

आयकरअपीलअधकरण, अहमदाबादयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" A "BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No. 191/AHD/2016
जथावष/Asstt. Year: 2011-2012

M/s Jap Agro Foods Pvt. Ltd., Block No.295, Ranu Tal. Padra, Vadodara. PAN: AABCJ3974G	Vs.	I.T.O, Ward-1(4), Baroda.
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(Applicant)		(Respondent)
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Assessee by :	Shri Hardik Vora, A.R
Revenueby :	Shri Deelip Kumar, Sr.D.R

सुनवाईकतारख/Date of Hearing : 19/12/2019

घोषणाकतारख/Date of Pronouncement: 03/03/2020

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals) Ahmedabad-1, dated 24/10/2015 (in short "Ld.CIT(A)") arising in the matter of assessment order passed under s.143 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 26/03/2014 relevant to the Assessment Year 2011-2012.

The assessee has raised the following grounds of appeal.

1. *On the facts and circumstances of the case as well as law on the subject, the Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of loan amount from Sh Nilesh N Panchal amounting to Rs. 50,00,000/- as unexplained loan.*
2. *On the facts and circumstances of the case as well as law on the subject, the Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of loan amount from Sh Aayush J Patel amounting to Rs. 16,07,178/- as unexplained loan.*
3. *On the facts and circumstances of the case as well as law on the subject, the Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of loan amount from Sh Vasantbhai S Patel amounting to Rs. 12,00,000/- as unexplained loan.*
4. *On the facts and circumstances of the case as well as law on the subject, the Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of loan amount from Sh Jignesh Vasantbhai Patel amounting to Rs. 57,50,000/- as unexplained loan.*
5. *On the facts and circumstances of the case as well as law on the subject, the Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of entire deposits in the two bank accounts totalling to Rs. 1,27,39,300/-.*
6. *On the facts and circumstances of the case as well as law on the subject, the Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 1,12,49,155/- treating the liability towards creditors as cessation of liabilities u/s 41(1) of the Act.*
7. *On the facts and circumstances of the case as well as law on the subject, the Learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of bad debts of Rs. 19,16,749/-.*
8. *On the facts and circumstances of the case as well as law on the subject, the Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of receipt from Madhya Gujarat Viji Co. Ltd amounting to Rs. 9,929/-.*
9. *On the facts and circumstances of the case as well as law on the subject, the Learned Commissioner of Income Tax (Appeals) has erred in not giving credit of brought forward prior period losses of AY 2006-07; 2007-08 and 2009-10.*
10. *On the facts and circumstances of the case as well as law on the subject, the Learned Commissioner of Income Tax (Appeals) has erred in not allowing current year loss (if any) to be carried forward.*
11. *It is prayed that above additions/disallowances made by Assessing Officer and confirmed by Commissioner of Income-tax (Appeals) may please be deleted.*
12. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.*

2. The issues raised by the assessee in Ground Nos. 1 to 4 are interconnected. Therefore these have been combined together for the purpose of convenience and brevity. The effective issue raised is that the learned CIT (A) erred in confirming the addition made by the AO by treating the loans as unexplained cash credit under section 68 of the Act.

3. The fact in brief is that the assessee is a private company and claimed to be engaged in the business of food processing. During the assessment proceedings the AO observed that the assessee during the year has accepted unsecured loan. Accordingly the AO vide notice dated 14-10-2013 requires the assessee to furnish the detail of loan accepted during the year and evidences with respect to genuineness of the transaction and identity & credit worthiness of the lender.

4. In response to the notice the assessee submitted that, during the year it has taken fresh interest free unsecured loan from 4 different persons namely Shri Nilesh N Panchal, Shri Ayush J Patel, Shri Vasanthbhai S Patel and Shri Jignesh Vasanthbhai Patel.

4.1 With regard to the taken loan from Shri Nilesh N Panchal:

The assessee claimed that it has taken unsecured loan of Rs. 50 lakh but failed to furnish confirmation or any other documentary evidence in order to substantiate genuineness of the transaction. Accordingly the AO added the same to the total income of the assessee as unexplained cash credit u/s 68 of the Act.

4.2 With regard to loan form Shri Aayush J Patel

a. The assessee during the year accepted unsecured loan of Rs. 16,07,178/- from Shri Aayush J Patel. The assessee in support of its claim furnished confirmation letter and ITR acknowledgment copy of the lender.

b. However the AO on perusal of ITR, observed that the lender has not sufficient creditworthiness to advance loan. Therefore the AO purposed for treating the same as unexplained cash credit under section 68 of the Act. But the assessee failed to reply to the show cause notice issued by the AO. Accordingly the AO added the unsecured loan of 16,07,178/- to the total income of the assessee under section 68 of the Act.

4.3 With regard to loan from Shri Vasantbhai S Patel:

a. The assessee during the year has taken fresh loan of Rs. 12Lakh only from the party and furnished the confirmation and copy of ITR in support of such loan.

b. But the AO found that the lender has declared income of Rs. 3,61,800/- only. Hence he did not have sufficient creditworthiness. The AO accordingly show caused the assessee.

c. In response to the show cause notice assessee filed computation of income of Shri Vasantbhai S Patel showing agricultural income of Rs. 17,18,530/- in addition to the taxable income of Rs. 3,61,800/-

d. However the AO disagreed with the submission of the assessee as the lender Shri Vasantbhai S Patel failed to reply to the notice issued u/s 136(6) of the Act and also copy of the computation was not signed. Accordingly the AO added the unsecured loan of Rs. 12,00,000/- to the total income of the assessee under section 68 of the Act.

4.4 With regard to loan from Shri Jignesh Vasantbhai Patel:

a. The assessee during the year under consideration has received unsecured loan of Rs. 29,50,000/- from the party and furnished ledger account, copy of ITR-

V and Bank Statement of Shri Jignesh Vasantbhai Patel in support of the loan transaction. .

b. However, the AO from the bank statement observed that there was no such entry in the bank statement of the lender as filed by the assessee. However a sum of Rs. 28,00,000/- was found debited in favour of the assessee, but the same was having different date and amount.

c. Further the AO observed that the lender Shri Jignesh Vasantbhai Patel has declared total income of Rs. 1,95,000/- only and he also failed to response to the notice issued u/s 136(6) of the Act. Accordingly the AO show caused the assessee purposing the addition of Rs. 57,50,000/-(29,50,000+28,00,000) only. But the assessee made no reply in this regard.

d. Thus the AO in absence of documentary evidence treated the sum of Rs. 57,50,000 as unexplained cash credit under section 68 of the Act and added to the total income of the assessee.

Aggrieved, assessee preferred an appeal before learned CIT (A)

5. The assessee before the learned CIT(A) submitted as under:

5.1 With regard to loan from Shri Nilesh N Panchal:

The assessee submitted the Shri Nilesh N Panchal advanced impugned loan of Rs. 50lakh out of amount received from Shri Vasantbhai Patel. The assessee in support of its contention furnished a confirmation of contra account from Shri Vasantbhai Patel, bank statement of both Shri Vasanthbhai and Shri Nilesh N Panchal along with copy of PAN and address detail of Shri Nilesh. The assessee further submitted that Shri Nilesh N Panchal is absconding due to ongoing criminal proceeding against him. Hence it is unable to submit any other evidence or confirmation from Shri Nilesh N Panchal.

5.2 With regard to loan from Shri Aaysush J Patel:

The assessee submitted that the loan amount of Rs. 16,07,178/- represent amount credited during the year on account of its liability paid by Shri Aayush J Patel on its behalf. The assessee in its support furnished copy of ledger confirmation, and ITR of the lender.

5.3 With regard to loan from Shri Vasantbhai S Patel:

With regard to the loan amount of Rs. 12Lakh, the assessee before the Id. CIT (A) filed copy of ledger confirmation, bank statement of Shri Vasantbhai S Patel and copy of ITR for the current year and preceding year.

5.4 With regard to loan from Shri Jignesh Vasantbhai Patel:

With regard to the loan from Shri Jignesh Vasantbhai Patel, the assessee submitted that it has received loan of Rs. 29.5 lakh only and filed the confirmation from Shri Jignesh vasantbhai Patel, his ITR and bank statement.

However the learned CIT (A) confirmed the addition made by the AO by observing as under:

5.5 With regard to loan from Shri Nilesh N Panchaal:

The learned CIT held that in the absence of bank statement of Shri Nilesh N Panchal, the assessee failed to prove the genuineness of the transaction. Accordingly the Id. CIT-A confirmed the addition of Rs. 50lakh.

5.6 With regard to loan from Shri Aaysush J Patel:

The learned CIT (A) in the absence of sufficient documentary evidence such as copy of bank statement and other documentary evidence in order to prove credit worthiness confirmed the addition made by the AO.

5.7 With regard to loan from Shri Vasantbhai S Patel:

The learned CIT (A) found that the lender Shri Vasantbhai S Patel declared very low income of Rs. 3,61,800.00 only. But he has advanced loan of Rs. 12 lakh to the assessee and also paid more than Rs. 50 lakh to Shri Nilesh N Panchal who advance the loan of Rs. 50 lakh out of such receipt to the assessee. As such, considering the income of the party the Id. CIT-A was of the view that he is not capable of advancing such huge amount. Further he also failed to comply with the notice issued under section 136(6) of the Act.

5.8 With regard to loan from Shri Jignesh Vasantbhai Patel:

The amount of loan claimed to be taken by the assessee were not verified based on the documentary evidences. Similarly, there was the mismatch in the amount of loan shown by the assessee and the loan appearing in the bank statement of the lender. Thus the Id. CIT-A confirmed the addition made by the AO.

Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

6. The learned AR before us filed a paper book running from pages 1 to 127 and submitted the loans were taken from the said parties in the bank account

which was not disclosed in the income tax return but subsequently these loans were transferred to the disclosed bank account. Similarly, all the transactions were duly shown in the balance sheet. As such the loan taken by the assessee does not give rise to the make the addition as unexplained cash credit under section 68 of the Act. All the conditions as specified under section 68 of the Act regarding the identity, creditworthiness and genuineness of the transactions were duly complied/fulfilled. Therefore there cannot be any addition to the total income of the assessee.

7. On the other hand the learned DR vehemently supported the order of the authorities

8. We have heard the rival contentions of both the parties and perused the materials available on record. The dispute in the instant case relates to the unsecured loan received by the assessee in the year under consideration from certain parties which was treated as unexplained cash credit under section 68 of the Act by the AO. The learned CIT (A) subsequently confirmed the addition made by the AO.

8.1 The provision of section 68 of the Act fastens the liability on the assessee to provide the identity of the lenders, establish the genuineness of the transactions and creditworthiness of the parties/lenders. These liabilities on the assessee were imposed to justify the cash credit entries under section 68 of the Act by the Hon'ble Calcutta High Court in the case of CIT Vs. Precision Finance (P) Ltd reported in 208 ITR 465 wherein it was held as under:

"It was for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions. On the facts of this case, the Tribunal did not take into account all these ingredients which had to be satisfied by the assessee. Mere furnishing of the particulars was not enough. The enquiry of the ITO revealed that either the assessee was not traceable or there was no such file and, accordingly, the first ingredient as to the identity of the creditors had not been established. If the identity of the creditors had not been established, consequently, the question of establishment of the genuineness of the transactions or the creditworthiness of the creditors did not and could not arise. The Tribunal did not apply its mind to the facts of this particular case and proceeded on the footing that since the transactions were through the bank account, it

was to be presumed that the transactions were genuine. It was not for the ITO to find out by making investigation from the bank accounts unless the assessee proved the identity of the creditors and their creditworthiness. Mere payment by account payee cheque was not sacrosanct nor could it make a non-genuine transaction genuine."

8.2 From the preceding discussion we note that the assessee has taken the loan from the parties detailed as under:

S.No. Lender Name Loan Amount

i.	Nilesh N Panchal	Rs. 50,00,000/-
ii.	Aayush J Patel	Rs. 16,07,178/-
iii.	Vasanthbhai S Patel	Rs. 12,00,000/-
iv.	Jignesh V Patel	Rs. 29,50,000/-

8.3 Regarding the loan taken from Shri Nilesh N Panchal for Rs. 50 lacs, we note that the assessee has submitted that Shri Nilesh N Panchal has received a sum of Rs. 55,52,000.00 from Shri Vasantbhai S Patel through banking channel which was utilized for advancing loan of Rs. 50 lakh to it (assessee). Shri Nilesh N Panchal transferred the loan amount for Rs. 45 lakh in the Bank of India account of assessee and remaining Rs. 5 lakh in state bank of India account of it. Subsequently Rs. 45 lakhs were also transferred from Bank of India to SBI bank account of the assessee. The assessee in support of its claim has filed the copy of the bank statement of Shri Vasantbhai Patel, Shri Nilesh N. Panchal and own bank statement maintained with Bank of India and State Bank of India along with other detail which are placed on pages 59 to 72 of paper book. Accordingly, the assessee was of the view that the impugned amount of loan cannot be treated as unexplained cash credit under section 68 of the Act.

8.4 We do not find any ambiguity in the contention of the assessee about the receipt of money by Shri Nilesh N Panchal from Shri Vasantbhai Patel. However, on perusal of the bank statement of Shri Nilesh N Panchal and the bank statement of the assessee maintained with Bank of India, we find that Shri Nilesh N Panchal has transferred a sum of Rs. 26.50 lakhs only through cheques and Rs. 5 lakhs only through NEFT to the bank of India account and the SBI account respectively.

These facts can be verified from the bank statements of the respective parties. Accordingly, we are of the view that the assessee has explained and satisfied the condition specified under section 68 of the Act to the tune of Rs. 31.50 lakhs only.

8.5 Taking up the matter further for the balance amount of loan of Rs. 18.50 lakh, we find that there was no banking transaction between the assessee and Shri Nilesh N Panchal. As such, the assessee failed to justify the receipt of loan from Shri Nilesh N Panchal based on any documentary evidence to the tune of Rs. 18.50 lakhs. Accordingly, we sustain the addition of the amount of Rs.18.50 lakhs.

8.6 Now coming to the loan accepted from Shri Aayush J Patel for Rs. 16,07,178.00 we note that the assessee has not taken any loan either through banking channel or cash . As such Shri Aayush J Patel has paid certain liabilities on behalf of the assessee as evident from the ledger account of Shri Aayush J Patel maintained in the books of the assessee which is placed on page 73 of the paper book. Thus it is transpired that the liability paid by Aayush J Patel on behalf of the assessee was duly accounted for in the books of accounts and this fact has not been disputed by the authorities below. Therefore, such loan liabilities shown by the assessee in the year under consideration cannot be treated as unexplained cash credit under section 68 of the Act without disturbing the corresponding payment made by Shri Aayush J Patel on behalf of the assessee. Therefore we are not impressed with the finding of the authorities below.

8.7 Now coming to the loan accepted from Shri Vasant Bhai Patel for Rs. 12 lacs, we note that the assessee has filed the confirmation along with the PAN, copy of the ITR for two years, computation of income and the balance sheet, bank statements. On perusal of all these documentary evidences, we note that Shri Vasantbhai S Patel is the man of means and had a capacity of advancing loan to the assessee for Rs. 12 lakhs. As such Shri Vasantbhai Patel had disclosed taxable income in the income tax return for the year under consideration for Rs. 3,61,800/- and for the immediate preceding assessment year for Rs. 85,43,350/-

which is sufficient enough to justify the capacity for advancing loan to the assessee. Therefore we are not impressed with the finding of the authorities below. As such the assessee has discharged its primary onus imposed under section 68 of the Act, by proving identity of party, Genuineness of transaction and credit worthiness of the party.

8.8 Now, coming to the amounts of unexplained loans for Rs. 57,50,000/- from Shri Jignesh V Patel as alleged by the AO. In this connection we note that the assessee in its books of accounts has shown receipt of Rs. 29.50 lakhs as loan from the impugned person in the manner as detailed below:

<i>Date</i>	<i>Mode</i>	<i>Amount</i>
13-11-2010	Bank	15,00,000
21-12-2010	Bank	10,00,000
15-02-2011	Aayush J Patel	3,00,000
23-01-2011	Aayush J Patel	1,50,000
TOTAL		29,50,000

9. However, the AO found that the above mention loan was not appearing in the bank statement of Shri Jignesh V Patel. But the AO on perusal of the bank statement further found that Shri Jignesh V Patel has advanced loan to the assessee for Rs. 28 lakhs in the manner as detailed under:

<i>Date</i>	<i>Mode</i>	<i>Amount</i>
08-12-2010	Cheque no.919902	12,50,000
20-12-2010	Cheque no.917903	12,50,000
22-12-2010	Cheque no.917906	1,00,000
03-03-2011	Cheque no.919911	1,00,000
TOTAL		28,00,000

In view of the above, the AO treated the entire sum of Rs. 57.50 lakhs (29.50 lakhs and 28 lakhs) as unexplained cash credit under section 68 of the Act. The view was subsequently upheld by the learned CIT (A).

9.1 However, on perusal of the bank statement of Shri Jignesh V Patel, we note that he has advanced loan to the assessee for Rs. 28 lakhs which was deposited in the bank account of the assessee namely Bank of India in the manner as discussed above.

9.2 The assessee subsequently transferred a sum of Rs. 25 lakhs from the bank of India account to its SBI account and Rs. 3 lakh to Aayush J Patel in the manner as detailed under:

<i>S.No</i>	<i>Book date</i>		<i>Bank date</i>	<i>Cheque No</i>	<i>Amount</i>	<i>Note</i>
<i>1</i>	<i>13-11-2010</i>		<i>19-11-2010</i>	<i>41477</i>	<i>Rs. 15Lakh</i>	<i>Shown as receipt</i>
<i>2</i>	<i>21-12-2010</i>		<i>21-12-2010</i>	<i>41494</i>	<i>Rs. 10Lakh</i>	<i>Shown as receipt</i>
<i>3</i>	<i>15-02-2011</i>		<i>15-2-2010</i>	<i>41596</i>	<i>Rs. 3Lakh</i>	<i>Adjusted with amount payable to Shri Aayush J Patel</i>
<i>4</i>	<i>Total</i>				<i>Rs. 28lakh</i>	

9.3 We further note that the assessee in its books of accounts has made the entries for the receipt of loan directly for the amount receipt in the statement of State Bank of India without showing the entries the bank account maintained with bank of India. Thus it is transpired that, that the assessee has received a loan of Rs. 28 lakhs only through the banking channel and not Rs. 57.50 lakhs as alleged by the authorities below. For the balance amount of Rs. 1.50 lakhs, we note that the loan account of shri Aayush J Patel was adjusted by crediting the loan account of Shri jignesh as evident from the confirmation placed on page 73-74 of the paper book. The adjustment of the loan amount was not doubted by the authorities below. Thus in effect, there was the actual loan liability from Shri Jignesh V Patel standing only for Rs. 29.50 lakhs and not for Rs. 57.5 lakhs as

alleged by the authorities below. Accordingly, we hold that there cannot be any addition on account of loan of Rs. 28 lakhs as made by the authorities below.

9.4 Now, coming to the fact whether the amount of loan of Rs. 29.5 lakhs received from shri Jignesh represents unexplained cash credit under section 68 of the Act. From the preceding discussion, we note that there is no ambiguity about the identity and the genuineness of the transaction as the assessee has filed the copy of the income tax return and the transaction was carried out through the banking channel. The dispute relates only with the creditworthiness of the party. In this regard, we find that the assessee has justified the creditworthiness of the party in the manner as detailed under:

<i>Jigneshbhai V Patel</i>		
<i>Particulars</i>	<i>Amount (in Rs.)</i>	
<i>Opening Capital</i>		<i>12175318</i>
<i>(A) Funds Raised by way of (in the AY 2011-12)</i>		
<i>Net profit from business construction activity</i>	<i>250581</i>	
<i>Gift from Madhuben K Patel</i>	<i>5602000</i>	
<i>Agriculture income</i>	<i>140055</i>	<i>5992636</i>
<i>(B) Funds Raised by way of (in the AY 2012-13)</i>		
<i>Net profit from business construction activity</i>	<i>269116</i>	
<i>Gift from Madhuben K Patel</i>	<i>3000000</i>	
<i>Agriculture Income</i>	<i>293135</i>	<i>7131251</i>
<i>Unsecured loan from Vasantbhai S patel</i>	<i>1500000</i>	
<i>Sale of agriculture land</i>	<i>2069000</i>	
<i>Total new fund inflow (A+B)</i>		<i>13123887</i>

The above statement showing creditworthiness of the party has not been doubted by the authorities below.

9.5 Further on perusal of the bank statement of Shri Jignesh V Patel, we note that he has received the amount from his aunt namely Madhuben Kanubai which he claimed to have received as of gifts from his aunt as per above table.

Thus, from the above it is clear that the assessee has discharged his primary onus by furnishing the details about the creditworthiness of the party or availability of fund in the hand of party which have not been doubted by the authorities below.

9.6 It is also pertinent to note that, at the time of hearing we express from the bench to restore the matter to the file of the AO for fresh adjudication. However at the time of dictation of the order, we do not find any reasons to set aside the issue to the file of the AO as all the informations are available on record. Accordingly, instead of setting aside the file to the AO, we preferred to decide the issue involved in the case on hand.

In view of the above, we hold that the assessee has explained the amount of loan received by it in the year under consideration to the extent as discussed above. Accordingly, we set aside the finding of the learned CIT (A) and direct the AO to delete the addition made by him to the extent discussed above. Hence the ground of appeal of the assessee is **partly allowed**.

10. The second issued raised by the assessee vide ground no-5 is that learned CIT (A) erred in confirming the addition on account of bank deposit of Rs. 1,27,39,300/-.

11. During the year under consider there were 3 bank accounts operating in the name of the assessee namely, SBI, Bank of India and ICICI Bank. But the assessee disclosed only SBI bank in return as well in reply in response to the notice issued u/s 142(1) of the Act. However the AO on independent examination

observed that the assessee during the year has made total deposit of Rs. 1,26,90,800/- in Bank of India out which Rs. 60,40,800 represent cash deposit. Similarly a deposit of Rs. 49,500/- were also made in ICICI Bank. Accordingly the AO show caused to assessee vide notice dated 11-03-2014 to explain why such amount deposited in the bank should not be added as unexplained deposit.

11.1 In response to the show cause only, the assessee submitted as under:

" We have duly incorporated ICICI Bank, the statement(s) of which are in your possession and for your reference please find enclosed herewith copy of bank account as appearing in our books. In view thereof, we request you not to make any addition on this account. "

11.2 Therefore the AO in absence of any explanation with respect to deposits held that the assessee is deliberately avoiding in submitting the detail thereof. Thus the AO made the addition of entire deposit of Rs. 1,27,39,300/- with bank of India and ICICI bank to the total income of the assessee as unexplained deposit.

Aggrieved assessee preferred an appeal before the learned CIT (A).

12. The assessee before learned CIT (A) submitted that the account maintained with bank of India and ICICI bank were operated by Shri Nilesh N Panchal (previous promoter) and the facts were not known to existing director or promoters. Thus the assessee failed to incorporate such bank accounts in its books of account. Further the assessee also claimed that the amount of Rs. 66,50,000/- deposited through cheques were actually received from the existing promoters i.e. received by Shri Nilesh N panchal and deposited in assessee bank and later on withdrawn by him. The assessee in its support submitted chart showing amount claimed to have received from existing promoters.

12.1 The submission of the assessee was provided to the AO for remand report. The AO in remand report objected the admission of additional evidences. However

the AO without prejudice also submitted that assessee in remand proceeding also failed to submit any concrete documentary evidence in order to substantiate the source of credit in the bank.

13. However, the learned CIT (A) disregarded the contention of the assessee and confirmed the addition made by the AO by observing as under:

It has been claimed that such deposits had been made by Mr. Nilesh out of the payments received from incoming promoters on different dates and the said amount after crediting in company books, were withdrawn in cash and then redeposited in these bank accounts by way of cash and cheque. It has been claimed that the sources of these amounts are either received from Mr. Vasan Patel and Mr. Jignesh Patel or received against MOU. But again no details of this had been submitted. Only in/ rejoinder to the remand report, the appellant has claimed that these amounts were paid to Bina Agro Tech and Bina Agro Herb Pvt Ltd, both companies being owned by Mr Nilesh. Such amount has been claimed to be Rs.36,04,000/-. But no supporting evidence in relation to even this amount has been submitted. So far as the balance amounts are concerned, copies of bank accounts and confirmations from Mr. Jignesh Patel and Mr. Vasant Patel have been submitted. But no explanation has been submitted as to why such details were not made part of the original submission filed during the course of the appellant proceedings on which the remand report from the AO was obtained. Besides no details of the alleged bank account of Mr Nilesh is available to establish the relation between payments made to him which had been deposited in his bank accounts, the withdrawal of the same and redepositing of the same in these undisclosed bank accounts of the appellant company. The appellant has not filed any evidence in support of its claims that the cash deposited by Mr. Nilesh in these bank accounts are out of the withdrawals made by him from other accounts of other companies. Besides as already discussed, the appellant has not established the creditworthiness of these two persons who are claimed to be the ultimate sources of these deposits in these undisclosed bank accounts. In the absence of any such details, the appellant's submission are not acceptable. Accordingly the AO's action of making addition of the entire amount deposited in these bank accounts as undisclosed income of the appellant company is upheld and this ground of appeal is dismissed.

Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

14. The learned AR before us reiterated the submissions as made before the authorities below.

15. The learned DR, on the other hand vehemently supported the order of the lower authorities.

16. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the assessee has not disclosed these bank accounts i.e. Bank of India and ICICI Bank in its books of accounts.

16.1 Regarding the bank account of the assessee maintained with Bank of India, we note that there was the deposit of cash and cheques amounting to Rs. 60,40,800/- and Rs. 66.5 lakhs respectively. The learned AR at the time of hearing agreed for the addition for the deposit of cash in the impugned bank account. Thus there is no dispute qua the cash deposit in the bank account. But we are of the view that if the entire amount is added the total income of the assessee, there would be double addition to the extent of Rs. 18.50 lakhs. Accordingly, we confirm the addition on account of the deposit of cash of Rs. 41,90,800.00 (60,40,800-18,50,000.00) in the account maintained with bank of India. For our detailed finding, please refer the paragraph numbers 16.6 to 16.9 of this order.

16.2 Regarding the deposits of cheques amounting to Rs. 66.5 lakhs, we are of the view that such deposits cannot be added to the total income of the assessee merely on the reasoning that such bank account was not disclosed in the books of accounts. As such, the deposits in the bank account should represent the income of the assessee.

16.3 On perusal of the impugned bank statement, we find that the details of the cheques deposits by the parties stand as under:

<i>Date</i>	<i>Received from</i>	<i>Amount Rs.</i>	<i>Cheque No.</i>	<i>Remarks</i>
12/11/10	Nilesh Panchal	1000000	RTGS/17111	Received from Vasant Patel & deposited the same in company account
18/11/10	Nilesh Panchal	1500000	RTGS	Received from Vasant Patel & deposited the same in company account.
08/12/10	Jignesh Patel	1250000	917902	Received against MOU
20/12/10	Jignesh Patel	12500000	917903	Received against MOU
22/12/10	Jignesh Patel	100000	917906	Received against MOU
03/03/10	Jignesh Patel	100000	917911	Received against MOU
08/03/11	Vasant Patel	200000	012846	Received against MOU
19/03/11	Vasant Patel	1000000	012847	Received against MOU
28/03/11	Nilesh Panchal	150000	NEFT	Received from Vasant Patel deposited the same in company account.

16.4 The above amount deposited in the bank account was subsequently transferred to the other account of the assessee namely state Bank of India. All the credits through cheques were shown by the assessee as loan from the parties stated above. On perusal of the individual bank accounts of the parties as discussed above, we note that the corresponding entries are reflecting therein. Thus in our considered view the credit entries (cheques) in the bank account of the assessee which was not disclosed in its books of accounts does not represent the income of the assessee.

16.5 It is also important to note that we have already given a finding in the preceding paragraph that the assessee has taken loan from the parties as discussed above. Therefore, we are not convinced with the finding of the authorities below that the deposits of cheques represent the income of the assessee. Accordingly, we allow the ground of appeal of the assessee in part.

16.6 Before parting, we also note that the assessee out of such undisclosed bank account has transferred a sum of Rs. 85 lakhs to the State Bank of India account which was duly disclosed in the books of accounts. The amount transferred from the undisclosed bank account to the State Bank of India was disclosed in the balance sheet as loan in the manner as detailed under:

Date	Cheque No.	Amount (Rs.)	Treatment in books
13-11-2010	41476	15 Lakhs	Loan from Nilesh Panchal
19-11-2010	41477	15 Lakhs	Laon from Jighnesh V Patel
11-12-2010	41493	10 Lakhs	Loan from Vsanthbhai Patel
21-12-2010	41494	10 Lakhs	Laon from Jighnesh V Patel
08-01-2011	41495	10 Lakhs	Loan from Nilesh Panchal
12-03-2011	41496	10 Lakhs	Loan from Nilesh Panchal
23-03-2011	41498	10 Lakhs	Loan from Nilesh Panchal
15-02-2011	41596	3 Lakhs	Loan from Jignesh v Patel adjusted with loan repaid to Aayush J Patel
17-02-2011	41598	2 Lakhs	Loan from Vasantbhai Patel adjusted with loan repaid to Aayush J patel
Total		85 Lakhs	

16.7 It is pertinent to note that the assessee claimed to have accepted loan of Rs. 85 lakhs from the parties as discussed above through the involvement of the undisclosed bank account namely Bank of India. However, the assessee has shown receipt of cheques amounting to Rs. 66.5 lakhs from the parties as detailed in table shown somewhere in the preceding paragraph of this order. The difference amount of Rs.18.5 lakhs transferred out of cash deposit were held as unexplained cash credit under section 68 of the Act by us while deciding the loan amount of Rs. 50 lakh from Shri Nilesh N Panchal in vide paragraph no 8.5 of this order. For detailed discussion please refer paragraph no 8.3 to 8.5 of this order.

16.8 Therefore in our considered view treating entire cash deposit of Rs. 60,40,800/- and making the addition of same to the income of the assessee will lead to double addition to tune of Rs. 18.5 lakh in the hand of the assessee. As the same was already confirmed by us while deciding the genuineness of the loan received.

16.9 As far as, the remaining amount of cash deposit of Rs. 41,90,800/- is concerned. We note that the learned AR before us agreed to addition with regard

to cash deposit. Accordingly we sustain the addition of Rs. 41,90,800 on account cash deposit in Bank of India.

16.10 with regard to the undisclosed bank account maintained with ICICI bank we note that the assessee has not filed any satisfactory explanation or documentary evidence either before authorities below neither before us. Accordingly in absence of any submission from the assessee we sustained the addition of Rs. 49,500/- made by the AO on account of deposit made there under. In the result the ground of the assessee partly allowed.

17. Third issue raised by the assessee vide ground no. 6 is that the the learned CIT (A) erred in confirming the addition Rs. 1,12,49,155/- on account of cession of liability.

18. At the outset we note that the learned AR for the assessee at the time of hearing before us admitted to the impugned addition. Thus the ground of appeal of the assessee is dismissed.

19. Fourth issue raised by the assessee is that the learned CIT (A) erred in confirming the disallowances of bad-debt for Rs. 19,16,749/- only.

20. The assessee during the year under consideration has written off its debtor balance to the tune of Rs. 19,16,749/- only but failed to produce the information about the year in which such bad debts were shown as income. Thus the AO in absence of any evidence with respect to the fact that impugned bad debt were offered to tax previously, disallowed the claim of the assessee and added the same to the total income of the assessee.

21. Aggrieved assessee preferred an appeal before the learned CIT (A) who confirmed the addition made by the AO by observing that the assessee failed to

fulfill the conditions prescribed under section 36(2) of the Act for claiming the bad-debts.

Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

22. The learned AR for assessee before us submitted the impugned debtors were classified under the current assessee and this fact was admitted by the authorities below for the year under consideration as well as in the earlier years. Therefore, the assessee is entitled for claiming the deduction is bad debts.

23. On the contrary the learned DR vehemently supported the order of the authorities below

24. We have heard the rival contentions of both the parties and perused the materials available on record before us. Admittedly the assessee written off the debtor balance to the tune of Rs. 19,16,749 and claimed the deduction for the same. However, the AO disallowed the claim of the assessee for the reasons as discussed above and the view of the AO was also subsequently confirmed by the learned CIT (A).

25. At the outset we note that the provisions of section 36 (2) of the Act allow the assessee to claim the deduction of bad debt written off during the year under consideration subject to the condition specified therein. The provision of section 36 (2) of the Act read as under:

Other deductions.

36.

(1) *****

2) In making any deduction for a bad debt or part thereof, the following provisions shall apply—

(i) no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year,

or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee;

26. On perusal of the provision of the section 36(2)(i) we note that the legislature has used the word "shall" i.e. it is mandatory. Hence to avail the benefit of the bad debt written off the impugned amount should have been recognised as income/offered to tax previously. However in the present case the assessee admittedly failed to produce any evidences to the effect that the impugned amount have already been recognised as income of the assessee. As the assessee expressed its inability to produce such document on the ground that its books of account are in the custody of previous management. Therefore in the absence of requisite information we find that the conditions prescribed under section 36 2 is not been complied with. Accordingly we hold that the assessee is not eligible for deduction for such bad debts. Hence, the ground of appeal of the assessee is dismissed.

27. The fourth issue raised by the assessee is that the learned CIT (A) erred in confirming the addition of receipt of Rs. 9,929/- only from Madhya Gujarat Vij Co. Ltd.

28. The AO during the assessment proceeding from ADR report observed that Madhya Gujarat Vij Co Ltd. during the year under consideration has paid a sum of Rs. 9,929 and also deducted TDS of Rs. 993 on the same to the assessee. But the assessee did not disclosed the same in its ITR. The assessee also failed to make any submission regarding the same during the assessment proceedings. Accordingly the AO added the same to the total income of the assessee.

The assessee preferred an appeal before learned CIT (A).

29. The assessee before the learned CIT (A) submitted that the impugned amount represent interest income but the same was received after finalization of books. Therefore the same was not included in the return.

29.1 However the AO in remand report contended that the assessee is following mercantile system of accounting. Hence the amount should have been offered in the current year only.

29.2 However, the learned CIT-A confirmed the order of the AO by sustaining the the addition.

Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

30. The learned AR before us submitted that the impugned income has already been offered to tax. Therefore, any further addition shall lead to the double addition to the total income of the assessee which is contrary to the provisions of law.

31. On the contrarary the learned DR vehemently supported the order of the assessee below.

32. We have heard the rival contention of both the parties and perused the materialsavailable on record before us. Admittedly, the assessee is following mercantile system of accounting. Therefore, the assessee, in our considered view, was under the obligation to offer the impugned income tax in the year under consideration. Accordingly, we confirm the order of the authorities below subject to the direction that the AO shall verify the fact whether the assessee has offered interest income in any of the succeeding year then the AO shall extend the relief the assessee in that assessment year. It is the settled law that income cannot be

taxed twice. Accordingly, we dispose of the ground of appeal of the assessee in terms of the above.

33. In the result the appeal of the assessee is **partly allowed**.

Order pronounced in the Court on 03/03/2020 at Ahmedabad.

**-Sd-
(RAJPAL YADAV)
VICE PRESIDENT**

Ahmedabad; Dated
manish

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)
03/03/2020