

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI M. BALAGANESH, HON'BLE ACCOUNTANT MEMBER**

**ITA NOS. 1609, 1610, 1611, 1613 & 1614/MUM/2019
(A.Ys: 2009-10, 2010-11, 2011-12, 2013-14 & 2014-15)**

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| Kamla Landmarc Estate Ground Floor, Shanti Vimal P.M. Road, Vile Parle(E) Mumbai – 400 057 PAN: AAIFK1567A | v. | DCIT, Central Circle – 3(4) 19 th Floor, Air India Building Nariman Point Mumbai – 400 021 |
| (Appellant) | | (Respondent) |

**ITA NOS. 1615 & 1619/MUM/2019
(A.Ys: 2008-09 & 2012-13)**

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| Kamla Park Developers Ground Floor, Shanti Vimal P.M. Road, Vile Parle(E) Mumbai – 400 057 PAN: AAHFK7627G | v. | DCIT, Central Circle – 3(4) 19 th Floor, Air India Building Nariman Point Mumbai – 400 021 |
| (Appellant) | | (Respondent) |

ITA NO. 1578/MUM/2019 (A.Y: 2013-14)

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| Kamla Shubham Estate Ground Floor, Shanti Vimal P.M. Road, Vile Parle(E) Mumbai – 400 057 PAN: AAIFK6226E | v. | DCIT, Central Circle – 3(4) 19 th Floor, Air India Building Nariman Point Mumbai – 400 021 |
| (Appellant) | | (Respondent) |

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|------------------------------|----------|-------------------------------|
| Assessee by | : | None |
| Department by | : | Shri Amit Mohan Mittal |
| | | |
| Date of Hearing | : | 17.03.2020 |
| Date of Pronouncement | : | 19.06.2020 |

ORDER

PER C.N. PRASAD

1. All these appeals are filed by various assessee's belonging to same group for various assessment years referred to in the cause list. Since the issues are common all the appeals are heard together and disposed off by this common order for the sake of convenience.
2. Assessee in all these appeals has raised following common grounds except for figures: -

“GROUND I: CONFIRMING THE ORDER OF THE ASSESSING OFFICER (AO) OF INITIATING PROCEEDINGS UNDER SECTION 153A OF THE ACT AS WELL AS ADDITIONS MADE PURSUANT THERETO ARE BAD IN LAW”

1. *On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the initiation of proceedings under section 153A of the Act and also confirming additions made by the AO in the order passed under section 143(3) r.w.s. 153 A of the Act.*
2. *The CIT(A) failed to appreciate and ought to have held that in the absence of any incriminating material found in the course of search and/ or a valid approval u/s. 153D of the Act, no addition could be made and the proceedings under section 153 A of the Act cannot be initiated by the AO.*

3. Therefore, the Appellant prays that the Order of the CIT(A) confirming proceedings initiated by the AO under section 153 A of the Act be set aside and quashed and held as bad in law and/or the addition made in the order passed under section 143(3) r.w.s. 153A of the Act be deleted.

WITHOUT PREJUDICE TO GROUND I:

GROUND II: VIOLATION OF PRINCIPLES OF NATURAL JUSTICE:

1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the action of the AO in not considering / ignoring the submissions of the Appellant and also CIT(A) himself not considering the said submissions in the proper perspective, thereby violating the principles of natural justice.

2. The CIT(A) further erred in confirming the actions of the AO of not providing the statement of the third parties, based on which the search was conducted and also not providing the opportunity of cross examining the said parties, to the appellant.

3. The Appellant prays that the Order of the AO as confirmed by the CIT(A) be set aside and be held as void-ab-initio and bad in law or the additions made therein be deleted for want of natural justice.

WITHOUT PREJUDICE TO GROUND I & II:

GROUND III: CONFIRMING DISALLOWANCE OF INTEREST ON LOANS OF RS. 12,74,795/- U/S. 37 OF THE ACT PAID ON LOANS TREATED AS BOGUS

1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the disallowance of interest on loans availed on the alleged ground that since the loans were treated as bogus, the interest on such loans is also not allowable u/s. 37 of the Act.

2. CIT(A) failed to appreciate and ought to have held that no addition can be confirmed as:

a. The statements of the Partner of the Firm were retracted during the course of assessment proceedings immediately after the same were made available to the Appellant;

b. An addition solely based on the statements of third parties cannot be made, moreover when the said statements were never provided to the Appellant;

c. In absence of any corroborative evidence, addition cannot be made solely on the basis of some statements;

d. There was no incriminating material found during the course of search action to support the allegations of loans being bogus in nature;

e. Having regard to the confirmation, statements and accounts of the loan creditors filed in the course of assessment, the additions made deserves to be deleted.

3. The Appellant prays that the disallowance on account of interest on loans availed treated as Bogus u/s 37 of the Act be deleted/appropriately reduced

WITHOUT PREJUDICE TO GROUND I & II:

GROUND IV: CONFIRMING THE DISALLOWANCE OF PROFESSIONAL CHARGES OF RS. 30,000/- MADE BY THE AO

1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the adhoc addition of professional fees on the alleged ground that the Appellant has not filed any documentary evidence in support of its claim and ignoring the submissions of the Appellant in entirety.

2. The CIT(A) failed to correctly appreciate and ought to have held that no additions can be confirmed as:

a. The Appellant has submitted the required details in respect of the expenses during the course of assessment;

b. The expenses have been incurred wholly and exclusively for the purpose of business.

3. The Appellant prays that the disallowance of professional fees be deleted.

WITHOUT PREJUDICE TO GROUND I & II:

GROUND V: CONFIRMING THE DISALLOWANCE MADE BY THE AO OF INTEREST OF RS. 11,14,504/- U/S 36(I)(iii) OF THE ACT

1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the actions of the AO disallowing interest u/s. 36(I)(iii) of the Act on the alleged ground that the Appellant had not charged interest on the excess capital withdrawn by the partner.

2. The CIT(A) failed to correctly appreciate and ought to have held that no additions can be confirmed as;

a. The Appellant has utilized the entire amount of interest bearing borrowed funds for the purposes of the business.

b. The borrowed funds were not used by the partners of the Appellant for non-business purposes as alleged by the AO.

3. The Appellant prays that the disallowance of interest be deleted.

GROUND VI: CONFIRMING ORDER OF THE AO OF CHARGING OF INTEREST UNDER SECTION 234B AND 234C OF THE ACT:

1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the actions of the AO in charging interest under section 234B and 234C of the Act.

2. The Appellant prays that the AO be directed to delete the interest charged or appropriately reduce interest under section 234B and 234C of the Act.”

3. In spite of issue of notice none appeared on behalf of the assessee.

The notice was sent through RPAD to the address given in Form No.36 by the assessee returned unserved with an endorsement “Left” by the postal authorities. Since the notice issued was returned unserved, we dispose off these appeals on merits on hearing the Ld.DR.

4. We have heard Ld. DR, perused the orders of the authorities below. On a perusal of the order of the Ld.CIT(A) we find that assessee requested adjournments on several occasions on the ground that one Mr. Jitendra Jain the key person of the assessee group was under judicial/police custody and hence no representation can be made. The matter was again posted on couple of occasions and the assessee requested time for the same reason and on one of the occasions assessee through letter dated 07.06.2018 sought adjournment for a longer period on the ground that an official liquidator has been appointed for one of the companies of the group concerns and have taken over the possession of the premises along with records, documents, etc., However, Ld.CIT(A) appears to have granted adjournment till 15.06.2018 and on 16.10.2018 one more notice was issued requesting the assessee to appear on 26.10.2018 and thereafter the case was posted for hearing on 16.11.2018 and on which date assessee again sought for an adjournment which was rejected by the Ld.CIT(A).

5. Ld.CIT(A) based on the statement of facts filed along with the appeal decided all these appeals exparte dismissing the grounds raised by the assessee effectively confirming the assessments made by the Assessing Officer. We observe that the Ld.CIT(A) while adjudicating some of the grounds appears to have accepted the contentions of the assessee that

some of the submissions filed by the assessee in the course of the assessment proceedings were not considered by the Assessing Officer. However, observing that the Assessing Officer will be duly considering the submissions which were filed by the assessee while dealing with the specific grounds of appeal in respect of various specific additions made by the Assessing Officer the grounds were partly allowed without any specific directions but made merely an observation by the Ld.CIT(A). Therefore, considering the totality of facts and circumstances into consideration and keeping in view the additions/disallowances made by the Assessing Officer, we are of the opinion that assessees should be given sufficient opportunity of being heard in person or through the Authorized Representatives. Thus, these appeals are restored to the file of the Ld.CIT(A) for denovo adjudication in accordance with law. Assessee shall cooperate with the proceedings before the Ld.CIT(A) without taking unnecessary adjournments. Thus, these appeals are restored to the file of the Ld.CIT(A) accordingly.

6. In the result, appeals of the assessee are allowed for statistical purpose.

7. Before parting we note that this appeal was heard on 17.03.2020. The pronouncement is delayed due to lockdown in view of COVID-19

pandemic. The pronouncement is as per Rule 34(5) of Income Tax Appellate Tribunal Rules, 1963 and Hon'ble Bombay High Court decision vide orders dated 15.04.2020 and 15.06.2020 extending the time bound periods specified by Hon'ble High Court by removing the period under lockdown. This aspect is also dealt with in detail by the ITAT Mumbai Bench in case of DCIT v. JSW Steel Vide order dated 15.05.2020.

Order pronounced as per Rule 34(5) of ITAT Rules and by placing the pronouncement list in the notice board on 19.06.2020.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER
Mumbai / Dated 19/06/2020
Giridhar, Sr.PS

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

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.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum