

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH MUMBAI
BEFORE SHRI C.N.PRASAD, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA No.5781/Mum/2017
(Assessment Year: 2013-14)

DCIT,CC-6(3) Room No.1926, 19 th Floor Air India Building Nariman Point Mumbai-400 021	Vs.	M/s Chetan R.Shah (HUF) 702, Marathon Max, Kailash Bunglow Lala DeviDayal Road Mulund(West) Mumbai-400 080
		PAN/GIR No.AAAHC9579E
Appellant)	..	(Respondent)

Revenue by	Shri Kumar Padmapani Bora, DR
Assessee by	Shri. J.P.Bairagra, AR
Date of Hearing	28/11/2019
Date of Pronouncement	10/01/2020

आदेश / ORDER

PER G.MANJUNATHA (A.M):

This appeal filed by the revenue is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-54, Mumbai, dated 28/06/2017 and it pertains to Assessment Year 2013-14

2. The revenue has raised the following grounds of appeal:-

(i) *"Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in treating the loan of Rs. 1,40,00,000/-as genuine, when such loan was received from dummy company/entities managed and controlled by Praveen Kumar Jain, and admitted by Shri Chetan C Shah, the Director of the assessee company, as to be in the nature of the accommodation entry.*

(ii) *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in treating the loan of Rs. 1,40,00,000/- as genuine, ignoring the decision of the Hon'ble ITAT in the case of Pavankumar M Sanghvi vs ITO I.T,A, No.2447/Ahd/2016, wherein the Hon'ble ITAT has held that genuineness of the transactions cannot be*

established merely on the basis of documentation filed by the assessee and further probe is required to ascertain whether what was apparent was real".

(iii) "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in allowing the interest expenses of Rs. 26,45,096/- on the loan of Rs. 1,40,00,000/- which has been held to be in the nature of the accommodation entry and sham in the assessment order."

3. The brief facts of the case are that the assessee has filed its return of income for AY 2013-14 on 28/09/2013, declaring total income at Rs.57,12,110/-. In this case, a survey u/s 133A of the Income Tax Act, 1961 was conducted by DDIT(Inv.),Unit-III(2), Mumbai on 25/03/2014 based on the information that the assessee had taken accommodation entries of bogus unsecured loans from various dummy concerns, who are engaged in the business of providing accommodation entries. During the course of survey action, the books of accounts of the assessee were examined and also, the assessee was asked to furnish the details of unsecured loans taken from various parties. On perusal of details filed by the assessee, it was noted that the assessee has received unsecured loans from the concerns/companies operated and controlled by Praveen Kumar Jain, who was one of the leading entry provider through web of companies.

4. The case was selected for scrutiny and during the course of assessment proceedings, the Ld. AO called upon the assessee to file necessary evidences, including confirmation letters from the persons from whom unsecured loans was taken. In response, the assessee has filed various details, including confirmation letters from the persons along with their financial statements and stated that loans taken from above parties are genuine, which are supported by necessary evidences. The assessee, has also filed bank statements

to prove that loans have been taken through proper banking channels either in form of cheques or RTGS forms. The Ld. AO after considering relevant submissions of the assessee and also taken note of material gathered during the course of survey u/s 133A coupled with information collected during the course of search in the case of Praveen Kumar Jain and his associates, came to the conclusion that although, the assessee has filed various details including confirmation letters from the person from whom he had taken loan, but, on perusal of details filed by the assessee, including financial statements of the lenders, it was noticed that all those companies are paper companies which does not have enough financial capacity to explain loans given to assessee company. The Ld. AO, further observed that on perusal of returns filed by those companies it was noticed that although, the companies are reporting high turnover, but when it comes to profit, they have declared meagre profit, which does not support the financial strength to explain unsecured loans given to the assessee. Further, all those companies have reported high sundry creditors on the liabilities side of the balance sheet and on the assets side, the major portion has been deployed under the head loans and advances. Further, although they have received interest on loans and advances given to various parties, but total TDS deducted on said interest income has been claimed as refund. Therefore, he came to the conclusion that all those entities are paper companies controlled and operated by Praveen Kumar Jain to give accommodation entries of unsecured loans to various persons. Therefore, he finally came to the conclusion that unsecured loans taken from the companies operated and controlled by the Praveen Kumar Jain are not explained and accordingly, made additions u/s 68 of the I.T.Act, 1961. Similarly, the

Ld. AO has made additions towards interest paid on said loans amounting to Rs.26,45,096/-, on the ground that when loan borrowed from those parties itself is not proved, consequent interest payment on said loans cannot be accepted as genuine transactions.

5. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated its submissions made before the Ld.AO. The assessee has filed elaborate written submissions on this issue, which has been reproduced at para 6.3 on pages 8 to 13 of Ld. CIT(A) order. The sum and substance of arguments of the assessee before the Ld.CIT(A) are that the Ld. AO has never disputed the identity of the creditors, which is evident from the fact that the assessee has filed complete details, including name and address of the lenders along with their PAN numbers. The assessee, further, submitted that it has filed complete financial statements of the lenders along with ITR filed for the relevant years. The Ld. AO has not made any observations with regard to cash deposits in bank accounts of the lenders before the cheques were issued to the assessee. The assessee has also filed retractions statements of the Praveen Kumar Jain made before the investigation wing. In spite of all these evidences are filed before the Ld. AO, the Ld. AO has ignored all the evidences filed by the assessee and made additions only on the basis of statement of Praveen Kumar Jain, without appreciating the fact that said statement has been retracted by the person, who gave the statement. The assessee has also relied upon plethora of judicial precedents in support of his arguments.

6. The Ld.CIT(A) after considering relevant submission of the assessee and also by relied upon various judicial precedents observed that the assessee has discharged initial burden cast upon u/s 68 of the Act, 1961 by filing enormous details, including confirmation letters from the each lender. The assessee has also proved the genuineness of transactions by filing bank statements of the lenders, as well as the assessee to prove that the loans have been taken through proper banking channel. The assessee has filed further evidences in form of TDS certificate issued to the parties to prove that interest has been paid on said loans after deducting necessary TDS applicable as per law. The Ld.CIT(A), further observed that it was not a case of the Ld. AO that the assessee has not proved capacity of the lenders, because the Ld. AO himself in his assessment order accepted the fact that in the bank accounts of the creditor, there is only RTGS/transfer entries, which itself proves that no cash was introduced prior to advancing loans to the assessee. He, further, observed that the Ld. AO has not brought on record any evidence to suggest that the assessee had paid cash to the loan creditors in lieu of loans received from them. It is also admitted fact that the unsecured loans under consideration have been repaid over a period of a time and also, the assessee has paid interest after deducting necessary TDS applicable as per law. Therefore, he came to the conclusion that the assessee has discharged the burden cast upon it, but the Ld. AO has not brought on records any evidence to prove that the loans taken from creditors are non genuine transactions. Accordingly, he has deleted additions made by the Ld. AO towards unsecured loans taken from those parties. Similarly, the Ld.CIT(A) has deleted consequent interest disallowances made by the Ld. AO on the said loans, on the ground

that once loans have been accepted as genuine transactions, consequent interest paid on said loans cannot be disallowed. The relevant findings of the Ld.CIT(A) are as under;-

6.4.9 From the assessment order it is observed that the Ld. AO has given a factual he bank accounts of the creditors there is only RTGS/Trf entries which no cash was introduced prior to advancing the loans lo the Ld. AO had not brought on record any evidence suggesting that the appellant had paid cash to the loan creditors in lieu of loans received from Them. It is also admitted fact that the unsecured loans under consideration have been repaid over a period of time and on same the appellant has paid interest and TDS thereupon, as per provisions of the Act, The Ld, AO has relied ion of Hon'ble Supreme Court in the case of Navodaya Castle P ltd and that of 'We Calcutta High Court in the case of Precision p Ltd. However, as the explained by the appellant the facts adjudicated therein were different as compared to the facts of the present case, hence the ratio laid down therein is not applicable in the present case.

6.4.10. In respect of unsecured loon creditor under considerations the appellant has submitted the details/evidences as under.

- a. M/s Victory Sales P Ltd- The appellant has submitted the copy of confirmation letter for relevant assessment year, copy of acknowledgement of return of income of relevant assessment year, copy of relevant pages of bank statement of them and itself to establish that the transactions were carried out through proper banking channel.
- b. Jignesh Bhatt HUF- The appellant has submitted the copy of confirmation letter for relevant assessment year, copy of acknowledgement of return "of income of relevant assessment year, copy of relevant pages of bank statement of them and itself to establish that the transactions were carried out through proper banking channel.
- c. M/s. P.Saji Textiles Ltd. The appellant has submitted the copy of confirmation letter for relevant assessment year, copy of acknowledgement of return of income of relevant assessment year, copy of Form 23AC filed with ROC, copy of relevant pages of bank statement of them and itself to establish that the transactions were carried out through proper banking channel,
- d. Sagar Girish Bhatt- The appellant has submitted the copy of confirmation^ letter for relevant assessment year, copy of acknowledgement of return of income of relevant assessment year, copy of relevant pages of bank statement of him and itself to establish that the transactions were carried out through proper banking channel.
- e. Shirish Bhat hUF-The appellant has submitted the copy of confirmation letter for relevant assessment year copy of

acknowledgement of return of income of relevant assessment year, copy of relevant pages of bank statement of them and itself establish that the transactions were carried out through proper banking channel.

The various courts have held that if the identity of the creditors proved and the transaction is through cheque and the income tax assessment particulars are provided then it can be held that the assessee has discharged its onus u/s 68 of the act. In view of the details and evidences submitted by the appellant in respect of above referred creditors, I am of the considered opinion that the Ld. AO was not justify in treating the loan received from above referred five creditors as unexplained cash credit u/s 68 of the Act. Hence, the impugned addition of Rs.1,40,00,000/- is deleted. Accordingly Ground NO.2 is allowed.

6.4.11. The appellant has also challenged disallowance of interest expense of Rs.26,45,096/-. The Ld. AO has disallowed the said interest expense in view of his action of treating unsecured loan of Rs.1,40,00,000/- as unexplained credit u/s 68 of the Act. As discussed above, said addition of Rs.1,40,00,000/- has been deleted and hence the consequential disallowance of interest pertaining to the same at Rs.26,45,096/- is also deleted. Accordingly, the ground No. 3 raised in appeal is allowed.”

7. The Ld. DR submitted that the Ld.CIT(A) was erred in deleting additions made by the Ld. AO towards unsecured loans of Rs.1,40,00,000/- taken from companies/associates controlled and operated by Praveen Kumar Jain, who is a entry provider without appreciating the fact that the assessee had admitted during the course of survey proceedings that loans taken from those parties are accommodation entries. The Ld. DR, further submitted that the Ld.CIT(A) has erred in not considering the decision of ITAT, in the case of Pawan Kumar M.Sangvi vs ITO in ITA No. 2447/Ahd/2016, where the ITAT has discussed the modus operandi of Praveen Kumar Jain, and also held that the loans taken from those companies are accommodation entries. The Ld. DR further submitted that the Ld.CIT(A) has erred in not appreciating the fact brought out by the Ld. AO, in light of evidences collected during the course of survey operations in the case of the assessee and also

search conducted in the case of Praveen Kumar Jain and his associates before he reaching to the conclusion that transactions between the parties are genuine and the assessee has discharged the onus cast upon him u/s 68 of the I.T.Act, 1961.

8. The Ld. AR for the assessee strongly supporting order of the Ld.CIT(A) submitted that the assessee has filed complete details, including confirmation letters from loan creditors to discharge the onus cast upon him u/s 68 of the I.T.Act, 1961. The Ld. AR further submitted that the Ld. AO has never disputed the fact that the assessee has discharged identity of the parties. Insofar as, genuineness of transactions and creditworthiness of the parties although, the assessee has filed enormous details including copies of the return of income filed by the parties along with their financial statements and bank statements, but the Ld. AO has disbelieved all evidences filed by the assessee only for the reasons that Praveen Kumar Jain had admitted in his statement recorded during the course of search that he is involved in providing accommodation entries of unsecured loans to various beneficiaries. But, fact remains that statement of Praveen Kumar Jain has been subsequently retracted by filing an affidavit before the investigation wing and this fact has been brought to the notice of the Ld. AO. Once, statement relied upon by the Ld. AO was no longer was in existence, then the same cannot be considered as an evidence to draw an adverse inference, more particularly, when the assessee has filed all details to prove the transactions between the parties are genuine. In this regard, he relied upon plethora of judicial precedents, including the decision of ITAT, Mumbai, in the case of the DCIT vs Marathon

Fiscal Pvt Ltd. in ITA No.5783/Mum/2017 dated 28/08/2019. The assessee has also relied upon the following case laws.

1. *Decision of Hon. Mumbai ITAT in the case of Dy. CIT vs. M/s. Marathon Fiscal Pvt Ltd., 1TA No. 5783/Mum/2017, dated 28,08,2019*
2. *Decision of Hon. Mumbai ITAT in the case of Dy. CIT vs. M/s. Manba Finance Ltd., ITA Nos. 1448, 1449 & 1467 / Mum/ 2017, dated 05.10.2018*
3. *Decision of Hon. Mumbai ITAT in the case of ACIT v. Shreedham Builders, ITA No, 5589/Mum/2017 dated 22.06.2018, 53 CCH 0212*
4. *Decision of Hon'ble Mumbai ITAT in the case of DCIT v. M/s Jainam Investments, ITA No.s.6099/Mum/2016 dated 10.08,2018, 2019-TIOL-213-ITAT-MUM*
5. *Decision of Hon. Mumbai ITAT in the case of DCIT v. Bairagra Builders P Ltd., ITA Nos. 4691 & 4692/Mum/2015 dated 14.09.2017*
6. *Decision of Hon. Mumbai ITAT in the case of ACIT v A. S Motiwala dated 22.02. 2019, 2019-TIOL-676-1TAT-MUM*
7. *Decision of Hon, Mumbai ITAT in the case of ITO v. Anant Shelters (R) Ltd., 51 SOT 234(Mumbai)*
8. *Decision of Hon'ble Mumbai ITAT in the case of ITO vs. M/s ayuresh Logistics Pvt Ltd. dated 24/06/2019, 2019-TIOL-1421-ITAT-MUM*
9. *Decision of Hon.Mumbai ITAT in the case of DCIT v. M/s Gladiolus Property & Inv. Pvt. Ltd., ITA Nos2924/Mum/2017, dated 16.05.2019*
10. *Decision of Hon. Bombay High Court in the case of PCTT v. J M/s Skylark Build, 1TA Nos. 616 of 2016 daied 24.10.2018, 2018-TIOL-2323-HC-MUM-1T*
11. *Decision of Hon. Bombay High Court in the case of CIT v. Orchid Industries (P.) Ltd., 397 ITR 136*
12. *Decision of Hon. Mumbai ITAT in the case of M/s.. BLA Power Holding Pvt. Lid. vs. ITO dated 10.06.2019, 2019- TIOL-1434-ITAT-MUM*
13. *Decision of Hon. Kolkata ITAT in the case of ITO vs. M/s. Axisline Investment Consultant Pvt Ltd dated 01.06,2019, 2Q19-TIOL-1396-ITAT-KOL*
14. *Decision of Hon. Ahmedabad ITAT in the case of Pavankumar M Sanghvi v. ITO, 59 ITR (T) 389 /165 ITD 260\198-201*

9. We have heard both the parties, perused the material available on record and gone through orders of the authorities below, along with case laws cited by both the parties. The Ld. AO has made additions towards unsecured loans taken from certain companies/associates of Praveen Kumar Jain, on the ground that those companies are paper entries operated and controlled by Praveen Kumar Jain and his associates to give accommodation entries of unsecured loans to various beneficiaries. The Ld. AO has

arrived at such conclusion on the basis of search conducted in the case of Praveen Kumar Jain and his associates and also, survey operation u/s 133A of the Act, conducted in the case of the assessee, where the assessee had given a confession statement and admitted that loans received from Praveen Kumar Jain group of companies are accommodation entries. The Ld. AO has also taken support from the statement recorded from Praveen Kumar Jain during the course of search in his case u/s 132(4) of the I.T.Act, 1961. The Ld. AO had also taken support from the statement of Shri Chetan R.Shah, recorded during the course of survey in the case of the assessee and his associates to come to the conclusion that transactions between the parties are not passed the test laid down u/s 68 of the I.T.Act, 1961. It is the contention of the assessee before the lower authorities that transactions between the parties are genuine, which are support by necessary evidences. The assessee has discharged the onus cast upon it u/s 68 of I.T.Act, 1961 by filing enormous details, including name and address along with PAN number of the lenders, their income tax returns with financial statements for relevant financial year, copies of bank statement of lenders and also confirmations letters from the parties. The assessee further contended that it has paid interest on said loans after deducting necessary TDS applicable as per law. Further, these loans have been subsequently repaid over a period of time through proper banking channels. The assessee has also placed on record the retraction statement filed by Praveen Kumar Jain before the investigation wing and argued that once, the statement on which the additions was made was no longer in existence or retracted, then the same cannot be considered as reliable evidence to draw an adverse

inference against the assessee, more particularly, when the assessee has discharged its onus by filing necessary evidences.

10. In this factual background, if you examine the case of the assessee, in light of provision of section 68 of the I.T.Act, 1961, we have to decide, whether the transactions between the assessee have passed the test laid down u/s 68 of the Act or not. The provisions of section 68 deals with a cases, where any sum found credited in the books of account of the assessee in any financial year for which the assessee, offers no explanation or explanation offered by the assessee, in the opinion of the AO is not satisfactory, then sum found credited may be treated as income of the assessee of that previous year. A plain reading of section 68, makes it very clear that to fix any credit within the ambit of section 68 of the Act, the AO has to examine 3 ingredients, i.e., identity, genuineness of transaction and creditworthiness of the parties. If the assessee proves three ingredients, then the onus shifts to the AO to prove otherwise. In this case on perusal of order of the Id. CIT(A), it was categorically observed that the assessee has discharged its onus by filing all necessary evidences to prove loan transactions between the parties.

11. Having said so, let us examine whether the assessee has discharged the burden cast upon it under section 68 of the Income-tax Act, 1961 in respect of loan received from creditors. The AO has not disputed the fact that the assessee has furnished various evidences to prove identity of the creditors. The AO categorically admitted in his assessment order that the assessee has filed various details including PAN and IT acknowledgement receipt of loan creditors to prove the identity. The AO has disputed genuineness of

transactions and creditworthiness of the parties. According to the AO, the loan creditors are not having capacity to prove creditworthiness and also transaction with the assessee are not genuine. The AO has various reasons to come to the conclusion that the assessee has failed to discharge genuineness of transaction and creditworthiness of the parties. According to the AO, mere furnishing of income-tax returns and balance-sheets of creditors would not be sufficient compliance of discharging genuineness of transactions, that too, in a case where notice issued u/s 133(6) to the creditors to their given addresses were remain unserved. But, fact remains that the assessee has proved the genuineness of transactions by filing bank statements of the lenders to prove that the loans have been taken through proper banking channel. The assessee has filed further evidences in form of TDS certificate issued to the parties to prove that interest has been paid on said loans after deducting necessary TDS applicable as per law. We, further, observed that it was not a case of the Ld. AO that the assessee has not proved capacity of the lenders, because the Ld. AO himself in his assessment order accepted the fact that in the bank accounts of the creditor, there is only RTGS/transfer entries, which itself proves that no cash was introduced prior to advancing loans to the assessee. We, further, observed that the Ld. AO has not brought on record any evidence to suggest that the assessee had paid cash to the loan creditors in lieu of loans received from them. It is also admitted fact that the unsecured loans under consideration have been repaid over a period of a time and also, the assessee has paid interest after deducting necessary TDS applicable as per law.

12. We, further, noted that the assessee has filed enormous details in respect of companies including their PAN details, CIN master data and other details to prove existence of those companies. The assessee also filed details of active status of the company in the website of Ministry of Corporate Affairs. On going through various detailed filed by the assessee, we find that there is no reason for the AO to doubt the genuineness of transactions and creditworthiness of the parties. We further notice that the assessee has filed balance-sheet of all creditors wherein they have huge share capital and reserves and surplus to establish creditworthiness of the parties. We further notice that all companies are having regular business. All these evidences go to prove an undoubted fact that these companies are not paper companies and had recognized business activity. Therefore, we are of the view that the AO was incorrect in treating loans as unexplained cash credit u/s 68 of the Income-tax Act, 1961.

13. Coming to the case laws relied upon by the assessee. The assessee relied upon the decision of co-ordinate bench of ITAT, Mumbai, in light of search conducted in the case of Praveen Kumar Jain and his associates and also, survey conducted in the case of the assessee, and also on the basis of inputs of search conducted in the case of Praveen Kumar Jain and his associates. The co-ordinate bench of ITA, Mumbai, 'D' Bench, in the case of Marathon Fiscal Pvt Ltd. in ITA No.5783/Mum/2017 had considered an identical issue and after considering relevant facts, including search operations conducted in the case of Praveen Kumar Jain and his associates and survey operations conducted in the case of the assessee u/s 133A, came to the conclusion that merely on the basis of admission

during the course of survey additions cannot be made towards loan taken from the parties, more particularly, when the assessee has discharged its onus by filing enormous details, including confirmation letters from the loan creditors. The relevant findings of the Tribunal are as under:-

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Our indulgence in the present appeal has been sought by the revenue for adjudicating two issues, viz. (i) that, as to whether the CIT(A) is right in law and facts of the case in concluding that the unsecured loans of Rs.10,91,50,000/- received by the assessee during the year could not be treated as unexplained cash credits under Sec.68 of the Act; and (ii) that, as to whether the CIT(A) is justified in vacating the disallowance of interest paid on loans amounting to Rs.70,49,112/-. As observed by us hereinabove, the A.O held a conviction that the assessee in the garb of unsecured loans had received accommodation entries from the following 9 concerns:

Sr. No.	Particulars	Amount of loan
1.	Atharva Business P. Ltd.	1,00,00,000
2.	Josh Trading P. Ltd.	1,00,00,000
3.	Casper Enterprises P. Ltd.	1,07,50,000
4.	Olive Overseas P. Ltd.	1,77,00,000
5.	Pragati Gems P. Ltd.	2,25,00,000
6.	Sumukh Commercial P. Ltd.	1,15,00,000
7.	Viraj Mercantile P. Ltd.	2,00,00,000
8.	Lunkad Textile P. Ltd.	50,00,000
9.	Falak Trading Co. P. Ltd.	17,00,000
	Total	10,91,50,000

On a perusal of the assessment orders, we find, that the A.O had drawn adverse inferences as regards the authenticity of the loans raised by the assessee from the aforementioned parties, for the reason, that the said parties were allegedly operated and controlled by Shri. Praveen K. Jain, an infamous accommodation entry provider. Apart there from, it was observed by him, that in the course of the survey action conducted on the assessee company, its director viz. Shri Chetan R. Shah was unable to divulge the details about the lenders from whom the aforesaid loans had been raised and had admitted that the same were in the nature of accommodation entries. In sum and substance, the authenticity of the loan transactions under consideration was not accepted by the A.O for two reasons, viz. that, the aforesaid concerns were controlled and operated by Shri Praveen K. Jain, an infamous accommodation entry provider, who in the course of search proceedings conducted against him

had in his statement recorded under Sec.132(4) admitted that he along with his group entities were engaged in the business of providing accommodation entries ; and (ii) that, Shri Chetan R. Shah, director of the assessee company in the course of the survey proceedings was unaware about the basic details of the lenders who had advanced unsecured loans to "Marathan Group", and had admitted that the unsecured loans raised from Shri Praveen K. Jain were in the nature of accommodation entries. However, as the assessee had not offered the aforesaid unsecured loans disclosed during the course of the survey proceedings amounting to Rs.10,91,50,000/- as its income in its return of income for the year under consideration, therefore, the A.O had called for an explanation as regards the same. In reply, it was submitted by the assessee that Shri Chetan R. Shah, director of the assessee company, had due to lack of information available with him at the time of survey proceedings stated that the various unsecured loans raised by "Marathan Group" were in the nature of accommodation entries. It was the claim of the assessee before the CIT(A) that Shri Chetan R. Shah had thereafter retracted from his aforesaid statement which in itself was recorded in the absence of the requisite details before him. Accordingly, it was the claim of the assessee in the course of the assessment proceedings that it had raised genuine loans from the aforementioned parties. In order to fortify its aforesaid claim the assessee had placed on record supporting documentary evidence, viz. (i) confirmations of the lenders;

(ii) copies of the returns of income for A.Y. 2013-14 of the lender parties; (iii) copies of the annual audited accounts for A.Y. 2013-14 of the lender parties; and (iv) copy of the bank statements of the lender parties from where the loans were advanced to the assessee company. Accordingly, the assessee in discharge of the primary onus that was cast upon it to substantiate the authenticity of the loan transactions had placed on record the aforesaid documentary evidence. It has been the claim of the assessee before the CIT(A) that as all the necessary requisite details in order to establish the identity and creditworthiness of the lenders and also the genuineness of the loan transactions were placed on record, therefore, the A.O without rebutting the said documentary evidence and placing on record any material proving to the contrary was not justified in summarily dislodging the claim of the assessee as regards the authenticity of the loans that were raised by it from the aforementioned parties.

8. We shall in the backdrop of the aforesaid facts deliberate on the observations of the lower authorities. We shall first advert to the statement of Shri Chetan R. Shah, director of the assessee company, which had been heavily relied upon by the A.O for driving home his claim that no genuine loans were raised by the assessee company from the aforementioned lenders. As is discernible from the order of the CIT(A), Shri Chetan R. Shah had during the course of the survey proceedings conducted on the assessee company under Sec.133A, vide his statement dated 25.03.2014, had in his reply to Question no.29 submitted that unsecured loans from parties listed in Table no. 1 and Table no. 2 in the said statements were unsecured loans routed in the books of Marathan

Fiscal Pvt. Ltd., Marathan Realty Pvt. Ltd. and Chetan Shah, HUF during the financial years 2011-12, 2012-13 and 2013-14 were in nature of accommodation entries, and had offered the same for tax in the said respective years. As observed by the CIT(A), Shri Chetan R. Shah had in his reply to Question no. 22 wherein he was called upon to furnish the name of the directors, address, PAN and creditworthiness of the lender companies from whom unsecured loans were taken, had submitted, that he was readily not in a position to give the details sought for. Accordingly, we are in agreement with the view taken by the CIT(A) that the aforesaid admission of Shri Chetan R. Shah has to be read along with the fact that he had categorically stated that he was not in a position to furnish the details that were sought by the survey officials in respect of the lender parties. However, we find that the assessee had not offered the aforesaid amount for tax in its return of income and had in the course of the assessment proceedings furnished with the A.O the requisite details supporting the authenticity of the loan transactions viz. copy of confirmations from lenders, copies of the returns of income filed by the lender parties, copies of the annual audited accounts of the lender parties, and also the copies of the bank accounts of the lenders from where the respective loans had been advanced to the assessee company. Also, Shri Chetan R. Shah had vide his letter dated 01.01.2016 submitted during the course of the assessment proceedings that the surrender made during the course of the survey proceedings was being withdrawn by him. In the backdrop of the aforesaid, we shall now deliberate on the evidentiary value of a statement of an assessee recorded during the course of the survey action conducted under Sec.133A, and as to whether the same on a standalone basis can justify addition in the hands of an assessee, or not. A perusal of Sec.133A(3)(iii) of the Act which vests power with an Income Tax Authority to record the statement of any person in the course of survey proceedings, reads as under:

"(iii) record the statement of any person which may be useful for, or relevant to, any proceeding under this Act."

Accordingly, it is evident that an Income Tax Authority in the course of the survey proceedings conducted under Sec.133A can record the statement of any person which could be useful or relevant to any proceeding under the Act. However, we find that the phraseology of Sec.133A(3)(iii) is entirely different as in comparison to provisions of Sec.132(4) of the Act, wherein the authorized officer can examine anybody on „Oath“, and such statement may be used as evidence in any proceedings under the Act. As the statement recorded under Sec.

133A(3)(iii) of the Act is not recorded on oath, therefore, as had consistently been held by various courts the same has no evidentiary value in absence of any corroborative evidence. In sum and substance, the statement recorded under Sec. 133A can be used to corroborate a state of fact, however, the same on a standalone basis cannot justifiably lead to drawing of any inferences. To sum up, a statement recorded under Sec.133A is simply an information which can be used for

corroborative purpose for deciding any issue in favour or against the assessee. In fact, we find that the evidentiary value of a statement recorded under Sec. 133A of the Act has been subjected to judicial scrutiny and the Hon^{ble} Courts had concluded that the same has no evidentiary value in the absence of any corroborative evidence. Our aforesaid view is fortified by the order of a coordinate bench of the ITAT, Delhi in the case of Mahesh Ohri Vs. ACIT (ITA No.4109 of 2009, dated 08.03.2013) (Del). The Tribunal in its aforesaid order had observed that as the survey officials are not authorized to record the statement on oath, therefore, the statement taken during the course of the survey proceedings is simply an information which can be used for corroborative purpose for deciding any issue in favour or against the assessee. It was observed by the Tribunal as under :

" A p a r t f r o m t h i s s t a t e m e n t , t h e R e v e n u e h a s n o t b r o u g h t a n y t h i n g o n r e c o r d i n s u p p o r t o f i t s c o n c l u s i o n t h a t t h e a s s e s s e e h a s u n d i s c l o s e d i n c o m e . D u r i n g t h e c o u r s e o f s u r v e y , t h e o f f i c e r c o u l d r e c o r d t h i s s t a t e m e n t o f a p e r s o n u n d e r s u b - s e c t i o n (3) (i i i) o f s e c t i o n 1 3 3 A o f t h e I n c o m e - t a x A c t , 1 9 6 1 . T h i s c l a u s e a u t h o r i s e s t h e a u t h o r i t y t o r e c o r d t h e s t a t e m e n t o f a n y p e r s o n w h i c h m a y b e u s e f u l f o r o r r e l e v a n t t o a n y p r o c e e d i n g s u n d e r t h e A c t . H o w e v e r , t h e o f f i c e r i s n o t a u t h o r i s e d t o r e c o r d t h e s t a t e m e n t o n o a t h a n d h e n c e t h e s t a t e m e n t t a k e n d u r i n g t h e c o u r s e o f s e a r c h h a s n o e v i d e n t i a r y v a l u e . I t i s s i m p l y a n i n f o r m a t i o n w h i c h c a n b e u s e d f o r c o r r o b o r a t i o n p u r p o s e f o r d e c i d i n g a n y i s s u e i n f a v o u r o r a g a i n s t t h e a s s e s s e e . T h i s i s s u e h a s c o m e u p b e f o r e t h e H o n ^{ble} K e r a l a H i g h C o u r t i n t h e c a s e o f P a u l M a t h e w s a n d S o n s (s u p r a) a n d t h e c o u r t h a s m a d e t h e f o l l o w i n g o b s e r v a t i o n s (p a g e 1 0 8) :

" S e c t i o n 1 3 3 A (3) (i i i) e n a b l e s t h e a u t h o r i t y t o r e c o r d t h e s t a t e m e n t o f a n y p e r s o n w h i c h m a y b e u s e f u l f o r , o r r e l e v a n t t o , a n y p r o c e e d i n g u n d e r t h e A c t . S e c t i o n 1 3 3 A , h o w e v e r , e n a b l e s t h e i n c o m e - t a x a u t h o r i t y o n l y t o r e c o r d a n y s t a t e m e n t o f a n y p e r s o n w h i c h m a y b e u s e f u l , b u t d o e s n o t a u t h o r i s e t a k i n g a n y s w o r n s t a t e m e n t . O n t h e o t h e r h a n d , w e f i n d t h a t s u c h a p o w e r t o e x a m i n e a p e r s o n o n o a t h i s s p e c i f i c a l l y c o n f e r r e d o n t h e a u t h o r i s e d o f f i c e r o n l y u n d e r s e c t i o n 1 3 2 (4) o f t h e I n c o m e - t a x A c t i n t h e c o u r s e o f a n y s e a r c h o r s e i z u r e . T h u s , t h e I n c o m e - t a x A c t , w h e n e v e r i t t h o u g h t f i t a n d n e c e s s a r y t o c o n f e r s u c h p o w e r t o e x a m i n e a p e r s o n o n o a t h , t h e s a m e h a s b e e n e x p r e s s l y p r o v i d e d w h e r e a s s e c t i o n 1 3 3 A d o e s n o t e m p o w e r a n y I n c o m e - t a x O f f i c e r t o e x a m i n e a p e r s o n o n o a t h . T h u s , i n c o n t r a d i c t i o n t o t h e p o w e r u n d e r s e c t i o n 1 3 3 A , s e c t i o n 1 3 2 (4) o f t h e I n c o m e - t a x A c t e n a b l e s t h e a u t h o r i s e d o f f i c e r t o e x a m i n e a p e r s o n o n o a t h a n d a n y s t a t e m e n t m a d e b y s u c h p e r s o n d u r i n g s u c h e x a m i n a t i o n c a n a l s o b e u s e d i n e v i d e n c e u n d e r t h e I n c o m e - t a x A c t . O n t h e o t h e r h a n d , w h a t e v e r s t a t e m e n t i s r e c o r d e d u n d e r s e c t i o n 1 3 3 A o f t h e I n c o m e - t a x A c t i t i s n o t g i v e n a n y e v i d e n t i a r y v a l u e o b v i o u s l y f o r t h e r e a s o n t h a t t h e o f f i c e r i s n o t a u t h o r i s e d t o a d m i n i s t e r o a t h a n d t o t a k e a n y s w o r n s t a t e m e n t w h i c h a l o n e h a s e v i d e n t i a r y v a l u e a s c o n t e m p l a t e d u n d e r l a w . T h e r e f o r e , t h e r e

is much farce in the argument of learned counsel for the appellant that the statement elicited during the survey operation has no evidentiary value and the Income-tax Officer was well aware of this."

9. Similarly, the Hon'ble Madras High Court has also concluded that statement recorded during the course of survey has no evidentiary value. The special leave petition against the decision of the Hon'ble Madras High Court has also been dismissed by the Hon'ble Supreme Court on September 20, 2012. We have examined the record and we do not find any other material collected by the survey team and used by the Assessing Officer for making the addition of Rs. 2 crores. The contentions of the learned Departmental representative on the strength of the Hon'ble Karnataka High Court decision is that the Department was prevented by the assessee to conduct further inquiry and, therefore, the assessee cannot take as a somersault subsequently. We do not find any force in the submissions of the learned Departmental representative because the Department is managed by trained Revenue officials. They have the knowledge about their authorities while taking statement during the course of survey. The Board has also issued guidelines advising the survey team not to take voluntary disclosure unless incriminating material was collected. In the case of T.P. Indrakumar (supra), the Assessing Officer specifically lay his hands on unexplained gifts, in that situation the assessee had made voluntary disclosure and filed a revised return. In the present case, the Department failed to collect any material during the course of survey and the Assessing Officer is simply harping upon the statement of the assessee, extract supra. According to the authority or it at iv e pr o u n c e m e n t of t h e H o n ' b l e S u p r e m e C o u r t i n t h e c a s e o f S . K h a d e r K h a n S o n (s u p r a) a s w e l l a s t h e H o n ' b l e K e r a l a H i g h C o u r t t h i s s t a t e m e n t d o e s n o t c a r r y a n y e v i d e n t i a r y v a l u e a n d , t h e r e f o r e , n o a d d i t i o n i s s u s t a i n a b l e o n t h e s t r e n g t h o f t h i s s t a t e m e n t . I n v i e w o f t h e a b o v e d i s c u s s i o n , w e f i n d f o r c e i n t h e f i r s t g r o u n d o f a p p e a l r a i s e d b y t h e a s s e s s e e a n d d e l e t e t h e a d d i t i o n o f R s . 2 c r o r e s ."

Also, a similar view had been taken by the Hon'ble High Court of Kerala in the case of Paul Mathews & Sons Vs. CIT (2003) 263 ITR 101 (Ker). In the aforesaid case, it was observed by the Hon'ble High Court that as the statement elicited during the course of the survey operations is not recorded on oath, therefore, the same has no evidentiary value. Further, the Hon'ble Supreme Court in its judgment in the case of CIT Vs. S. Khader Khan Son (2013) 352 ITR 480 (SC), while upholding the view of the Hon'ble High Court of Madras, had held, that as a statement recorded in the course of the survey proceedings does not carry any evidentiary value, therefore, no addition is sustainable on the strength of the said statement. A similar view had also been taken by the Hon'ble High Court of Delhi in the case of CIT Vs. Dhingra Metal Works (2010) 328 ITR 384 (Del). In the aforementioned case, it was observed by the Hon'ble High Court that a statement of an assessee to have evidentiary value should have been recorded on oath. It was observed by the High Court that though an admission was an extremely important piece of evidence, it could not be said to

be conclusive and it was open to the person who made the admission to show that it was incorrect. In the backdrop of the aforesaid judicial pronouncements, it can safely be concluded that the statement recorded during the course of the survey proceedings has no evidentiary value and the same can only be used for corroborative purposes for deciding an issue in the course of the assessment proceedings. Now in the case before us, we find that the assessee in the course of the assessment proceedings had placed on record sufficient documentary evidence to substantiate the authenticity of the loan transactions viz. (i) confirmations of the lenders; (ii) copies of the returns of income for A.Y. 2013-14 of the lender parties; (iii) copies of the annual audited accounts for A.Y. 2013-14 of the lenders parties; and (iv) copy of the bank statements of the lenders. Also, as observed by us hereinabove, the assessee while filing the return of income for the year under consideration had not considered the unsecured loans as its income. In fact, Shri Chetan R. Shah, director of the assessee company had vide his letter dated 01.01.2016 that was submitted during the course of the assessment proceedings categorically withdrawn his statement that was recorded during the course of the survey proceedings. In the backdrop of the aforesaid facts, we are of the considered view that now when Shri. Chetan R. Shah, director of the assessee company had withdrawn his statement that was recorded in the course of the survey proceedings, and had in the course of the assessment proceedings placed on record supporting documentary evidence to substantiate the authenticity of the loan transactions under consideration, therefore it was incumbent upon the A.O to conclusively prove on the basis of corroborative material that the assessee had as a matter of fact obtained accommodation entries in the garb of the aforesaid loan transactions and he could not have simply drawn adverse inferences on the basis of the aforesaid statement recorded in the course of the survey proceedings. As observed by us hereinabove, a statement recorded in the course of the survey proceedings can only be used for corroborative purposes for deciding any issue in favour or against the assessee. However, in the case before us, we find that the A.O had simply harped on the admission made by Shri Chetan R. Shah, director of the assessee company in his statement recorded under Sec.133A and had absolutely failed to place on record any documentary evidence which despite withdrawal of the aforesaid statement would have corroborated the facts which were stated by him. In our considered view, as a statement recorded under Sec.133A has no evidentiary value in absence of any corroborative evidence, therefore, the same on a standalone basis could not have justified drawing of adverse inferences as regards the authenticity of the loan transactions, specifically when the assessee had declined to act upon the same and had placed on record supporting documentary evidence to prove the authenticity of the said transactions. In fact, we find that the CBDT in its letter No. F.No.286/2/2003, IT (Inv-II), dated 10.03.2003 had observed that instances have come to its notice that in certain cases the assesses were forced to confess undisclosed income in the course of the search & seizure and survey operations. It was noticed by the Board that as such baseless disclosures would be divorced from the actual facts and would not be backed by any credible evidence, therefore, the assesses at the time of filing their returns of income would retract from the same. Accordingly, the Board taking cognizance of the said ground realities had in its aforesaid circular emphasised that the officials in the course of the search & seizure proceedings and survey operations should focus and concentrate on collection of evidence of income which leads to

information on what has not been disclosed or is not likely to be disclosed by the assessee before the department, and no attempt should be made to obtain confession as regards the undisclosed income. The said CBDT Circular reads as under:

"Instances have come to the notice of the Board where assessee's have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assessee's while filing returns of income. In these circumstances, confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Department. Similarly, while recording statement during the course of search, seizures and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also, Assessing Officers should rely upon the evidence submitted gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders."

On the basis of our aforesaid observations, we are of a strong conviction that in the case before us, the mere admission of undisclosed income by the assessee in the course of the survey proceedings, which we are afraid is in itself not free from doubts and debate and in fact had been withdrawn, thus could not have been acted upon by the revenue in isolation for drawing of adverse inferences and making exorbitant additions in the hands of the assessee de hors any corroborative material. In sum and substance, we are of a considered view that the heavy reliance placed by the A.O on the retracted statement of Shri Chetan R. Shah, director of the assessee company that was recorded in the course of the survey proceedings conducted on 25.03.2014, in the absence of any corroborative material could not have been acted upon by the revenue for drawing adverse inferences in the hands of the assessee.

9. We shall now advert to the contention of the revenue that the CIT(A) had erred in treating the loans aggregating to Rs.10,91,50,000/- as genuine, despite the fact that the said loans were received from dummy companies/entities managed and controlled by Shri Praveen Kumar Jain, an infamous accommodation entry provider. As is discernible from the orders of the lower authorities, search and seizure action was conducted on Shri Praveen Kumar Jain, an infamous accommodation entry provider. As claimed by the revenue, Shri. Praveen Kumar Jain had in his statement recorded under Sec.132(4) admitted before the investigation wing that he was controlling and operating various dummy concerns/companies through which he had provided accommodation entries to various persons. As observed by us hereinabove, it is a fact borne from the orders of the lower authorities that Shri Praveen Kumar

Jain had retracted from his aforesaid statement by filing an „affidavit“ alleging that as the search operations had continued at length for 9 days, therefore, it had taken a toll on his mental faculties. Be that as it may, we find that it is not the case of the revenue before us that the aforesaid person had at any stage in his statement recorded during course of the search proceedings ever alleged that he had provided accommodation entries to the assessee company. We shall in the backdrop of the aforesaid facts emerging from the statement of Shri Praveen Kumar Jain recorded under Sec.132(4) of the Act, which thereafter is stated to have been retracted by him, therein deliberate on the evidentiary value of the same insofar the case of the assessee before us is concerned. As observed by us hereinabove, one of the material aspect which had weighed in the mind of the A.O while concluding that the assessee had obtained accommodation entries from the aforementioned companies which were stated to be operated and controlled by Shri Praveen K. Jain, was the statement of the said person recorded under Sec. 132(4) of the Act. As observed by us hereinabove, it has throughout been the claim of the assessee that the aforesaid person had never stated that he had provided accommodation entries to the assessee. Apart therefrom, it was also submitted by the assessee before the A.O that as Shri Praveen Kumar Jain had retracted from his statement that was recorded during the course of the search proceedings, hence no cognizance of the same could thereafter be drawn. In fact, the assessee in order to fortify its claim that it had raised genuine loans from the aforementioned companies had in the course of the assessment proceedings placed on the record of the A.O sufficient documentary evidence to support the same. We have given a thoughtful consideration to the facts of the case in the backdrop of the settled position of law, and before proceeding any further may herein observe that in the case before us the statement of Shri Praveen Kumar Jain, which had thereafter been retracted by him (though not accepted by the revenue) had been heavily relied upon by the A.O for arriving at a conclusion that the assessee had in the garb of unsecured loans raised accommodation entries from the aforementioned 9 parties. In sum and substance, we are confronted with a situation where a statement of a „third party“ which had been retracted is being acted upon by the revenue for drawing of adverse inferences and characterising the loan transactions under consideration as bogus/sham. On a perusal of sub-section (4) of Sec.132 of the Act, an authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceedings under the Act. Accordingly, it can safely be gathered that the statement recorded in the course of the search proceedings under Sec.132(4) "may" thereafter be used in evidence in any proceedings under the Act. It is thus abundantly clear that the A.O is vested with a discretion to use a statement recorded under Sec.132(4) as an evidence in the course of any proceedings under the [Income Tax Act](#). In our considered view, the CIT(A) has rightly concluded that the word "may" clearly suggests that the statement recorded under Sec. 132(4) may therein be rebutted subsequently if the

assessee is able to prove with documentary evidence that the facts earlier stated were not correct. In fact, we are persuaded to subscribe to the view of the CIT(A) that though a statement recorded under „oath“ is an important piece of evidence however, addition/disallowance cannot be made solely on the basis of such statement in the absence of any corroborative evidence supporting the same. As a matter of fact, in a case where a statement had been retracted by the assessee, it becomes all the more onerous on the part of the A.O to corroborate the statement recorded in the course of the search proceedings on the basis of supporting evidence. As had been observed by various courts, a statement recorded under Sec.132(4) is treated as a piece of evidence in the proceedings under the Act, as long as the same is not retracted. However, in case the assessee retracts the statement, the evidentiary value of the said statement suffers a serious dent. Accordingly, the mandate envisaged under sub-section (4) of Sec.132 of using the statement as evidence in any proceedings under the Act gets honoured only when there is no other version of the assessee vis-a-vis the said statement. To sum up, a statement recorded under Sec.132(4) has though an evidentiary value, however, the same cannot be ascribed the status of a proven fact. In our considered view, a retracted statement under Sec.132(4) of the Act would require some corroborative material for the A.O to proceed and make additions on the basis of the facts stated in such statements. Now, in the case before us, we are seized with a situation where the revenue has sought to draw adverse inferences in the hands of the assessee by acting upon a statement recorded under Sec.132(4) of a „third party“, which as observed by us hereinabove in itself is found to have been retracted. We cannot remain oblivious of the fact that now when a statement recorded under Sec.132(4) of the Act, which had thereafter been retracted, (though not accepted by the department) would require some corroborative material for the A.O to make additions on the basis of such statement in the hands of the person whose statement it is, therefore, obviously, a much higher burden would be cast upon the revenue at the time of using such statement for drawing of adverse inferences in the hands of a „third party“. Admittedly, an admission recorded in a statement under Sec.132(4) is a vital piece of evidence, but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect. Our aforesaid view is fortified by the judgment of the Hon'ble Supreme Court in the case of Pullangode Rubber Product Company Ltd. Vs. State of Kerala 91 ITR 18 (SC). Also, a similar view had been taken by the Hon'ble High Court of Andhra Pradesh in the case of CIT Vs. Naresh K. Aggarwal (2014) 369 ITR 171 (AP). In the said case, it was observed by the Hon'ble High Court that a statement recorded under sub-section (4) of Sec.132 shall be treated as a piece of evidence in the proceedings under the Act, as long as the said statement is not retracted. Also, a similar view had been taken by the Hon'ble High Court Delhi in the case of CIT Vs. Sunil Aggarwal (2015) 379 ITR 367 (Del). In the aforementioned case, it was observed by the Hon'ble High Court that a retracted statement under Sec.132(4) of the Act would require some corroborative material for the A.O to proceed to make additions on the basis of such statement. We find that the Hon'ble Supreme Court in the case of Pullangode Rubber

Produce Co. Ltd. Vs. State of Kerala & Anr. (1973) 91 ITR 18 (SC), had observed, that an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It was observed by the Hon'ble Apex Court that it was open to the person who made the admission to show that it was incorrect. Relying on the aforesaid judgment of the Hon'ble Apex Court, we find, that a coordinate bench of the Tribunal viz. ITAT, Mumbai in the case of Tribhuvandas Bhimji Zaveri, ITA No. 2250 & 2251/Mum/2013, dated 04.11.2015, had drawn an analogy and had observed that though an admission made in a statement recorded under Sec.132(4) is an extremely important piece of evidence but it cannot be said that it is conclusive as it is open to the person who made the admission to show that it is incorrect. We further find that the Hon'ble High Court of Gujarat in DCIT (Investigation) Vs. Narendra Garg & Ashok Garg (AOP) (ITA No. 1531 & 1532 of 2007, dated 28.07.2016), had held, that as the assessee had retracted from his statement recorded under Sec.132(4), which though was not accepted by the revenue, therefore, it was incumbent on the part of the A.O to have supported the addition made on the basis of the disclosure made by the assessee in his aforesaid statement on the basis of evidence collected during the course of the search proceedings. It was observed by the Hon'ble High court that the A.O cannot proceed on presumption under Sec. 132(4) of the Act and there must be something more than bare suspicion to support the assessment or addition. We find that the Hon'ble High Court in the aforementioned case had observed that even in a case where the retraction of the disclosure made by the assessee in his statement recorded under Sec.132(4) is not accepted by the revenue, even then, the addition/disallowance has to be based by the revenue on the basis of evidence collected during the course of the search proceedings. Accordingly, on the basis of our aforesaid deliberations, we are of the considered view that merely on the basis of admission an assessee cannot be saddled with additions unless and until some corroborative evidence is found in support of such admission.

10. We shall now advert to the facts of the case before us in the backdrop of the aforesaid settled position of law. Admittedly, as observed by us hereinabove, the A.O had drawn adverse inferences in the hands of the assessee on the basis of the statement of Shri Praveen Kumar Jain, that was recorded under Sec. 132(4) of the Act, despite the fact that the said person had thereafter retracted from his aforesaid statement on the basis of an „affidavit“ filed with the department. We are unable to persuade ourselves to subscribe to the view taken by the A.O that despite absence of any corroborative evidence which would substantiate that the assessee had obtained any accommodation entries in the garb of unsecured loans from the aforementioned 9 companies, it was to be so presumed merely on the basis of the aforesaid standalone statement (which too had been retracted) of the aforementioned person viz. Shri Praveen Kumar Jain. We find that though search proceedings under Sec.132 were conducted in the case of Shri Praveen Kumar Jain, however, there is nothing discernible from the orders of the lower authorities which would reveal that any „material“ evidencing that the assessee as a beneficiary had obtained accommodation entries from the

said person had surfaced or was unearthed during the course of the said proceedings. Also as observed by us hereinabove, there is nothing discernible from the records which would reveal that the aforesaid person had ever alleged that he had provided any accommodation entries to the assessee company. We also cannot remain oblivious of the fact that in the absence of any corroborative evidence the statement of the aforementioned „third party“ viz. Shri Praveen K. Jain could not be used in isolation for drawing of adverse inferences in the hands of the assessee. Apart therefrom, we find that as is discernible from the assessment order, though the assessee had sought a „cross-examination“ of Shri Praveen Kumar Jain, whose statement was being heavily relied upon by the A.O for drawing of adverse inferences in its hands, however, the same was not allowed to him. In our considered view, the aforesaid failure on the part of the A.O to allow a cross-examination of the aforementioned party viz. Shri Praveen Kumar Jain is in itself a flagrant violation of the basic tenets of the principle of natural justice. Our aforesaid view is fortified by the judgment of the Hon^{ble} Supreme Court in the case of Andaman Timber Industries Vs. Commissioner of Central Excise (2015) 281 CTR 241 (SC). In the said case, it was observed by the Hon^{ble} Apex Court that not allowing the assessee to cross-examine the witnesses whose statements were made the basis for passing the impugned order by the Adjudicating Authority amounted to a serious flaw, which being for violation of the principles of natural justice rendered the said order as nullity. We find that the CIT(A) while disposing off the objection of the assessee that the A.O had erred in not allowing cross-examination of Shri. Pravin Kumar Jain, had inter alia observed, that now when it was held by him that the A.O without bringing any corroborative material on record was in error in relying on the statement of the aforementioned person, therefore, the assessee was not prejudiced in any manner by the action of the A.O in not affording an opportunity to him in cross- examining the said person. Apart therefrom, we find that the CIT(A) had observed that neither the assessee had in the course of the appellate proceedings requested that the A.O be directed to grant cross-examination of Shri. Praveen Kumar Jain, nor the failure to provide such cross-examination would render the assessment order as void. As the assessee has not assailed before us the aforesaid observations of the CIT(A), therefore, we refrain from adverting to the same. We thus in terms of our aforesaid observations are of the considered view that the CIT(A) had rightly concluded that the reliance placed by the A.O on the statement of Shri Praveen K. Jain, which in the backdrop of the aforesaid retraction is in itself not free from doubts and debates, could not have been summarily acted upon by the A.O in the absence of any corroborative material for drawing of adverse inferences in the hands of the assessee. In fact, we find that there is no whisper in the assessment order as to how and on what basis the A.O had sought to dislodge the authenticity of the aforesaid loan transactions by referring to the statement of Shri Praveen Kumar Jain. Accordingly, on the basis of our aforesaid deliberations we are of the considered view that the CIT(A) had rightly concluded that in the absence of any corroborative material the A.O could not have proceeded with and made additions on the basis of the retracted statement of Shri Praveen Kumar Jain.

11. We shall now advert to the material which had been placed on record by the assessee in the course of the assessment proceedings to substantiate the authenticity of the loan transactions under consideration. Also, we shall deliberate upon the observations of the A.O on the basis of which he had declined to accept his aforesaid claim. As is discernible from the orders of the lower authorities, the assessee in order to drive home its claim that it had raised genuine loans from the aforementioned 9 parties had placed on record supporting documentary evidence viz. (i) confirmations of the lenders;

(ii) copies of the returns of income for A.Y. 2013-14 of the lender parties; (iii) copies of the annual audited accounts for A.Y. 2013-14 of the lenders parties; and (iv) copy of the bank statements of the lenders from where the loans were advanced to the assessee company. As a matter of fact, the CIT(A) had specifically referred to the documentary evidence placed on record by the assessee on a party wise basis, as under :

"a. M/s Atharv Business P. Ltd. The appellant has submitted the copy of confirmation letter for relevant assessment year, copy of acknowledgement of return of income of relevant assessment year, copy of annual audited accounts of relevant assessment year, copy of relevant pages of bank statement of them and itself to establish that the transactions were carried out through proper banking channel.

b. M/s Josh Trading P Ltd- The appellant has submitted the copy of confirmation letter for relevant assessment year, copy of acknowledgement of return of income of relevant assessment year, copy of annual audited accounts of relevant assessment year, copy of relevant pages of bank statement of them and itself to establish that the transactions were carried out through proper banking channel.

c. M/s Casper Enterprises P. Ltd. The appellant has submitted the copy of confirmation letter for relevant assessment year, copy of acknowledgement of return of income of relevant assessment year, copy of annual audited accounts of relevant assessment year, copy of relevant pages of bank statement of them and itself to establish that the transactions were carried out through proper banking channel.

d. M/s Olive Overseas P.Ltd. The appellant has submitted the copy of confirmation letter for relevant assessment year, copy of acknowledgement of return of income of relevant assessment year, copy of annual audited accounts of relevant assessment year, copy of relevant pages of bank statement of them and itself to establish that the transactions were carried out through proper banking channel.

e. M/s Pragati Gems P Ltd- The appellant has submitted the copy of confirmation letter for relevant assessment year, copy of acknowledgement of return of income of relevant assessment year, copy of annual audited accounts of relevant assessment

year, copy of relevant pages of bank statement of them and itself to establish that the transactions were carried out through proper banking channel.

f. M/s Sum u kh Co mm er cial P Lt d - The a ppell a nt has su bmit t ed t he copy of confirmation letter for relevant assessment year, copy of acknowledgement of r et ur n of income of r elev ant assessment year , copy of annua l audit ed a c c o u n t s o f r e l e v a n t a s s e s s m e n t y e a r , c o p y o f r e l e v a n t p a g e s o f b a n k s t a t e m e n t o f t h e m a n d i t s e l f t o e s t a b l i s h t h a t t h e t r a n s a c t i o n s w e r e c a r r i e d o u t t h r o u g h p r o p e r b a n k i n g c h a n n e l .

g. M/s Viraj Mercantile P. Ltd. The appellant has submitted t h e c o p y o f confirmation letter for relevant assessment year, copy of acknowledgement of r et ur n of income of r elev ant assessment year , copy of annua l audit ed a c c o u n t s o f r e l e v a n t a s s e s s m e n t y e a r , c o p y o f r e l e v a n t p a g e s o f b a n k s t a t e m e n t o f t h e m a n d i t s e l f t o e s t a b l i s h t h a t t h e t r a n s a c t i o n s w e r e c a r r i e d o u t t h r o u g h p r o p e r b a n k i n g c h a n n e l .

h. M/s Lunkad Textile P Ltd- The appellant has submitted the c o p y o f confirmation letter for relevant assessment year, copy of acknowledgement of. r e t u r n o f i n c o m e o f r e l e v a n t a s s e s s m e n t y e a r , c o p y o f a n n u a l a u d i t e d a c c o u n t s o f r e l e v a n t a s s e s s m e n t y e a r , c o p y o f r e l e v a n t p a g e s o f b a n k s t a t e m e n t o f t h e m a n d i t s e l f t o e s t a b l i s h t h a t t h e t r a n s a c t i o n s w e r e c a r r i e d o u t t h r o u g h p r o p e r b a n k i n g c h a n n e l .

i. M/s Falak Trading P Ltd- The appellant has submitted the c o p y o f confirmation letter for relevant assessment year, copy of acknowledgement of r et ur n of income of r elev ant assessment year , copy of annua l audit ed a c c o u n t s o f r e l e v a n t a s s e s s m e n t y e a r , c o p y o f r e l e v a n t p a g e s o f b a n k s t a t e m e n t o f t h e m a n d i t s e l f t o e s t a b l i s h t h a t t h e t r a n s a c t i o n s w e r e c a r r i e d o u t t h r o u g h p r o p e r b a n k i n g c h a n n e l "

We find that the assessee by placing on record the aforesaid documentary evidence had discharged the primary „onus“ that was cast upon it to prove the authenticity of the loan transactions entered into with the aforementioned 9 parties under consideration. However, the veracity of the claim of the assessee was not accepted by the A.O on the basis of generalised observation that the financials of the aforementioned concerns/entities revealed that despite high turnover practically no tax was paid by them (in many cases refund was claimed), and there were high amount of sundry creditors, loans and advances, debtors and investments. On the basis of his aforesaid generalized observations, we find that the A.O had drawn adverse inferences as regards the creditworthiness of the aforementioned parties. In our considered view, the aforesaid casual approach adopted by the A.O, without even putting up any effort to refer to the specific financials of the said concerns/entities as was placed on record by the assessee cannot be accepted. In fact, we

find that the A.O had failed to put up any effort to dislodge the authenticity of the loan transactions by placing on record any material which could prove to the contrary. As is discernible from the assessment order, the A.O had as a matter of fact dedicated his entire efforts for demonstrating the facts which had emerged in the course of the search proceedings conducted on Shri Praveen Kumar Jain, and also the modus operandi that was adopted by him for providing accommodation entries. We are afraid that the general observations of the A.O that the creditworthiness of the lenders and the genuineness of the transaction are not found to be satisfactory is not backed by any supporting documentary evidence. As observed by us hereinabove, the A.O had failed to rebut the material which was placed on record by the assessee to substantiate the identity and creditworthiness of the lenders, and also the genuineness of the transaction under consideration. In fact, we find that the assessee had been able to substantially prove the authenticity of the loan transactions on the basis of the documentary evidence placed on record by him. As observed by us hereinabove, the A.O had not even sought to verify the authenticity of the aforesaid loan transactions by issuing any notices under Sec.133(6) of the Act. In our considered view, in case the A.O would had any doubts as regards either the identity and creditworthiness of the aforesaid lenders or the genuineness of the loan transactions, then he would have made necessary verifications by either summoning the details in exercise of the powers vested with him under Sec.133(6) or directing the assessee to furnish further documentary evidence. However, we find that the A.O neither carried out any verifications on his own nor directed the assessee to clarify any further aspects pertaining to the authenticity of the loan transactions under consideration. As regards the observation of the A.O that the assessee had not produced the parties, we find, that there is nothing discernible from the records from where it could be gathered that he had ever directed the assessee for doing the needful. In fact, in our considered view, now when the assessee in discharge of the primary „onus“ that was cast upon it to substantiate the authenticity of the loan transactions had placed on record sufficient documentary evidence which had not been rebutted by the A.O, therefore, merely for the reason that the said lenders had not appeared before him would even otherwise not justify characterising the said loan transactions as bogus/sham. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of Commissioner of Income Tax-8 Vs. M/s Orchid Industries Pvt. Ltd. (2017) 397 ITR 136 (Bom). In the aforesaid case, it was observed by the Hon'ble High Court that now when the assessee had placed on record documentary evidence to support the genuineness of the transactions under consideration, therefore, only because the creditors had not appeared before the A.O would not justify drawing of adverse inferences as regards the authenticity of the said transactions. As regards the observation of the A.O that a perusal of the bank accounts of the lenders revealed that the same only contained RTGS/TRF entries, we find ourselves to be in agreement with the view taken by the CIT(A) that the said fact in itself proves that no cash was introduced in bank accounts of the said lenders prior to advancing of the loans to the assessee. We are persuaded to subscribe to the view taken by the CIT(A) that the A.O had

also not brought on record any evidence which would suggest that the assessee had paid cash to the lenders in lieu of loans received from them. Apart therefrom, we are also of the considered view that the fact that the assessee company had paid interest on the loans raised from the aforementioned parties after deduction of tax at source also substantiates the authenticity of the loan transactions. Also, the fact that the said loans had been repaid by the assessee to the aforementioned lenders fortifies the veracity of the said loan transactions. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of PCIT Vs. M/s Skylark Build (ITA No. 616 of 2016; dt. 24.10.2018). In the aforesaid case, the Hon'ble High court taking cognizance of the subsequent development of repayment of the loans by the assessee to the lenders, had observed that the said fact proved the authenticity of the loan transactions.

12. We shall now advert to the reliance placed by the revenue on the order of the ITAT, Ahmedabad in the case of Pavankumar M. Sanghvi Vs. ITO (ITA No. 2447/Ahd/2016) (Ahd). It is the claim of the assessee that involving identical facts, the tribunal in the aforementioned case had concluded that genuineness of loan transactions cannot be established merely on the basis of documents filed by the assessee and further probe is required to be carried out for arriving at the actual facts. We have perused the aforesaid order of the ITAT, Ahmedabad, and are unable to persuade ourselves to subscribe to the aforesaid claim of the revenue. A perusal of the aforesaid order reveals that the same is distinguishable on facts. As is discernible from the said order, it was observed by the Tribunal that a perusal of the Bank account of the lender party viz. M/s Natasha Enterprises revealed that after the loan of Rs.10,00,000/- was advanced to the assessee the balance in the bank account remained at a meagre figure of Rs.13,717/- only. On a similar footing, it was noticed by the Tribunal that on various other dates also after the amounts were advanced from the bank account of the lender the closing balance of the respective days would remain between few thousands of rupees. Further, it was observed, that though the lender had shown a substantial turnover of 122.92 crores, but there was no closing stock. Also, certain peculiar facts as regards the meagre expenses incurred by the lenders were also noticed, which thus did not inspire any confidence as regards the genuineness of the business transactions of the said respective concerns. Similarly, it was observed that the facts involved in the case of the other lender party viz. M/s Mohit International also did not reveal any different story. To sum up, in the aforementioned case, it was conclusively proved on the basis of the facts borne from the records that the lenders were not carrying out any genuine business. We are afraid that in the case before us neither such facts are borne out from the records, nor any effort has been made by the Id. D.R to establish that the lenders in the case before us also had a similar state of affairs. We are of the considered view that as the facts involved in the case of the assessee before us are not shown to be similar as against those which were there in the case before the ITAT, Ahmedabad, in the case of Pavankumar M. Sanghvi Vs. ITO (2017) 165 ITD 260 (Ahd), therefore, the same being distinguishable on facts would not assist the case of the

revenue before us. On the basis of our aforesaid observations, we are of the considered view that the assessee by placing on record sufficient documentary evidence had discharged the primary „onus“ that was cast upon it to prove the identity and the creditworthiness of the parties, and also the genuineness of the transaction under consideration. As observed by us hereinabove, the A.O had failed to dislodge the documentary evidence that was placed on record by the assessee in the course of the assessment proceedings to substantiate the authenticity of the loan transactions under consideration. We are of the considered view that as the assessee by placing on record the aforesaid supporting documentary evidence had discharged the primary „onus“ that was cast upon it to prove the authenticity of the loan transactions, therefore, it was incumbent on the part of the A.O to have disproved the said claim of the assessee by placing on record documentary evidence proving to the contrary. However, as the A.O in the case before us had failed to dislodge the documentary evidence placed on record by the assessee in support of its claim as regards the authenticity of the loan transactions, and had only taken recourse to certain general observations, without specifically referring to the material placed on record by the assessee, we are afraid that he by so doing had absolutely failed to discharge the „onus“ as was shifted upon him to disprove the authenticity of the loan transactions under consideration. In fact, we find that the A.O instead of placing on record any documentary evidence which would disprove the authenticity of the loan transactions under consideration, had focussed primarily on the facts and the modus operandi of functioning of Shri. Praveen Kumar Jain as had emerged in the course of the search proceedings conducted on him. We are afraid that the adverse inferences drawn by the A.O as regards the authenticity of the loan transactions under consideration without any attempt to dislodge the documentary evidence placed on record by the assessee to support its claim, cannot be sustained and is liable to be vacated. Our aforesaid view is fortified by the order of the ITAT "C" Bench, Mumbai, in the case of ITO 20(2)(5), Mumbai Vs. Smt. Pratima Ashar (2019) 107 taxmann.com 135 (Mum), wherein a similar view was taken. At this stage, we may herein observe that similar adverse inferences as regards the authenticity of the loan transactions that were drawn by the A.O. in the case of a „sister concern“ of the assessee company viz. M/s Manba Finance Ltd., were on appeal deleted by the CIT(A). On further appeal by the revenue, the order passed by the CIT(A) was upheld and the appeal of the revenue was dismissed vide order passed by a coordinate bench of the Tribunal viz. Dy. CIT-CC-7(2), Mumbai Vs. M/s Manba Finance Ltd., (ITA Nos. 1448, 1449 & 1467/Mum/2017, dated 05.10.2018) (copy placed on record). As is discernible from the aforesaid order of the Tribunal, in that case too on the basis of information that the said concern had in the garb of loans obtained accommodation entries from certain concerns which were managed and controlled by the Shri Praveen Kumar Jain, survey action was conducted on the said concern on 25.03.2014. In the course of the survey action, the director of the said concern had in his statement recorded under Sec. 133A during the course of the survey proceedings had admitted that the assessee company had received accommodation entries. However, the aforesaid concern did not offer the amount of the

aforesaid unsecured loans for tax in its return of income. Accordingly, the A.O relying upon two aspects viz. (i) that, the director of the assessee company in its statement recorded in the course of the survey proceedings had admitted that it had raised bogus unsecured loans; and (ii) that, the lender concerns were managed and controlled by Shri Praveen Kumar Jain, an infamous accommodation entry provider, held the loans as unexplained cash credits u/s. 68 of the Act. We find that the Tribunal while upholding the order of the CIT(A), had observed, that the A.O had not brought on record any adverse material to rebut the credibility of the corporate entities from which loans were raised by the assessee. Also, it was observed by the Tribunal that the assessee had placed on record supporting documentary evidence to substantiate the authenticity of the loan transactions viz. confirmation letters, bank statements, financial statements of the lender parties, and thus had discharged the onus that was cast upon it. It was further observed by the Tribunal that no adverse inferences could have been drawn by the A.O without making any inquiry by issuing notices under Sec. 133(6) or summons under Sec. 131 of the Act. As regards the admission of the undisclosed income by the director of the assessee company in his statement recorded in the course of the survey proceedings, it was observed by the Tribunal that a disclosure obtained in the course of survey de hors corroborative evidence cannot be a conclusive proof for making an addition in the hands of the assessee. Accordingly, the Tribunal on the basis of his aforesaid observations had in the case of the aforementioned „sister concern“ of the assessee company wherein identical facts were involved, had upheld the order of the CIT(A) and therein concluded that the A.O in the absence of the corroborative evidence was not justified in treating the loans received by the assessee before them as unexplained cash credit under Sec. 68 of the Act.

13. We have given a thoughtful consideration and are of the considered view, that the CIT(A) after deliberating at length on the issue under consideration had rightly concluded that as the assessee had discharged the „onus“ that was cast upon it under Sec.68 of the Act, therefore, the A.O was not justified in treating the loans received from the aforementioned parties as unexplained cash credits under Sec.68 of the Act. We thus not finding any infirmity in the well reasoned order of the CIT(A) to the extent he had deleted the addition of Rs.10,91,50,000/- uphold the same. The Grounds of appeal No. (i) & (ii) raised by the revenue are dismissed.

14. We shall now advert to the disallowance of the interest expenditure of Rs.70,49,112/- that was claimed by the assessee to have been paid to the aforementioned 9 lender parties. We find that the aforesaid claim of expense of the assessee was disallowed by the A.O, for the reason, that the loan transactions under consideration had been held by him to be bogus. Now, as we have concluded that the assessee had raised genuine loans from the aforementioned parties, therefore, the consequential disallowance by the A.O of the interest paid to the said lenders by treating the loan transactions as bogus shall accordingly stand vacated. Accordingly the order of the CIT(A), deleting the disallowance of

interest expense of Rs.70,49,112/- is upheld. The Ground of appeal No. (iii) raised by the revenue is dismissed.”

14. In this case, the Ld.CIT(A) has recorded categorical findings in light of various evidences filed by the assessee, including confirmation letters from the creditors and observed that the assessee has filed necessary details, in respect of each and every loan creditors to establish the fact that transactions between the parties are genuine, which are carried out through proper banking channel. The Ld. CIT(A) has also recorded the fact that the assessee has paid interest on said loans after deducting necessary TDS applicable as per law. He, further, stated that the Ld. AO was never brought on record any evidences to prove that the assessee had paid cash to the loan creditors in lieu of loans received from them. It is also not in dispute that the assessee has repaid said loans in subsequent financial years through proper banking channel. Therefore, we are of the considered view that the Ld.CIT(A) has rightly appreciated the fact that in light of various evidences filed by the assessee before reaching to the conclusion that unsecured loans taken from those parties are genuine transactions, which are supported by the necessary evidences. Therefore, we are of the considered view that there is no error in findings recorded by the Ld.CIT(A) and hence, we are inclined to uphold the findings of the Ld.CIT(A) and direct the Ld. AO to delete additions made towards unsecured loans taken from those parties and consequent additions made towards interest paid on said loans.

15. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on this 10 /01/2020

Sd/-
(C.N.PRASAD)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated: 10 /01/2020
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai