd.	27.07.2010	40,00,000	Bank Entry Details: RTGS: KOHIAR HOUSE 4 th MARINE S UTR NO. PUNB 10208072087 Sender Bank: PUNJAB NATIONAL BANK SENDER BRANCH; BOMBAY ILACO HOUSE FORT SPM,/PUNB0006100
8	Veenaben Babulal Shah		3,95,000	Out of total receipt of Rs. ' 7,45,000/-, Rs. 3,50,000/- paid during the year and Rs. 3,95,000/- remained as unpaid.
		Total	1,90,95,000	

6.2 We have observed that the assessee has claimed that it availed finance from market to carry out its business of executing sub-contracts for performing work of Municipal Corporation of Greater Mumbai/Thane. The assessee had also claimed that in two of these

cases namely Ambition Plaza Private Limited and Seva Bhawan Private Limited, the investors advanced share application money but later on said share application money were treated as unsecured loans on the grounds that the assessee's authorised capital was less than said share application money and assessee was not in position to issue share certificates and hence the said share application money were treated as unsecured loans unilaterally by the assessee. It is claimed that these two parties continue to treat the said amounts as share application money in their books of accounts. Further, the assessee has claimed that these amounts received by the assessee from various lenders were all interest free as no interest is payable by assessee on these unsecured loans/share application money. The assessee has submitted additional evidences before learned CIT(A) as detailed in preceding para's of this order which were admitted by learned CIT(A). The remand report was submitted by the AO during the course of appellate proceedings conducted by learned CIT(A) on these additional evidences filed by assessee before learned CIT(A) which was also considered by learned CIT(A) while granting relief to the assessee. Be that as it may be, it is now admitted position that the assessee has claimed to have submitted all the evidences in its possession in order to make an effort to discharge its burden u/s 68 of the 1961 Act. These evidences either filed before the AO during assessment proceedings or during appellate proceedings conducted by learned CIT(A) are now placed in paper book filed by assessee with tribunal. While submitting additional evidences before learned CIT(A), the assessee has explained reasons for non submission of these evidences before the AO which was accepted by learned CIT(A). In the interest of substantial justice, we are inclined to endorse the decision of learned CIT(A) in admitting all these additional evidences with a view to dispense justice to both the parties as we are inclined to prefer the cause of justice than technicalities and more-so cause is shown by assessee for its failure to submit these additional evidences during course of assessment proceedings. Now, all the evidences which the

assessee had submitted either at assessment stage or appellate stage before learned CIT(A) in order to substantiate its contention that it discharged its onus u/s 68 of the 1961 Act , are now placed in paper book filed with the tribunal and it becomes extremely important for us to evaluate these additional evidences to arrive at conclusions whether the assessee infact discharged its onus as is cast u/s 68 of the 1961 Act and any additions to the income u/s 68 of the 1961 Act is warranted or not in the hands of the assessee.

6.3 The assessee has furnished name and addresses , PAN no. of the aforesaid eight parties.

6.4 The assessee has submitted confirmations were submitted by assessee in respect of following three parties , detailed as hereunder:-

- (i) *Roof and Proof, Mumbai*
- (ii) *Ambition Plaza Private Limited, Kolkatta*
- (iii) *Seva Bhavan Private Limited, Kolkata*

6.5 The AO further observed that with respect to the following two parties, the assessee has furnished ledger account claiming to be countersigned by these two parties , detailed as hereunder:-

- (i) *Shubh Labh Vinmay Private Limited, West Bengal*
- (ii) *Snow Pack Tieup Pvt. Ltd., West Bengal*


6.6 The AO further observed that the assessee has not furnished confirmation of account or ledger account of following three parties, detailed as hereunder:-

- (i) *Atul Ratilal Shah & Sandhya Atul Shah, Mumbai*
- (ii) *Big Scale Shipping Private Limited, Mumbai*
- (iii) *Veenaben Babulal Shah, Mumbai*

6.7 The AO had a grievance that the assessee submitted part-documents as above only at fag end on 22.03.2014 when the

assessment was getting time barred thereby preventing effective verification and enquiry with respect to these unsecured loans.

6.8 The assessee claimed before learned CIT(A) that it is submitting ledger confirmations along with PAN and addresses before learned CIT(A) with respect to all the eight parties to prove genuineness of the transaction of unsecured loans and claimed that it has submitted all necessary evidences but the learned CIT(A) observed from records that none of the documents were in-fact submitted, which led learned CIT(A) to issue letter dated 02.02.2016, reproduced hereunder:

	OFFICE OF THE Commissioner of Income Tax(Appeals)-18, Room No.24, 3rd floor, B-Wing, Mittal Court, Nariman Point, Mumbai- 400 021. ☎ 22886343 Fax No. 22886343
No.CIT(A)-18//2015-16	Date : 02.02.2016

To,
M/s. Western Imaginary Transcon Pvt. Ltd.
101, Shreeji Darshan, Dixit X Road No.1,
Near R.B.T. School, Ville Parle (E),
Mumbai-40057.

**Sub : Requirement of enclosure in the case of M/s. Western
Imaginary Transcon Pvt. Ltd., A.Y. 2011-12
(Appeal No.CIT(A)-18/IT-108/ITO-8(3)(4)/14-15)
Ref : 1) Your letter dtd. 07.01.2016**

Kindly refer to the above.

2. During the course of appellate proceeding, the paper book has been submitted by you in tapal on 07.01.2016. I would like to draw your kind attention on sub-para 3 of para (f) and sub-paras 1, 2 and 3 of para 5 of the said paper book which reproduced below:


3) The appellant is once again submitting ledger confirmations alongwith PAN number and full address of the following 8 parties to prove the genuineness of the transactions.

S.No.	Name of the party	Amount involved
01.	Roof of Proof	9,00,000/-
02.	Ambition Plaza Pvt. Ltd.	10,00,000/-
03.	Seva Bhavan Pvt. Ltd.	20,00,000/-
04.	Shubha Labh Vinimay Pvt. Ltd.	67,00,000/-
05.	Snow Pack Tieup Pvt. Ltd.	40,00,000/-
06.	Sandhya Ratilal Shah (in our books of accounts - Atul Ratilal Shah)	1,00,000/-
07.	Jayesh B. Shah (In our books of Accounts - Veenaben)	3,95,000/-
08.	Big Scale Shipping Pvt. Ltd.	40,00,000/-

(V) SUBMISSION:

1. Following details were submitted by us on time to time basis. A copy of the same has been enclosed herewith for your perusal:
- (i) Copy of covering letter of submissions dated 30th January, 2013 which was submitted on 13th November, 2013.

- (ii) Copy of covering letter dated 25th November, 2013.
 (iii) Copy of justification letter submitted on 28th February, 2014
 (iv) Copy of covering letter of submissions dated 20th March, 2014.
 (v) Copy of covering letter of submissions dated 21st March, 2014.
2. The appellant is submitting Ledger Confirmations duly signed and stamped (wherever required) along with PAN number and full address of following 8 unsecured loan parties to prove the genuineness of the transactions.
3. Further, the appellant is submitting ledger confirmations and bills of 12 purchase parties.
- 3 On verification of case record, it is revealed that, the aforesaid details have not been submitted by you. Therefore, you are requested to submit the above details within seven days from the receipt of this letter.


 (ANADEE NATH MISSHRA)
 Commissioner of Income tax,
 (Appeals)-18, Mumbai.

6.9 The assessee has setup a claim that two of the parties namely Ambition Plaza Private Ltd and Seva Bhawan Private Limited were participating in share capital by way of subscription of share application money but later the said money was converted into interest free unsecured loans as the assessee has claimed that it had insufficient authorised share capital to issue share capital. It is also claimed that it led to dispute between the assessee and investing parties as these Investing parties are reflecting these amounts advanced to assessee as share application money while assessee is unilaterally reflecting the same amount as interest-free unsecured loans received from the aforesaid parties. The assessee has not submitted any shareholder agreements or terms and conditions for issuance of its shares to these parties . The assessee has also not submitted copies of Resolution passed by its Board of Directors and/or Shareholders or of the investing company. The assessee has also not placed on record any report of due diligence conducted by investing companies or valuation report of its shares. Thus, the assessee has not discharged its burden u/s 68 of the 1961 Act with respect to the share application money received from Ambition Plaza Private Limited and Seva Bhawan Private Limited. This claim set up by assessee to convert unilaterally the aforesaid share application money to interest-free unsecured loans is clearly an after-thought and is

clearly an attempt made by assessee to wriggle out of its onus/burden cast u/s 68 of the 1961 Act with respect to these amounts so raised by the assessee as share application money during the year under consideration.

6.10 We are of the considered view that Section 68 of the Act creates a legal fiction which cast obligation on the assessee to explain to the satisfaction of the AO about nature and source of credit in case any amount is found credited in the books of the assessee maintained for any previous year. This creates a legal fiction and in case the assessee did not offer explanation to the satisfaction of the AO as to the nature and source of credit of any amount found credited in the books of the assessee for any previous year by cumulatively satisfying the AO about the identity and creditworthiness of the creditor and about the genuineness of the transaction , the amount found credited in the books of the assessee shall be treated to be the income of the assessee as unexplained income under legal fiction created by Section 68 of the Act. The Section 68 of the Act created a legal fiction which does not require that the Revenue has to show the sources of the income before bringing the amount to tax since the amount is found to be credited in the books of the assessee in case the assessee has not offered explanation to the satisfaction of the AO. Thus, section 68 of the Act cast obligation on the assessee where any sum is found credited in the books of an assessee maintained for any previous year , and the assessee offers no explanation about the nature and source of credit thereof or the explanation offered by the assessee is found not satisfactory in the opinion of the AO, the sum so credited may be treated as income and charged to income-tax as income of the assessee of that previous year. The burden/onus is cast on the assessee and the assessee is required to explain to the satisfaction of the AO cumulatively about the identity and capacity/creditworthiness of the creditors along with the genuineness of the transaction to the satisfaction of the AO. All the constituents are required to be

cumulatively satisfied. If one or more of them is absent, then the AO can make the additions u/s 68 of the Act as an income. There are companies which are widely held companies in which public are substantially interested which comes out with an initial public offers wherein shares are listed on stock exchanges and widely traded , wherein members of public make subscriptions in pursuance to the Prospectus issued by the company . Issue of shares in these cases to general public in India as well abroad are approved, regulated and monitored by various authorities who are engaged in regulating and managing securities market such as Securities and Exchange Board of India(SEBI) , Stock Exchanges, Government of India etc. . These members of public who make subscription are widely scattered all over the country or even outside India as any person entitle to apply as per the conditions prescribed in the prospectus can place an application subscribing to the shares of the company by depositing duly filled in application along with application money with the designated authorized recipients of the company stipulated in the prospectus such as bankers, brokers, under-writers, merchant bankers, company offices etc . These shareholders who are member of public are un-known persons to the company issuing shares and the company issuing shares have no control/mechanism to verify their creditworthiness etc. and the burden of proof in such cases is different, but there is another class of companies which are closely held companies in which public are not substantially interested who are mostly family controlled closely held companies and they raise their share capital from their family members, relatives and friends and in these companies since share capital is received from the close knit circles who are mostly known to the company/promoters, the onus as required u/s 68 of the Act is very heavy to prove identity and capacity of the shareholders and genuineness of the transaction. The onus of widely held company could be discharged on the submissions of all the information contained in the statutory share application documents and on not being satisfied the AO may proceed against the

shareholders u/s 69 of the Act instead of proceeding against the company, but in the closely held companies the share capital are mostly raised from family, close relatives and friends and the assessee is expected to know the share subscribers and the burden is very heavy on the assessee to satisfy cumulatively the ingredients of Section 68 of the Act as to identity and establish the credit worthiness of the creditors and genuineness of the transaction to the satisfaction of the AO , otherwise the AO shall be free to proceed against the assessee company and make additions u/s 68 of the Act as unexplained cash credit. The use of the word 'any sum found credited in the books ' in Section 68 indicates that it is widely worded and the AO can make enquiries as to the nature and source thereof . The AO can go to enquire/investigate into truthfulness of the assertion of the assessee regarding the nature and the source of the credit in its books of accounts and in case the AO is not satisfied with the explanation of the assessee with respect to establishing identity and credit worthiness of the creditor and the genuineness of the transactions, the AO is empowered to make additions to the income of the assessee u/s 68 of the Act as an unexplained credit in the hands of the assessee company raising the share capital because the AO is both an investigator and adjudicator. In our considered view, merely submission of the name and address of the creditor, income tax returns, Balance Sheet/statement of affairs of the creditor and bank statement of the creditor is not sufficient as the AO is to be satisfied as to their identity and creditworthiness as well as to the genuineness of the transaction entered into.

6.11 It is undisputed that the aforesaid amount of Rs. 1,90,95,000/- stood credited in the books of accounts of the assessee and now the onus is on the assessee to prove identity and creditworthiness of the creditors to advance these amounts to the assessee and genuineness of these transactions, be it share application money or unsecured loans. The assessee has filed paper book in which it has claimed to

have filed all necessary evidences such as confirmations etc. to claim that its onus u/s 68 stood discharged. The Ld. CIT(A) deleted the additions by accepting these evidences including additional evidences filed by assessee before learned CIT(A). The assessee setup a story that some of these receipts are from various investors who subscribed share application money to subscribe towards share capital of the assessee but later on said amount was treated as interest-free unsecured loans for the reasons that assessee's authorised capital was less than amount received. This story as we have seen above in para 6.9 does not inspire much of the confidence as nothing prevented assessee from raising its authorised capital by passing Board Resolution, Shareholders Resolution, altering Memorandum and Articles of Association and complying with requirements as prescribed under The Companies Act, 1956. More-over, these companies have shown in their audited balance sheet, these investments as share application money which evidences that the story set up by assessee does not inspire confidence and stand rejected. It is well established that merely receipt of money through banking channel is not sufficient to discharge onus u/s 68 of the 1961 Act because the assessee has to prove genuineness of the transaction as well identity and creditworthiness of these parties cumulatively.

6.12 Under these circumstances, it become critical to evaluate evidences submitted by assessee which are placed in paper book filed by the assessee with tribunal. Let us see and evaluate these evidences in context of amount raised by assessee be it share application money or unsecured loans.

6.13 **Roof N Proof.** The assessee has claimed to have received Rs. 15 lacs on 20.10.2010 while Rs. 6 lacs was refunded on 23.03.2011, leaving a net amount payable by assessee as on 31.03.2011 of Rs. 9 lac. The assessee has filed confirmation of account from said Roof N Proof(Mr Pradeep Jain) duly signed by Proprietor and its address/PAN is duly given. There was one more transaction reflected

in said confirmation filed by assessee, of Rs. 2,10,000/- paid by said Roof N Proof to assessee on 22.02.2011, which did not found mentioned in the orders of the authorities below and communication of the assessee with lower authorities. Thus, the balance shown to be payable to Roof N Proof by assessee as at 31.03.2011 is Rs. 11,10,000/- as per confirmation filed and not Rs. 9,00,000/- as is brought to tax by the AO. The assessee has neither filed bank statements of said party nor Balance Sheet/Statement of Affairs of the said party along with copy of ITR for relevant period is also not filed by the assessee. The assessee could not explain as to reasons for the said creditor to have extended interest free unsecured loans . The assessee also did not explained as to when these loans were finally paid off/squared by the assessee. The learned CIT(A) merely accepted confirmation filed by the assessee and did not made any enquiry/verification himself to come to conclusion whether all the ingredients of Section 68 were satisfied cumulatively . Needless to say that powers of ld. CIT(A) are co-terminus with powers of the AO. In our considered view, the assessee has not fully discharged its onus u/s 68 of the 1961 Act completely and cumulatively as to all the three ingredients and in our considered view , this matter need to be restored to the file of the AO for fresh adjudication wherein one more opportunity is granted to the assessee to adduce evidences to substantiate satisfaction of all the three ingredients of Section 68 of the 1961 Act. The assessee is directed to file necessary evidences before the AO in set aside proceedings to discharge its onus/burden as is cast u/s 68 of the 1961 Act. The AO is directed to give proper and adequate opportunity of being heard to the assessee in denovo assessment proceedings. The AO shall admit all relevant evidences/explanation filed by the assessee in its defence in set aside proceedings, which shall then be adjudicated on merits in accordance with law. We order accordingly.

6.14. Now coming to the second lender namely **Atul Ratilal Shah**, who had stated to have advanced Rs. 1 lac to assessee. We have observed that the assessee has filed confirmations of **Mrs. Sandhya Atul Shah** and submitted address and PAN of the said party (page 68/pb). The assessee has neither filed bank statements of said party nor Balance Sheet/Statement of Affairs of the said party along with copy of ITR for relevant period is also not filed by the assessee. The assessee could not explain as to reasons for the said creditor to have extended interest free unsecured loan of Rs. 1 lacs . The assessee also did not explained as to when this loans was finally paid off/squared by the assessee. The learned CIT(A) merely accepted confirmation filed by the assessee and did not made any enquiry/verification himself to come to conclusion whether all the ingredients of Section 68 were satisfied cumulatively . Needless to say that powers of ld. CIT(A) are co-terminus with powers of the AO. In our considered view, the assessee has not fully discharged its onus u/s 68 of the 1961 Act completely and cumulatively as to all the three ingredients and in our considered view , this matter need to be restored to the file of the AO for fresh adjudication , wherein one more opportunity is granted to the assessee to adduce evidences to substantiate satisfaction of all the three ingredients of Section 68 of the 1961 Act. The assessee is directed to file necessary evidences before the AO in set aside proceedings to discharge its onus/burden as is cast u/s 68 of the 1961 Act. The AO is directed to give proper and adequate opportunity of being heard to the assessee in denovo assessment proceedings. The AO shall admit all relevant evidences/explanation filed by the assessee in its defence in set aside proceedings, which shall then be adjudicated on merits in accordance with law. We order accordingly.

6.15 Similarly in case of **Mr. Jayesh B. Shah (Mrs. Veenaben Babulal Shah)** , it is observed that the assessee has closing balance outstanding of Rs. 3,95,000/- as at 31.03.2011. The assessee has filed confirmation along with PAN and Address of Mr Jayesh B. Shah.

It is observed from confirmation filed that there was opening balance as at 01.04.2010 of Rs. 7,45,000/- payable by assessee, while during the year the assessee has paid Rs. 3,50,000/- through banking channel to said party (page 69/pb). Since, as per this confirmation, no amount is received during the year under consideration and in our considered view when no amount is received and found credited during the year under consideration, Section 68 has no applicability as it can be applied when any sum is found credited in the books of accounts of the assessee. If Revenue wants, then it can invoke provisions of Section 68 of the 1961 Act for the year when the said sum was received by assessee and was found credited in its books of accounts of the assessee, if the law so otherwise permit. Reference is drawn to provisions of Section 68 of the 1961 Act as was applicable for ay: 2011-12, which reads as under:

“Cash credits.

68. *Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.”*

Thus for limited verification of this aspect as to whether any sum was received during the year from said party or else the balance constitute the amount received in earlier years, the matter is restored to file of the AO. If it is found that the balance as at 31.03.2011 amounting to Rs. 3,95,000/- was received in earlier ay's, then no additions are warranted in this year under consideration before us, otherwise our directions in preceding para's 6.13-6.14 of this order shall equally apply. The Revenue is, however, free to invoke provisions of 1961 Act to make additions in earlier years in the years when the said amount was received by the assessee, if the law so otherwise permit. We order accordingly.

6.16 Now coming to receipts from following five parties which stood credited in the books of accounts of the assessee for the relevant

previous year from five companies , namely **(a) Ambition Plaza Private Ltd., Rs. 10 lac, (b) Big Scale Shipping Pvt. Ltd., Rs. 40 Lac, (c) Seva Bhavan Pvt. Ltd, Rs. 20 Lac, (d) Shubh Labh Vinimay Private Ltd.(Shubh Labh Advertising Private Limited), Rs. 67 Lac and (e) Snow Pack Tieup Pvt. Ltd., Rs. 40 Lac**, aggregating to Rs. 1,77,00,000/- .

6.16 With respect to amount advanced by Ambition Plaza Private Limited of Rs. 10 lacs to assessee during the year under consideration , we have observed that the assessee has filed copy of bank statement, copy of Balance Sheet as on 31.03.2011(no P& L, other schedules etc. filed) , copy of acknowledgement of ITR of the said party, and letter dated 21.03.2014 issued by Ambition Plaza Private Limited in favour of the assessee confirming that this amount is given as share application money to assessee(page 53-56/pb) . We have observed that the said company M/s Ambition Plaza Private Limited has shown meager income of Rs. 5250 for ay: 2011-12. The said company M/s Ambition Plaza Private Limited has total Balance Sheet size of Rs. 2.19 crores. The paid up capital of M/s Ambition Plaza Private Limited is meager Rs. 4.18 lacs while it has huge Reserves and Surplus of Rs. 2.15 crores. The total Investments made by the said company namely M/s Ambition Plaza Private Limited in various entities is Rs. 1.76 crores as at 31.03.2011. It did not have any fixed assets as at 31.03.2011 and 31.03.2010 . The liabilities and provisions are meager Rs. 0.29 lacs as at 31.03.2010. The perusal of Bank Statement of said Ambition Plaza Private Limited will reveal that while payment of Rs. 10 lacs was made by it on 21.10.2010 to assessee , which is preceded with deposit of equivalent amount of Rs. 10 lacs on the same day in its bank account . The balance maintained with the bank account with HDFC bank from where payment was made by said M/s Ambition Plaza Private Limited to assessee was a meager sum of Rs. 26,000/-. The assessee has not submitted any details of shareholder agreements or terms and conditions agreed for

allotment/subscription of its shares by said M/s Ambition Plaza Private Limited . The assessee has also not submitted Resolutions passed by its Board of Directors or Shareholders nor Resolutions passed by investing company is filed. There are no due diligence/valuation report for valuing assessee company or its shares at the behest of investing company are brought on record. The said amount was claimed to be shown as share application money by said M/s Ambition Plaza Private Limited in its audited Balance Sheet while the assessee is now claiming the said amount as interest-free unsecured loan payable to M/s Ambition Plaza Private Limited . This company Ambition Plaza Private Limited has address at 30 Shivtolla Street, Burrabazar, Kolkatta-700007 , West Bengal while the other lender namely Seva Bhawan Private Limited also had same address as that of Ambition Plaza Private Limited at Kolkatta. The Directors of M/s Ambition Plaza Private Limited and Seva Bhawan Private Limited as well auditors are also common. The said Seva Bhawan Private Limited also showed meager income of Rs. 3630/- for ay: 2011-12. The said Seva Bhawan Private Limited also have meager capital of Rs. 3.85 lacs while Reserves and Surplus are to the tune of Rs. 1.82 crores, as at 31.03.2011. The said Seva Bhawan Private Limited also did not have any fixed assets as at 31.03.2011 and also at 31.03.2010. The said Seva Bhawan Private Limited has made investments of Rs. 1.40 crores as at 31.03.2011 in various entities, while liabilities and provisions are meager sum of Rs. 0.16 lacs. It has also advanced share application money to the tune of Rs. 20 lacs to assessee company while no terms and conditions /share holder agreement is brought on record nor Resolutions passed by Board of Directors/Shareholders of Investee as well investing company are brought on record. There are no due diligence/valuation report for valuing assessee company or its shares at the behest of investing company are brought on record. This company M/s Seva Bhawan Private Limited also have bank account with HDFC Bank, Burra Bazar, Kolkatta and is having a meager balance of Rs. 0.40 lacs. The

payments of Rs. 10 lacs each has been made to the assessee towards share application money by said Seva Bhawan Private Limited on 21.10.2010 and 23.10.2010 aggregating to Rs. 20 lacs ,which is preceded by transfer of equivalent amount on the same date in the aforesaid bank account. We have observed that the assessee has filed copy of bank statement, copy of Balance Sheet as on 31.03.2011(no P& L, other schedules etc. filed) , copy of acknowledgement of ITR and letter dated 21.03.2014 issued by Seva Bhawan Private Limited in favour of the assessee confirming that this amount of Rs. 20 lacs is given as share application money to assessee(page 58-62/pb). With Respect to M/s Shubh Labh Advertising Private Limited , merely Balance Sheet and Schedules as at 31.03.2011 are filed(No P& L A/c, no Bank Statement, copy of ITR not filed) (pb/page 63-64). The said company has reflected an amount of Rs. 67,00,000/- advanced to assessee as 'Advances for value to be received' under the head 'Loans and Advances' in its Balance Sheet as at 31.03.2011. The copy of ITR, Confirmations and bank statements of the lending company are not filed. With Respect to Snowpack Tie-up Private Limited, merely Balance Sheet and Schedules as at 31.03.2011 are filed along with certified ledger account(No P& L A/c, Bank Statement, copy of ITR filed) (pb/page 65-67). The said company has reflected an amount of Rs. 40,00,000/- advanced to assessee as 'Advances for value to be received' under the head 'Loans and Advances' in its Balance Sheet as at 31.03.2011). The copy of ITR, Confirmations and bank statements of the lending company are not filed. With Respect to M/s Bigscale Shipping Private Limited , merely Balance Sheet and Schedules as at 31.03.2011 are filed along with certified ledger account(No P& L A/c, Bank Statement, copy of ITR filed) (pb/page 70-72). The said company has reflected an amount of Rs. 40,00,000/- advanced to assessee under the head 'Loans and Advances' in its Balance Sheet as at 31.03.2011. The said amount of Rs. 40,00,000/ is claimed to be paid back on 10.07.2012 , vide certified ledger account copy. The copy of ITR, Confirmations and bank statements of the lending company are

not filed. All the five investing/lending companies have common auditors. M/s Ambition Plaza Private Limited and M/s Seva Bhawan Private Limited has common Directors. Similarly, M/s Bigscale Shipping Private Limited and Snowpack Tie-up Private Limited have common Director namely Mr. Deepak Patel. It is also admitted by the assessee that even Shubh Labh belongs to the same group as that of Bigscale and Snowpack. All the five companies do not have single fixed assets with them both as at 31.03.2011 and 31.03.2010. The assessee is based in Mumbai and is contractor for authorities situated in Greater Mumbai/Thane districts. All the investing/lender companies have common thread of having no fixed assets , low capital base, large Reserves and Surplus or large unsecured loan raised by it, large Investments/loans and advances granted by it. These common thread which runs into all these investing/lender company having common addresses in Kolkatta or common Directors/common auditors and common financial parameters and their peculiar features clearly indicates that these investing /lending companies are all merely name lenders/ accommodation entry providers and have merely provided accommodation entries to the assessee for an aggregate sum of Rs. 1,77,00,000/- . The two companies namely Ambition Plaza Private Limited and Seva Bhawan Private Limited had claimed to have advanced share application money to assessee but no shareholder agreements, terms and conditions for issue of shares, Resolutions passed by investor and investee companies are brought on record. Neither due diligence report or valuation report of shares/assessee company conducted at behest of investing company is brought on record. Now , it is claimed by assessee that these share application moneys are unilaterally treated by assessee as interest unsecured loans in its books of accounts as it has low authorized capital and it cannot issue share capital beyond that limit, while those investing companies continued to reflect the invested amount as share application money in their books of accounts. Nothing prevented assessee to increase its authorized capital after complying with legal

requirements as mandated by Companies Act. Thus, this contention of the assessee that confirmation got delayed due to dispute as to conversion of share application money into loans is merely an afterthought. The loans received by the assessee from these companies are stated by assessee to be unsecured and also free of interest which defies all commercial logics and commercial expediencies as to why these unrelated parties shall advanced these amounts as unsecured loans to assessee and that too without any interest. The assessee has filed bank statement in the case of Ambition Plaza Private Limited and Seva Bhawan Private Limited which clearly shows that the money of equivalent amount comes into bank account of these two companies on the same day which are then transferred to the bank account of the assessee on the very same day and the average balance maintained by both these investing company was otherwise meagre/minimal. The assessee has not filed copies of ITR's in the case of Shubh Labh Advertising Private Ltd, Snowpack Tie-up Pvt. Ltd., and Bigscale Shipping Pvt. Ltd. nor their bank statements were filed. Thus taking into account all the evidences filed by the assessee along with explanations offered , we are of the considered view that assessee has not discharge its primary onus as is mandated u/s 68 of the 1961 Act with respect to raising of Rs. 1,77,00,000/- as share application money/unsecured loans from the aforesaid five parties and the transactions for raising Rs. 1.77 crores by assessee from aforesaid five parties during the relevant previous year are merely accommodation entries wherein the assessee own undisclosed funds are routed/channelized through these companies to bring it back into bank accounts/books of accounts of the assessee under the garb of share application money/unsecured loans in an attempt to give it a color of legitimate investments/loans . The learned CIT(A) merely accepted the contentions/documents filed by the assessee without analyzing these documents/evidences/explanations to come to conclusion whether the assessee did comply with mandate of provisions of Section 68 of the 1961 Act and the appellate order

passed by learned CIT(A) cannot be sustained in view of our aforesaid detailed observations. Thus, under these circumstances we hereby confirm additions to the tune of Rs. 1,77,00,000/- as were made by the Assessing Officer and set aside the appellate order passed by Ld. CIT(A) . The appeal of the Revenue stand allowed on this issue as indicated above. We order accordingly.

7. The second effective issue raised by Revenue in its appeal filed with tribunal relates to addition being made on account of 100% of alleged bogus purchases to the tune of Rs. 3,25,98,680/- by the AO in an assessment order dated 27.03.2014 framed u/s 143(3) of the 1961 Act , which was later reduced to 12.5% of alleged bogus purchases by learned CIT(A). The AO has received specific information from Investigation Wing of the Department at Mumbai that assessee is beneficiary of bogus purchases to the tune of Rs. 3,25,98,680/- from following twelve parties , as detailed here under:-

Sr. No.	Name of the party	Amount involved (Rs.)
1	M/s. Vatsa Enterprises	37,47,358
2	M/s. Excel Industries	28,16,575
3	M/s. Deep Enterprises	12,62,735
4	M/s. Sambhav Traders	11,34,921
5	M/s. R.K. Traders	14,61,625
6	M/s. Ameer Enterprises	29,94,221
7	M/s. Gaddhar Trading Co.	21,41,040
8	M/s. Ashar Impex	29,04,959
9	M/s. Vijami Impex	31,25,469

10	M/s. Linion Tradelink	33,35,152
11	M/s. Banjara Enterprises	37,53,249
12	M/s. A. K. Enterprises	39,21,376
	TOTAL	3,25,98,680

7.2. The AO asked assessee to explain genuineness of these purchases. The assessee in response thereof with respect to query raised by the AO , submitted as under:-

“ We have made the purchase sand metal cement , etc. from Mrs. Vikramsinah J, Solanki having address: 6/1, Durga Villa, Gokhale Road, Vile Parie (E), Mumbai - 57 and contact No.: 8980285985 as per the requirement of material at site for the construction. The order for the said material is normally given on phone to the agents and they supply to us thru the various dealers and normally the dealers raised the bills with materials send by them:

<i>M/S. Vatsa Enterprises</i>
<i>M/S.Excel Industries</i>
<i>M/S.Deep Enterprises</i>
<i>M/S.Sambhav Traders</i>
<i>M/S.R.K. Traders</i>
<i>M/S.Amee Enterprises</i>
<i>M/S.Gaddhar Trading Co.</i>
<i>M/S.Ashar Impex</i>
<i>M/S.Vijami Impex</i>
<i>M/S.Linion Tradelink</i>
<i>M/S.Banjara Enterprises</i>
<i>M/S.A.K.Enterprises (As per</i>

us A.K. Traders)

In connection with the purchases from the above parties, we are furnishing the point wise details asked by you for your perusal:

1. Details of seller such as name and address, PAN details of material/goods purchased. The details of seller were given in letter dated 30/01/2013 and again on 13/11/2013 with address and VAT TIN No. of the above parties.

2. Datewise purchase of materials by you with details of quantity and rate of goods purchased. We enclosing copy of ledger account of the above parties with copies of purchase bills.

3. Correspondence of requisition for purchase of goods/material to the seller party, copies of invoices raised by the seller party. The requisition as explain were on telephone as and when material required at site and copy of bills are enclosed.

4. Copy of delivery challans of goods received by you. The normal procedure is to get the bills cum invoice and copies of the same are enclosed.

5. Details of loading and unloading charges and transportation charges paid by you. Also furnish copies of lorry Receipts. The purchase parties get this material at his site and no extra charge or separate charge for transport on unloading requires to be paid as per normal business trend or policy and the rates are always including transport.

6. Address of places/godowns to where the goods purchased were Loaded and unloaded in your godown/sites. The address of the goods load were not known to us as the same were known to the seller party. The address at which goods unloaded were at site., the address of the site are given hereunder;

Site address of Neev Infrastructure: At our Andheri (W) and A, C., E and B ward site chowky.

Site address of Shayona Corporation: Construction and strengthening of Nalla No. 1 (part), 3W, 7, 9, 11 and 12 under INDP in Thane City.

7. Details of sales tax/VAT, Octroi or duty other tax/levy on the purchases made by you of each purchase.

As explain above, the seller party takes care of every payment of taxes till the delivery to our site.

8. Copy of stock register showing receipt of goods by you. Site wise details of stock receipt are enclosed.

9. Details of payments made by you alongwith details of entries showing payment to seller in Bank Statement, etc. If paid in subsequent period, the details thereof.

he details of the payments are shown in the copy of Ledger account enclosed of the setter parties and the copy of banks statements are enclosed to cross verify for the payments.

10. Copies of toll payment/Octroi Naka payments if the purchase made from outside, Mumbai. All purchases were made in Mumbai and as explain earlier the duty for any payments related to any taxes till the delivery at our site is of the seller.

Hope the above details and explanations will able your honour for justifying our claim of genuine purchase made by us, and further we are enclosing the details of the sales corresponding the purchases alongwith the copies of labour bills.

Further to prove our genuine purchase we are enclosing the third party confirmations i.e. of our sales parties and also of the parties from which they received these contracts i.e. the Mumbai Municipal Corporation for the completion of the said work and also the corresponding bills raised by them to the Corporation."

7.3. The AO observed from the assessee's aforesaid reply, as detailed hereunder :-

“(i) The assessee has not furnished confirmations of account of the entire above mentioned seller parties. Further, in some cases, it is seen that in some cases, confirmations of account are not countersigned by respective seller party. Hence, furnishing of confirmation of account of some of the parties, which are even not cross signed, cannot be relied upon.

(ii) It is seen that none of the bills of purchases furnished by the assessee company have been signed in lieu of receipt of goods by any person except the bills of Deep

Enterprises, Sambhab Traders & R.K. Traders. Further, the bills does not bear stamp of assessee company in lieu of receipt of goods. Hence, the bills cannot be said to be reliable in nature.

(iii) Further, it is seen from the copies of bills, that the bills are computerized typed in same Font and size of alphabets, which is a very remote possibility in day to day working. The bills also reveal that different supplier of goods, located at different places have used same lorries/trucks for supply of goods to the assessee company, which is also not practically remotely possible. Hence, on these aspects, the bills cannot be said to be reliable in nature.

(iv) Further to above, from copies of certain bills, such as that of Gadadhar Trading which has shown VAT no. 27300803525 allotted on 07.12.2010 and in the case of Vatsa Enterprises which has shown VAT no. 27870754739 allotted on 08.01.2010, it is seen that VAT no. allotted in the case of Vatsa Enterprises on 08.01.2010 is bigger No. in serial order than the VAT No. 27300803525 allotted to Gadhadhar Trading on 07/12/2010, which is not possible because VAT Nos. are allotted on first in first served basis.

(v) Further, in none of the bills produced by the assessee company, the supplier party has mentioned destination of goods delivered. In all the bills only name of the assessee has been mentioned.

(vi) The assessee did not produce the stock register maintained by its project supervisor at its site office so as to show that the goods/material was received by the assessee company.

(vii) As regard to assessee's contention that the rates of material always includes transportation charges and other charges, such as, loading & unloading etc., however, it is seen that in none of the bills, the supplier has charged any additional charges, nor it has been mentioned by the supplier that the rates of material includes all charges and delivery at doorstep of the purchaser party.

(viii) As regard to stock receipt submitted, as claimed by the assessee, it is a work completion register maintained by the Municipal Officer/Engineer. The said register does not endorse the delivery of goods/material as stated by the assessee.

(ix) As regard to assessee is contention that all the material were purchased from Mumbai, it is to mentioned here that the major building materials such as bricks & sand is not manufactured or excavated in Mumbai. It is always import from outside Mumbai. While coming by road to Mumbai, many toll naka as well as at the entry point of Mumbai & Thane city, octroi naka is always there. The receipt of Octroi as well as Toll can be a valid proof of transportation of goods. If the assessee is not having such proof, it is the responsibility of assessee to arrange such receipt from the seller party which was not done so.

(x) As regards to assessee's contention the it has completed the construction work at Thane as well as at Andheri sites, it is to be clarified here that the assessee has shown total purchase of Rs. 18,30,56,344/- and the assessee has procured bogus bills only to the amount of Rs.3,25,98,680/-. The assessee has not classified/ bifurcated to establish that out of the said amount of purchases of material of Rs.3,25,98,680/- also, it has completed the construction/ job work, as it has also claimed other purchases of Rs.15,04,57,664/-in addition to the above amount of Rs.3,25,98,680/-, which may be genuine in nature. Therefore the assessee's contention that it has completed the construction work from purchases of Rs.3,25,98,680 of said material is also not convincing and the bills of labour does prove that the said purchases of Rs.3,25,9,8,680/- is genuine in nature.”

7.4. Thus based on above discussion, the AO was of the view that assessee failed to prove genuineness of the purchases.

7.5 The AO in order to verify assessee's claim for purchases to the tune of Rs. 3,25,98,680/- from the above mentioned twelve parties , issued notices dated 27.02.2014 u/s. 133(6) to the aforesaid twelve seller parties but all the notices dated 27.02.2014 issued u/s. 133(6) of the 1961 Act returned un-served by the postal authorities which further strengthened view of the AO that these parties are non existent and purchases are bogus.

7.6 The AO also observed that assessee has not furnished delivery challans with respect to these alleged bogus purchases to the tune of Rs. 3,25,98,680/-, which led to the additions being made to the tune of 100% of alleged bogus purchases by the AO vide assessment order

dated 27.03.2014 passed by the AO u/s 143(3) of the 1961 Act as in the opinion of the AO , the assessee had failed to prove that it made aforesaid purchases to the tune of Rs. 3,25,98,680/- and the said claim of purchases were disallowed and added to the income of the assessee by the AO .

8. The assessee being aggrieved by an assessment order dated 27.03.2014 framed by the AO u/s 143(3) of the 1961 Act filed first appeal with Ld. CIT(A). The assessee made submissions before Ld. CIT(A) that the assessee company is engaged in the business of execution of contracts for transportation of waste, waste management, works contracts and sub-contracts. The assessee claimed that it has made genuine purchases to the tune of Rs. 3,25,98,680/- which were mainly used for execution of contracts. The assessee claimed that it has duly furnished copies of bills and ledger confirmations and the payments were made through banking channel. The assessee claimed that the aforesaid twelve parties from whom these purchases were made have not deposited VAT amount with the Sales Tax authorities which was collected from the assessee which led to denial of claim for input tax credit to the assessee . It was submitted that the assessee has forgone the said input tax credit in the Sales Tax assessment. The assessee submitted that it was not aware that the said dealers from whom purchases were made will default in payment of VAT with the Sales Tax authorities. The assessee also submitted before Ld. CIT(A) details of purchases and sales for work contract execution by the assessee and it was submitted that it can be verified that all the aforesaid materials alleged to be bogus purchases by the AO which were purchased by the assessee came directly at the site of Municipal Corporation of Greater Mumbai and Thane and the material were utilised in executing contract and some of the material were appearing as stock in hand as at year end. Thus it was submitted that material represented by aforesaid alleged bogus purchases were duly accounted for by the assessee. It was submitted that AO has not

verified the same for which the assessee is not at fault. It was submitted that the ledger confirmation from the creditor were duly submitted before the AO and there is a reconciliation wherein sales were backed by purchases. The assessee also relied upon certain case laws , detailed hereunder:-

(i) *CIT v. President Industries (2002) 258 ITR 654 (Guj.) (HC) (655)*

(ii) *CIT v. Balachand Ajit Kumar (2003) 263 ITR 610 (MP) (HC) (612-613)*

(iii) *Sanjeev Woolen Mills v. CIT (2005) 279 ITR 434 (SC)*

It was also submitted that these purchases were duly accounted for in the books of accounts of the assessee and payments were made through banking channel. The assessee relied upon decision of ITAT, Ahemdabad in the case of General Mechanical Works v. ACIT , dated 14.03.2014 wherein profits embedded in these purchases was estimated which stood disallowed and it was submitted that entire purchases cannot be held to be bogus and disallowed as was done by AO in the case of assessee. The assessee claimed that the entire purchases are accounted for in its books of accounts and payments were made through proper banking channels to the suppliers. The assessee claimed that merely because these suppliers defaulted with the Maharashtra VAT authorities in making payment of VAT , these purchases cannot be disallowed.

8.2 The Ld. CIT(A) after considering submissions of the assessee observed that the information was received from Sales Tax Authorities that the assessee is beneficiary of bogus purchases from Hawala Dealers who have confessed before Sales Tax Authorities that they were engaged in issuing bogus bills without supplying any material. The learned CIT(A) also observed that Investigation Wing of Mumbai had provided a list of Hawala bill racketeers who were issuing bogus bills without supplying any material. The assessee was stated to be beneficiary of bogus bills to the tune of Rs. 3,25,98,680/- issued by

aforesaid twelve hawala operators wherein only bogus invoices were issued without supplying any material. The learned CIT(A) also observed that the assessee has produced transportation bills and consumption of material purchased but has failed to produce these twelve parties before the AO and even the assessee failed to produce these parties before learned CIT(A) despite being asked by Ld. CIT(A) to produce the said parties for verification. The Ld. CIT(A) observed that these suppliers were infact assessee's witnesses and the assessee is required to produce these suppliers before the authorities which the assessee had failed to produce. The Ld. CIT(A) considered the ratio of decision of following case laws , as detailed hereunder:-

- (1) CIT v. Durgaprasad More 82 ITR 540 .
- (2) Sumati Dayal v.CIT 214 ITR 801
- (3) Jamnaprasad Kanhaiyalal v. CIT 130 ITR 244 (SC).
- (4) Sri Meenakshi Mills Ltd., 63 ITR 609 (SC)
- (5) McDowell & Co. 154 ITR 148 (SC)
- (6) CIT vs. Daulat Ram Rawatmull (1973) 87 ITR 349
- (7) Chuharmal vs. CIT (1998) 172 ITR 250/ 38 Taxman 190
- (8) Dhakeswari Cotton Mills Ltd. Vs. CIT (1954) 26 ITR 775
- (9) Nikunj Eximp In ITA no. 5604 of 2010 (Bombay High Court);
- (10) Balaji Textiles 49 ITD 177 (Bom)
- (11) Rajeev G. Kalathil in ITA no. 6727/Mum/2012 and CO no. 06/Mum/2014
- (12) Nikunj Eximp (2014) 48 Taxmann.com 20 (Bom),.
- (13) Killick Nixon Ltd., vs DCIT (2012) 20 Taxmann.com 703 (Bom)
- (14) B.V vs. Union of India (2012) 204 Taxmann.com 408/ 17 Taxamann.com 202
- (15) Union of India vs. Azadi Bachao Andolan (2004) 10 SCC 1
- (16) Mathuram Agarwal v. State of Madhya Pradesh (1999) 8 SCC 667
- (17) Sri Ganesh Rice Mills Vs. CIT (2007) 294 ITR 316 (All.)
- (18) Khandelwal Trading Co. vs. ACIT (1996) 55 TTJ 261 (JP)
- (19) Deoria Oxygen Company vs. CIT (2007) 160 Taxman 427 (ALL.)
- (20) Dhakeswari Cotton Mills Ltd. vs. CIT (1954) 26 ITR 775
- (21) Seth Gurmukh Singh vs. CIT (1994) 12 ITR 393
- (22) Samurai Software P. Ltd., vs. CIT (2008) 299 ITR 324 (Raj.)
- (23) CIT vs. La Medica (2001) 250 ITR 575
- (24) Indian Woolen Carpet Factory vs. ITAT (2002) 125 Taxman 763 (Raj.)
- (25) Sanjay Oilcake Industries vs. CIT (2009) 316 ITR 274 (Guj.)

- (26) ACIT vs. Tribhovandas Bhimji Zaveri (2000) 74 ITD 92 (Mum).
- (27) Homi Jehangir Gheesta vs. CIT (1961) 41 ITR 135
- (28) T. Devashaya Nadar vs. CIT (1964) 51 ITR 20 (Mad.)
- (29) R. S Dass vs. Union of India AIR 1967 SC 593.
- (30) Chairman, Board of Mining Examination vs. Ramjee AIR 1977 SC 965.
- (31) GTC Industries Ltd., vs ACIT (1998) 65 ITD 380 (Bom.).
- (32) SBI vs. S.K Sharma AIR 1996 SC 364
- (33) Bholanath Polyfab Pvt. Ltd., 355 ITR 290 (Guj.)
- (34) Sanket Steel Traders vs. ITO (IT Appeal no. 2801 & 2937 (Ahd) of 2008 dated 20.05.2011
- (35) Vijay Proteins Ltd., vs. ACIT (1996) 58 ITD 428 (Ahd.)
- (36) CIT vs. Simit Sheth (2013) 38 Taxmann.com 385 (Guj)
- (37) Vijay M. Mistry Construcion Ltd., 355 ITR 498 (Guj)

8.3 The learned CIT(A) observed that the above cases are directly applicable to the facts of the assessee's case. The learned CIT(A) observed that these parties are not existing but however AO had not given any adverse finding as to consumption /sales of goods and as per learned CIT(A) , now the issue boils down to finding the profits embedded in these purchases , which Ld. CIT(A) to estimate profits embedded in these purchases @ 12.5% as income of the assessee which was ordered by learned CIT(A) to be brought to tax vide appellate order dated 08.03.2017 .

9 Aggrieved by the decision of learned CIT(A) granting relief to the assessee by estimating profits embedded in these purchases @12.5% as income of the assessee to be brought to tax vide appellate order dated 08.03.2017 , the revenue has come in an appeal with the tribunal. The Ld. DR submitted that AO has made additions to the tune of 100% of alleged bogus purchases , while Ld. CIT(A) has restricted the same @ 12.5% of the alleged bogus purchases. The Ld. DR submitted that the revenue has filed an appeal as it is aggrieved by appellate order dated 08.03.2017 passed by Ld. CIT(A) and our attention was drawn to ground no. 2 filed by the Revenue. It was submitted that the assessee could not prove genuineness of these purchases and reliance was placed on the decision of Hon'ble Supreme Court in the case of N.K Proteins Ltd. (Supra) and prayers were made to confirm the addition to the tune of 100% alleged bogus

purchases by relying on assessment order framed by the AO. On the other hand, the Ld. Counsel for the assessee prayed that the additions as were confirmed by Ld. CIT(A) be upheld . It was submitted that assessee has not filed any appeal against decision of the Ld. CIT(A) which stood accepted by the assessee and reliance was placed on decision of Ld. CIT(A). Thus, prayers were made by learned counsel for the assessee to confirm the appellate order passed by Ld. CIT(A).

10. We have heard rival contentions and perused the material on record. We have observed that the assessee is engaged in the business of execution of contracts for transportation of waste, waste management, works contracts and sub-contracts. The assessee is working for executing work contracts with Municipal Corporation of Greater Mumbai and Municipal Corporation of Thane as sub-contractor. The assessee has made total purchases to the tune of Rs. 18,30,56,344/- during the year under consideration. Since , the assessee is executing work contracts with aforesaid Municipalities albeit as sub-contractor, these materials so purchased are intended to be consumed for executing of work contracts awarded by these Municipalities and onus is on the assessee to prove that these materials were duly utilised/consumed in executing of work orders through cogent evidences. The Municipalities keep proper consumption records of the material wherein every receipt as well consumption of material at site is entered in the stock records which requires authentication by officials of the Municipalities. Further, the said material has to be in accordance with stipulated specification and quantity as provided in the work order . Thus, the onus is very heavy on the assessee to prove consumption/utilisation of the aforesaid material so purchased was duly consumed in the intended work executed for Municipalities at Greater Mumbai and Thane for which it carried out the work as sub-contractor by bringing on record cogent evidences to substantiate its contentions. The AO in the instant case received incriminating information from Maharashtra VAT authorities

and Investigation Wing, Mumbai that the assessee is beneficiary of bogus purchases from twelve hawala dealers as detailed hereunder to the aggregate value of purchases to the tune of Rs. 3,25,98,680/- wherein these hawala dealers have merely issued bogus invoices without supplying any material physically and the assessee is stated to be beneficiary of these alleged bogus purchases . The details of the said alleged hawala dealers who have allegedly issued bogus invoices to the assessee without supplying any material are as under:

Sr. No.	Name of the party	Amount involved (Rs.)
1	M/s. Vatsa Enterprises	37,47,358
2	M/s. Excel Industries	28,16,575
3	M/s. Deep Enterprises	12,62,735
4	M/s. Sambhav Traders	11,34,921
5	M/s. R.K. Traders	14,61,625
6	M/s. Ameer Enterprises	29,94,221
7	M/s. Gaddhar Trading Co.	21,41,040
8	M/s. Ashar Impex	29,04,959
9	M/s. Vijami Impex	31,25,469
10	M/s. Linion Tradelink	33,35,152
11	M/s. Banjara Enterprises	37,53,249
12	M/s. A. K. Enterprises	39,21,376
	TOTAL	3,25,98,680

The AO made additions to the tune of 100% of aforesaid alleged bogus purchases to the income of the assessee. The AO had observed many discrepancies in the submissions of the assessee, such as that the assessee did not submit confirmations from some of these parties and in some cases the confirmations submitted were not countersigned by these parties. The AO also noted that all the bills/invoices from these twelve parties were prepared in same font and size of alphabets. The said twelve selling parties albeit located at different places have used same lorries/trucks for alleged supplies of goods to the assessee. The delivery of goods as well consumption of goods cannot be proved. The destination of goods has not been mentioned in the bills as the materials are meant for government contracts and are to be unloaded at work site to be utilised/consumed for executing work orders. The AO observed that work completion register maintained by municipality did not endorse the delivery of the goods as alleged to be made from these twelve parties. The assessee did not produce evidences such as octroi receipts to substantiate movement of goods. The other discrepancies are also noticed by the AO which are mentioned in para 4.3 of the AO order at page 8-10 of assessment order. It is an admitted position that notices issued u/s 133(6) returned unserved by postal authorities. It is also admitted position that the assessee could not produce these parties before the AO as well learned CIT(A). The AO disallowed 100% of these alleged bogus purchases while learned CIT(A) upheld additions to profits embedded in these purchases which was estimated @12.5% of alleged bogus purchases. The Revenue has alleged that the material represented by bogus invoices issued by these twelve hawala dealers were never supplied by these parties and is merely an attempt by the assessee to inflate expenses and to evade taxes. The learned CIT(A) has also held that these purchase invoices are bogus and material has not been supplied under these invoices but on the ground that transportation of these material and consumption stood proved, the learned CIT(A) upheld additions to the tune of 12.5% of alleged bogus purchases as profits embedded in

these alleged bogus purchases. It is an admitted position that the assessee is executing work contract with Municipalities of Greater Mumbai and Thane as sub-contractor and had these material would have been genuinely supplied which was mainly in the nature of cement, sand , metal, bricks etc , it would have been delivered at work site and then consumed for execution of work contract. Under these circumstances , it become relevant to see the utilisation/consumption details/evidences of these material as filed by the assessee. The assessee has filed paper book containing 277 pages with tribunal. The evidences with respect to these alleged bogus purchases are filed from page 74-277/paper book. It is important to see these evidences as are filed in paper book with respect to these alleged bogus purchases. Perusal of page 74-82/paper book reveals that these are confirmations filed by the assessee with respect to these alleged suppliers. Perusal of page 74/paper book reveals that this is confirmation of Vatsa Enterprises. The assessee has made first purchase on 15.11.2010 from this party in the year under consideration. The total purchases are from 15.11.2010 to 31.01.2011 made by assessee from Vatsa Enterprises aggregating to Rs. 37,47,358/- during financial year 2010-11. The balance outstanding to be payable to this party as at 31.03.2011 by assessee is also Rs. 37,47,358/-. Thus, as could be seen from the confirmation filed by the assessee of this party namely Vatsa Enterprises , the assessee has not made any payment to this party against purchases made during financial year 2010-11. The purchases has also taken place during November 2010 to January 2011. The assessee has stated to have purchased Metal , River Sand and Powder from this party. The invoices are placed in paper book/page 83 to 103. In purchases , Lorry Number is not stated to be complete like 'MH 02K 6019' but is stated to be merely '6019'. This trend is noticed in all the invoices submitted by assessee in paper book of all the suppliers namely Vatsa Enterprises, Excel Enterprises , Deep Enterprises, Ameer Enterprises and so on. It is highly improbable that all these parties will not write fully lorry details but will write only

number of Lorry. The second confirmation of account is filed of Excel Enterprises which also reveal same trend that purchases started from 15.11.2010 and ended on 31.03.2011 during the year under consideration , aggregating to Rs. 28,16,575/-. It is observed that the assessee again did not made any payments to the said party during entire financial year. Similar trend and pattern is observed with respect to purchases made from Ameer Enterprises which started from 15.11.2010 and ended on 31.03.2011 , aggregating to Rs. 29,94,221/- while no payments are made by the assessee for the entire year and balance outstanding as on 31.03.2011 is Rs. 29,94,221/-. The balance outstanding to be payable by assessee to said party as at 31.03.2011 is Rs. 29,94,221/- . The purchases were made in short period from 15.11.2010 to 31.03.2011. With respect to other parties namely Gadadhar Trading Co. , Ashar Impex, Vijami Impex, Linion Tradelink, Banjara Enterprises, A.K.Traders for which the assessee filed confirmations , exactly similar trends and patterns are observed. It defies cannon of all commercial logic and expediency that all these supplier parties are supplying material without seeking their payments from the assessee as not even a single payment has been made by the assessee to all these aforesaid suppliers till the end of the previous year. In the rest of the cases , the assessee has not filed any confirmations. The assessee has only filed invoices and no consumption details are filed by the assessee. The assessee has not filed any delivery proof of the material allegedly supplied under these invoices nor evidences from Municipal Corporation of Greater Mumbai and Thane Municipal Corporation are filed by the assessee. The incriminating information was received from Sales Tax Department as well Investigation Wing, Mumbai that these parties are indulging in issuing bogus purchases invoices without supplying any material physically wherein these parties have deposed before Maharashtra Sales Tax Authorities that they are indulging in issuing bogus invoices and the assessee is stated to be beneficiary of these alleged bogus purchases. The assessee could not produce these parties before AO as

well learned CIT(A) for verification , enquiry and recording of their statement . The notices issued u/s 133(6) by the AO to these parties for verification returned unserved. The proof of transportation and delivery of the material was not filed by the assessee. The consumption/utilisation details of the material is also not filed. In this case, the material under these invoices was intended to be utilised for executing contracts with Municipalities of Greater Mumbai / Thane by assessee as sub-contractor. The onus was very heavy on assessee to prove consumption/utilisation of material, which it could not discharge as no consumption/utilisation details were furnished. There are several inconsistencies noticed by the AO in para 4.3 of assessment order, which also remained un-rebutted by the assessee. Thus, under these facts and circumstances taken cumulatively , we are of the considered view that appellate order passed by learned CIT(A) cannot be upheld/sustained and we set aside the appellate order passed by learned CIT(A) and upheld/sustain the assessment order passed by the AO as it is a fit case for sustaining additions to the tune of 100% of alleged bogus purchases . The Revenue succeeds on this issue. We order accordingly.

11. In the result, appeal of the Revenue in ITA No. 4929/Mum/2017 for ay: 2011-12 stand allowed as indicated above.

Order pronounced in the open court on 20.08.2019.

आदेश की घोषणा खुले न्यायालय में दिनांक: 20.08.2019 को की गई

Sd/-

(SANDEEP GOSAIN)

JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)

ACCOUNTANT MEMBER

Mumbai, dated: 20.08.2019

Nishant Verma

Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI