

THE INCOME TAX APPELLATE TRIBUNAL  
"A" Bench, Mumbai  
Before Shri Shamim Yahya (AM) & Shri C.N. Prasad (JM)

I.T.A. No. 2110/Mum/2016 (Assessment Year 2006-07)  
I.T.A. No. 2111/Mum/2016 (Assessment Year 2007-08)  
I.T.A. No. 2112/Mum/2016 (Assessment Year 2008-09)  
I.T.A. No. 2117/Mum/2016 (Assessment Year 2009-10)  
I.T.A. No. 2113/Mum/2016 (Assessment Year 2010-11)  
I.T.A. No. 2115/Mum/2016 (Assessment Year 2012-13)

Mr. Rajesh Poddar 42, Gautam Apartment 31 Juhu Road Santacruz-West Mumbai-400 054.  PAN : AAFPP3092C (Appellant)	Vs.	DCIT, Central Circle 7(4) Room No. 659 6 <sup>th</sup> Floor Aayakar Bhavan M.K. Road, Mumbai-20.  (Respondent)
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Assessee by	Shri Sanjay Kapadia
Department by	Shri Rajiv Harit
Date of Hearing	20.01.2020
Date of Pronouncement	18.06.2020

ORDER

Per Shamim Yahya (AM) :-

These are appeals by the assessee against common order of learned CIT(A) dated 27.3.2014 for concerned assessment years with respect to assessments framed u/s. 143(3) r.w.s. 153A of the I.T. Act. Since common issue has been raised and appeals have been heard together, these are being consolidated and disposed of by way of this common order.

2. The common issue raised in these appeals relate to addition of unsecured loans as undisclosed in u/s. 68 of the I.T. Act in assessments framed.

3. Brief facts of the case are that there was search and seizure in the case of Loha Ispaat group on 22.2.2012. Notice u/s. 153A was issued to the

assessee. In the assessment order the Assessing Officer referred that from time to time details were called for and submission of the assessee was received. The Assessing Officer thereafter observed that from the details furnished and on going through the Balance Sheet of the assessee, it was seen that during the years under consideration, the assessee had inter alia received following unsecured loans from financial year 2005-06 to financial year 2011-12 tabulated as below:-

Unsecured loans introduced in A.Y. 2006-07 to 2012-13

S.No	Name	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
1	Rajesh Poddar HUF	103892792	73234516	145195000	3100000	650000		74169250
2	Dhanidevi Processors Pvt. Ltd.			851597				
3	Indian Tube Traders			3650000				
4	Shree Ram International			808036				
5	Ganayaka Steels Pvt. Ltd.				20320000	900000		10000
6	S.B. Metal				3600000			
7	Varun Sales Pvt. Ltd.							
8	Ajaydev Steels					2742411		
9	Bhavna Ispaat Pvt. Ltd.					9858358		
10	Bride Steels					2008042		
11	Shivam Ispaat					22253762		
12	V.K. Shah Steels Pvt. Ltd.					1500000		1000000
13	Pawanjyoti Steels Ltd.					12591384		
	Total	103892792	73234516	150504633	27020000	52503957	0	75179250

4. During the course of assessment proceeding, assessee was required to establish the credit worthiness of these parties. The Assessing Officer observed that the assessee was unable to substantiate with corroborative evidence the three ingredients required to be established enabling the acceptance of a loan as a genuine loan i.e. genuineness, identity and creditworthiness of the loan creditor. The Assessing Officer further noted during search and seizure action u/s.132(1) of the IT Act, 1961 carried out in Loha Ispaat Group of cases, it was found that this company was also carrying out various transactions of purchase/sales/loan etc. with the above referred concerns. That the company on being confronted with huge evidence in the shape of seized papers, computer backup data and the statements of various persons including the statement of assessee Shri Rajesh Poddar himself (CMD of Lpha

Ispaat Ltd.) has admitted that the concerns mentioned at Sr.no. 3 to 13 have provided only accommodation entries by receiving cash from the company itself. The Assessing Officer further noted that this has been admitted even during the course of assessment proceedings in the case of the company. Hence, the Assessing Officer held that thus it has already been proved that these concerns are bogus entities having no creditworthiness of their own and were giving accommodation entries to Loha Ispaat Group in lieu of some commission brokerage paid to them. He further noted that moreover the concerns other than mentioned at Sr. No. 1 and 2 are entities belonging to the Loha Ispaat Group and their creditworthiness and source of funds has also not been established by the assessee. In view of the same, the assessee was asked to explain and show cause as to why loans standing in books of assessee from the parties as stated above should not be treated as unexplained cash credits u/s.68 of the I.T. Act, 1961. Thereafter the Assessing Officer further observed that during the course of assessment the assessee has submitted that these are loans taken by the assessee from various companies which are not having any source of their own. The Assessing Officer referred to the relevant extract from the reply of the as under :-

"In respect of loan received from following parties;

1. Rajesh Poddar HUF
2. Dhanidevi Processor Pvt. Ltd
3. Indian Tube Traders
4. Shree Ram International
5. Ganayaka Steel Pvt. Ltd.
6. S.B. Metal
7. Varun Sales Pvt. Ltd.
8. Ajaydev Steels
9. Bhavna Ispaat Pvt. Ltd.
10. Shivam Ispaat
11. V.K. Shah Steels Pvt. Ltd.
12. Pawanjyoti Steels Pvt .Ltd.
13. Bride Steels

It is sub mitted that unsecured loan received from the above mentioned parties during the period from 2005-06 to 2011-12 is as a result of accommodation stock/accommodation debtors in the books of Loha Ispaat limited leading no evasion of tax. All the money received through chain of person related to the transaction within Loha Ispaat limited. And the

transaction remains unsettled both in the hand of Mr. Rajesh Poddar, in the hand of above mentioned parties & Loha Ispaat Limited, Hence it is dear that such a loan provider did not have their own source of fund. The loan so generated in the hand of assessee is forming part of accommodation transactions of sales & purchases of Loha Ispaat Limited."

5. From the above the Assessing Officer concluded that the assessee itself in his submission has admitted that these parties had provided unsecured loan to the assessee and they do not have their own source of income. He rejected other aspects of the assessee's contention that these types of loans were generated mostly by way of purchase and sale in Loha Ispaat Ltd. leaving corresponding accommodation debtors/stock unsettled as mere explanation given by the assessee to support the purpose of assessee. He held that it is not acceptable as there is no proof on record given by the assessee to prove such correlation. Thereafter the Assessing Officer held that the assessee has not proved the onus cast upon him. He held that the assessee has not explained as to why such flow has taken place and such credits in his books are indirectly the money generated mostly by way of purchase and sale leaving corresponding debtors/stock unsettled. Hence, he held that source of the same is not explained and substantiated by the evidence. Thereafter the Assessing Officer referred to the provisions of section 68 of the Act and certain case laws. Finally the Assessing Officer concluded that the assessee was not able to discharge the onus cast on him with respect to genuineness of these parties giving unsecured loans appearing as credits in books of the company. He opined that money introduced is nothing but assessee's own money. Accordingly, he made addition as under section 68 of the Act :-

Assessment Year	
2006-07	10,38,92,792 (Closing balance from Rajesh Poddar HUF which includes amount received during the year at Rs.5,31,89,070/-)
2007-08	7,32,34,516 (received during the year)
2008-09	15,05,04,633 (received during the year)
2009-10	2,70,20,000 (received during the year)
2010-11	5,25,03,957 (received during the year)
2011-12	-
2012-13	7,51,79,250 (received during the year)

6. Thereafter the Assessing Officer held that without prejudice to the above the amount is taxable in hands of the assessee as deemed dividend u/s. 2(22)(e) of the Act. For this the Assessing Officer stated that the assessee in its submission has stated that the money is routed through various bogus entities as unsecured loans in balance sheet of the assessee and these loans are actually the money of Loha Ispaat Ltd. The Assessing Officer further noted that Loha Ispaat Ltd. is not a company in which public are substantially interested. He noted that the assessee is holding beneficial ownership of shares in the company. He noted that for the concerned assessment year there were sufficient accumulated profits. Thereafter the Assessing Officer observed that the loans have been taken by the assessee through the conduit of the dummy companies. He referred to the decision of Hon'ble Supreme Court in the case of CIT, Kolkata Vs. Mukandray Shah (209 ITR 433). That in such circumstances provisions of section 2(22)(e) of the Act shall apply. Hence, he held that the amount is to be added in the total income of the assessee on this account. He held that this is only an alternative argument to the argument made in earlier paragraphs. However, he noted that since the same addition u/s. 68 has already been made no separate addition has been made.

7. Against this order, the assessee is in appeal before learned CIT(A).

8. Learned CIT(A) in his appellate order referred to the Assessing Officer's discussion regarding addition u/s. 68 of the Act. Thereafter he mentioned that the submissions of the assessee have been remanded and rejoinder to the remand has been considered. Learned CIT(A) observed that before him also assessee contended that the Assessing Officer failed to appreciate the fact that the assessee had not introduced new cash every time while taking the alleged accommodation entry. He noted assessee's submission that what can be best be added by the Assessing Officer is the seed amount introduced for circulation in the given case as it was repeatedly concluded that the cash was received on the later date out of the said transactions. He further noted that discrepancies on the amount noted by the assessee. He further noted the

submission that the concept of real income of the assessee should be followed. However, learned CIT(A) rejected the same on the ground that the Assessing Officer has categorically brought out in the assessment order that the assessee had given a mere explanation that the credits/loans were generated mostly by way of purchase and sale in Loha Ispaat Ltd. leaving corresponding accommodation debtors/stock unsettled but no proof thereof is either available on record or given by the assessee before the Assessing Officer to prove such co-relation. He noted that despite the fact that the creditors are the part of Loha Ispaat group or related thereto and the assessee being the Managing director in Loha Ispaat Ltd., the assessee has failed to submit any documentary evidence in support of his claim regarding unsecured loans. Further learned CIT(A) dealt with the issue raised by the assessee that the additions were not based upon any incriminating material found in search. He refuted the same by observing that incriminating material were found and seized during the search showing that the assessee has taken accommodation entries from various entities and a statement u/s. 132(4) was obtained from assessee confirming the same.

9. Against this order the assessee is in appeals before us.

10. We have heard both the counsel and perused the records. Learned counsel of the assessee submitted that the assessee has already stated during the course of assessment itself that money has originated from the company Loha Ispaat Ltd. That the amount has already been added in the hands of the Loha Ispaat Ltd. He submitted that the entire amount which has been taxed on substantive basis in this year in the hands of Loha Ispaat Ltd. and taxed again on the assessee on substantive basis. Hence, he submitted that same amount cannot be again added. He submitted that in the statement submitted by the assessee, the assessee has himself stated that this amount has been sourced from Loha Ispaat Ltd. and has been further introduced in Loha Ispaat itself. Learned counsel submitted that the authorities below are relying upon the assessee's statement that the source of this loan cannot be proved in as

much as it was sourced from Loha Ispat Ltd. However, they are rejecting the statement given by the assessee in the same breath that this amount has come from Loha Ispaat Ltd. and have gone back to Loha Ispaat Ltd. He submitted that it is not justified on the part of the authorities below to accept a part of the statement and reject the same without any enquiry whatsoever. Furthermore, learned counsel sought to submit certain papers in support of his contention that these amounts have come from Loha Ispaat Ltd. and they have been routed back to the same company. Hence, learned Counsel of the assessee pleaded that no addition in the hands of the assessee is to be sustained once it is clear that the source of funds is Loha Ispat ltd and the same amount has already been added in the hands of the Loha Ispaat Ltd. He further relied upon the claim and submissions made before learned CIT(A). He stated that the papers being submitted by him are already before the assessing officer. He submitted that these papers only aim to give a pictorial chart linking the sums to the bank account, group concerns et cetera for an understanding of the transaction carried out between Rajesh Poddar and Loha Ispat ltd

11. Per contra, learned Departmental Representative submitted that similar issue has been decided by the ITAT, Mumbai Benches in the case of Smt. Anju Ranesh Poddar, wife of the assessee, wherein following unexplained loans were added by the Assessing Officer :-

- Rajesh Poddar (HUF) Rs. 3,75,358/-
- Dhani Devi Processor Rs. 60,000/-

12. Learned Departmental Representative thereafter referred to paragraph 7 of the said order for following proposition :-

"7. We have considered the submissions of the parties and perused the material available on record. As could be seen, the only grievance of the assessee is, before treating the unsecured loans as unexplained cash credits under section 68 of the Act, the Departmental Authorities have not given adequate opportunity of being heard to the assessee. In this context, it is the submission of the learned Authorised Representative that certain developments have taken place after completion of the assessment, in assessee's case viz. assessment orders passed in case of Loha Ispat Ltd. and

some of the creditors which may have bearing on the genuineness of unsecured loans. To prove such fact, the assessee has also submitted before us the assessment orders passed in case of Loha Ispat Ltd., Shri Rajesh Poddar (HUF) and Dhani Devi Processors for the very same assessment year. On a perusal of the aforesaid orders, we have noticed that these orders have been passed after completion of the assessment in case of the assessee. Moreover, prima-facie, it appears that they have not been submitted before the learned Commissioner (Appeals) either. Thus, these documents, in our view, have to be examined by the Departmental Authorities to find out whether they have bearing on the issue of genuineness of the unsecured loan. Further, the assessee should also get a fair opportunity to prove the genuineness of the loan transaction on the basis of aforesaid documentary evidence. Keeping this in view, we are inclined to restore the matter back to the file of the Assessing Officer for deciding afresh."

13. Referring to the above learned Departmental Representative submitted that the assessment made in the case of M/s Loha Ispat Ltd., Shri Rajesh Poddar (HUF) and M/s Dhanidevi Processors Pvt. Ltd. for the respective assessment years have an important bearing on the genuineness of the unsecured loans in the case of the assessee too, since the assessee has received loans from the aforesaid parties as well. He pointed out that these appeals are pending adjudication. As regards the issue that when the addition is only based upon the statement of assessee which stated that the parties giving loans had no source of their own but the sums are sourced from Loha and the issue of applicability of the doctrine of "Approbate and Reprobate" he submitted that it is settled that law does not permit a person to approbate and reprobate, i.e., no party can accept and reject the same instrument to suit its interest. That however, it is only a species of estoppel; it applies only to the conduct of the parties. He submitted that as in the case of estoppel, it cannot operate against the provisions of a statute. In this regard he referred to decision of Hon'ble Apex Court in Commissioner of Income-tax, Madras v. V. Mr. P. Firm, Muar (1965) 56 ITR 67 (SC). He submitted that equity is out of place in tax law. In this regard he referred to the decision of Hon'ble High Court of Gujarat in the case of N.K. Industries Ltd. v. Dy. CIT [2016] 72 taxmim.com 289 (Guj.) He propounded the proposition that it cannot be read as having held that even if the material found during the course of search expose the falsity of the entries made in the regular books of accounts, the

consequent concealed income cannot be assessed as undisclosed income in the block assessment under Chapter XIV-B. However the learned departmental representative did not back this submission to any reference of the seized material in the orders of the authorities below. Thereafter learned Departmental Representative referred to the claim of the assessee that loans generated in the hands of assessee are part of the accommodation transaction of sales and purchases of M/s Loha Ispaat Limited. However, he submitted that this claim is not supported by any evidence. However thereafter he sought to address this issue and submitted that additional income disclosed by M/s Loha Ispaat Ltd. on account of unaccounted cash sales for the corresponding A.Ys. are as under :-

S.No.	A.Y.	Unaccounted Cash Sales	additional income disclosed by M/s Loha Ispaat Ltd. @ 3% on unaccounted cash sales
1	2006-07	3,56,13,708	4,68,411
2	2007-08	1,38,97,843	4,16,935
3	2008-09	79,89,493	2,39,685
4	2009-10	5,70,35,156	17,11,055
5	2010-11	10,60,39,550	31,81,187
6	2011-12	3,44,70,180	10,34,105
	TOTAL	23,50,45,930	70,51,378

In addition to above M/s Loha Ispat Ltd. has admitted unaccounted sale of Rs. 3,28,810/- for F.Y. 2004-05 and Rs. 14,22,18,089/- for F.Y. 2011-12. Thus M/s Loha Ispaat Ltd. has declared unaccounted sales of Rs. 37,75,92,809/-, in total from F.Y. 2004-05 to F.Y. 2011-12 (Para 5.2,6 on Page 37 of the assessment order in the case of M/s Loha Ispaat Limited.

14. From the above he submitted that total funds available to Loha Ispaat Ltd. on account of undisclosed income from cash sales are much less and not adequate to explain the source of share application received from the assessee alone. That even the entire unaccounted cash sales cannot cover unsecured loan of the assessee. Thereafter learned Departmental Representative referred to the decision of Hon'ble Delhi High Court in the case of CIT Vs. Harjeev Aggarwal (70 taxmann.com 95) for the proposition that the statement recorded on oath u/s. 132(4) of the Act has evidentiary value. Finally learned Departmental Representative submitted that in the present case addition made

by the Assessing Officer to the income of the assessee was exclusively and solely on the basis of the disclosure made by the assessee himself and M/s. Loha Ispaat Ltd. where he is managing director. Thereafter, he referred to certain additional documents being submitted by learned Counsel of the assessee. He prayed for the rejection of these documents. In this regard he submitted as under :-

“During the hearing before the Hon'ble Bench, the assessee has placed certain documents in the form of Paper Book-2 dated 20.01.2020 before the Hon'ble Tribunal and claimed that the paper furnished in the paper book are not fresh evidence but forming part of document seized by department reviewed during assessment proceedings. However, these facts are not borne out from the assessment order and appellate order. The CIT(A) has categorically mentioned in Para 3.8 on Page 11 of the appellate order that "several opportunities were given to the appellant during the appellate proceeding for furnishing of details. Despite the same the appellant filed a written submission of four pages giving elementary details of returned income, particulars of additions/disallowance and assessed income which is of general in nature and perfunctory in substance" and in Para 3,11 on Page 12, he has further highlighted the fact that "Despite the fact that the creditors are the part of M/s Loha Ispat Group or related thereto and the assessee being the Managing Director in M/s Loha Ispat. Ltd, the appellant has failed to submit any documentary evidence in support of his claim regarding unsecured loans." Therefore, these details now. submitted by the assessee in the form of Fund Trail Chart along with extract of Bank Statement shall not be admitted for adjudication.”

15. Learned Departmental Representative further submitted that the decision of the Assessing Officer in the case of M/s. Dhanidevi Processors Pvt. Ltd., another group company has made an addition of Rs. 4 crores to the total income of the concern for A.Y. 2007-08 on account of unexplained investment as share application money introduced in M/s. Loha Ispaat Ltd. and the appeal is pending before learned CIT(A). learned Departmental Representative finally concluded as under :-

“In view of the aforesaid, it is humbly submitted that the claim of the appellant that the loans generated in the hands of assessee are part of the accommodation transaction of sales and purchases of M/s Loha Ispaat Ltd., deserves to be rejected and the addition made by the Assessing Officer to the total income of assessee as unexplained cash credits, deserves to be sustained.”

16. We have heard both the Counsel and perused the records. We note that assessment in this case has been framed pursuant to search and seizure

action. Assessment up to AY 10-11 has been framed under section 153A of the income tax act. It is settled law that in such cases where assessment is not abated no addition can be made dehorse incriminating material seized in the search. We note that the assessing officer has referred that there is search action in Lodha Ispat group. However with regard to the issue of unsecured loans he has mentioned that it was from the details furnished and going through the balance sheet of the assessee he has found that assessee has received unsecured loans from financial year 2005-06 to financial year 2011-12. Thereafter the assessing officer has referred that during search carried out in Loha Ispat group it was found that the company is also carrying on various transactions of purchases/sales/loans etcetera with the parties from whom assessee has obtained unsecured loan that the company on being confronted with huge evidence in the shape of seized papers, computer backup and the statement of assessee who is CMD of Loha Ispat has admitted that the concerns have provided only accommodation entries by receiving cash from the company itself thereafter the assessing officer has observed that this has been admitted by the by the company during the course of assessment proceedings thereafter the assessee officer has referred to the statement of the assessee as reproduced above.

17. From the above is evidently clear there is no reference whatsoever to the incriminating material found during the course of search upon the assessee on the basis of which this addition of unsecured loan has been done in the hands of the assessee under section 153A. This issue was very much raised before the learned CIT appeals. In this regard learned CIT appeals observed that search and seizure action under section 132 of the act was conducted on 22/2/2012. Hence he noted that assessment year 11-12 is pending as assessing officer had the jurisdiction to issue notice under section 143(2). As regards assessment year 12-13 is concerned he observed that the same being the current year the assessing officer has jurisdiction to assessee income not only based upon the incriminating material discovered during the course of search but he also retains the jurisdiction to assessee the other income arising

out of the regular scrutiny assessment proceedings. Furthermore regarding assessment year 10-11 he observed that the assessee has not given information regarding filing of return under section 139(1) for this assessment year. He further observed that last date for filing of return of income under section 139(4) of the act for this year was 31/3/12.

18. At this juncture learned CIT(A) declined to adjudicate this aspect. After having so adjudicated he observed that the issue raised regarding absence of incriminating seized material has not been raised by way of a ground but it has been stated only in written submission that assessment under section 153A must be limited only to incriminating material found during search. He held that explanation given in the written statement cannot be treated as a ground. Thereafter learned CIT(A) again contradicted himself by stating that materials were found and seized during search. However he failed to make any reference to any such material. Here we note that learned CIT(A) was very much conscious of assessee's grievance and he has adjudicated the same against the assessee for assessment year 11-12 and 12-13. However as he found that for the other assessment years no assessment is pending he observed that he is not going to adjudicate the issue in absence of a ground. In this regard we note that it is settled law that in the interest of justice issue can be raised before quasi judicial authorities without any specific ground raised in grounds of appeal. This is particularly so for legal ground. Moreover no tax can be levied except that leviable as per the provisions of law. It is also settled law that there is no estoppel as to law. If an amount is not exigible to tax as per the provisions of law the same cannot be brought to tax on the ground of concession or otherwise. Moreover as noted above this issue was very much made before the learned CIT(A).

19. From the discussion above and observation of learned CIT(A) in this regard it is manifestly clear that the assessment years for assessment year 10-11 and years preceding to this were not pending at the time of search. Hence assessment for these assessment years did not abate. Hence no addition in

these assessment years under section 153A is permissible without incriminating material found during search. This proposition duly find support from honourable Bombay High Court decision in the case of CIT Vs. Continental warehousing Corporation (Nhava Sheva) (IT Appeal 523 of 2013 and the Supreme Court decision in the case of CIT Vs. Sinhgad Technical Education Society (Civil Appeal No. 11080 OF 2017).

In the present case assessing officer is referring that material were found in search of loha Group and Loha Ispat ltd without referring to the nature or any other detail thereof. If the assessing officer is referring to search material found in other cases, then assessment in the hands of assessee was to be framed under section 153C, with the requisite requirements as per law. Material found in search in hands of persons other than the assessee can not give jurisdiction of assessment u/s 153A in the case of assessee.

20. Furthermore, as noted herein above the addition has been solely made by referring that assessee was not in a position to give corroborative evidence regarding the genuineness of the aforesaid loan. In assessment order there is no reference whatsoever as to what enquiry was done by the assessing officer in this regard. The sole basis which is reflected in the assessment order as the basis of addition is the following statement of the assessee :-

"In respect of loan received from following parties;

1. Rajesh Poddar HUF
2. Dhanidevi Processor Pvt. Ltd
3. Indian Tube Traders
4. Shree Ram International
5. Ganayaka Steel Pvt. Ltd.
6. S.B. Metal
7. Varun Sales Pvt. Ltd.
8. Ajaydev Steels
9. Bhavna Ispaat Pvt. Ltd.
10. Shivam Ispaat
11. V.K. Shah Steels Pvt. Ltd.
12. Pawanjyoti Steels Pvt .Ltd.
13. Bride Steels

It is sub mitted that unsecured loan received from the above mentioned parties during the period from 2005-06 to 2011-12 is as a result of

accommodation stock/accommodation debtors in the books of Loha Ispaat limited leading no evasion of tax. All the money received through chain of person related to the transaction within Loha Ispaat limited. And the transaction remains unsettled both in the hand of Mr. Rajesh Poddar, in the hand of above mentioned parties & Loha Ispaat Limited, Hence it is dear that such a loan provider did not have their own source of fund. The loan so generated in the hand of assessee is forming part of accommodation transactions of sales & purchases of Loha Ispaat Limited."

21. The learned Departmental Representative in his submission has also stated that addition has been made exclusively and solely on the basis of disclosure made by the assessee himself and M/s. Loha Ispat Ltd.

22. From the above it is apparent that assessee has duly stated that above loans are results of accommodation/accommodation debtors in the books of Loha Ispat Ltd. The above statement has been interpreted by the assessing officer as acceptance that these parties who have provided the unsecured loan do not have their own source. In this regard there is no material on record as to on what basis the assessing officer is coming to the conclusion that these parties do not have source of their own other than the statement attributed to the assessee that these are accommodation entries originating from Loha Ispat. The Assessing Officer in his order stated that the assessee as MD of Loha Ispat in his stated during search has admitted that these concerns have provided loan by receiving cash from the company itself.

23. It is settled law that when a person is relying upon a statement he cannot accept a part of it and disbelieve the other part. This has been enshrined in the maxim of a probate and reprobate. It denotes that a party cannot be permitted to approbate and reprobate on same facts and take shifting stands. Here we note that assessing officer is accepting the assessee's statement that these parties do not have source of their own, but the assessing officer is rejecting the other part of the assessee which is a statement that these amounts are sourced from Loha Ispat ltd and routed through other concerns to the assessee and which went back to Loha Ispat Ltd. This

principal was further reiterated by honourable Supreme Court in the case of Suzuki Parasrampuriah Suitings Vs. Official Liquidator (Civil Appeal No. 10322 of 2018 dated 8.10.2018) where in the honourable Supreme Court held that a party cannot be permitted to take shifting slaves.

24. When this aspect has been confronted with the learned departmental representative he had submitted that approbate and reprobate is a specie of the estoppel and he has relied upon the decision of honourable Supreme Court in the case of P.V. Firm supra.....

25. We note that the above reliance by the learned departmental representative does not fructify the case of the revenue. In the said case law honourable Supreme Court has expounded that if a particular sum is not taxable in law the same cannot be brought to tax on the basis that assessee had agreed for the same. In the present case we note that the addition in the case of search and seizure and others has to be based upon provisions of law and the case laws in this regard. If it is not so assessee cannot be subject to tax. Rather this decision helps the case of the assessee

26. On this account also a mere admission on the part of assessee dehorse any corroborative material found during search and without any further enquiry by the assessing officer cannot be the sole and conclusive basis of addition under section 68 of the unsecured loan. This is more so when in the statement of the assessee which is the basis of addition it has been stated that these sums have their origin from Loha Ispat ltd. These aspects have been brushed aside by the assessing officer. He has not issued any notice to the parties who have given the loan. He has not obtained their financials and commented upon their creditworthiness on the basis of the financials.

27. We also note that the assessing officer was also himself aware of the real import of the assessee's statement wherein it was submitted that the unsecured loans have their origin in Loha Ispat Ltd. Hence assessee officer has

made an alternative argument, though he has not made the addition under section 2 (22)e that the said sum is also liable to be taxed in the hands of the assessee under section 22 e as deemed dividend. In this regard the assessing officer has placed reliance upon honourable Supreme Court decision in the case of CIT Vs. Mukundray K. Shah (Civil Appeal No. 1873 of 2007 dated 10.4.2007).

28. In this regard we note that the assessing officer's reliance upon the said decision of the Supreme Court is not applicable on the facts of the present case. In the said case investment by the assessee were discovered in search. Honourable Supreme Court has noted that the company had granted funds to the partnership firms where the concerned assessee was a partner and from current account of partner the assessee had received funds for these investments and the same were held to be taxable under section (2)(22)(e) of the Act.

29. In the present case we note that there is no finding as to if and how the firms and parties who have received the sums from Loha Ispat were under the control of the assessee. In absence of such a finding the reliance of the assessing officer on the above said case law is not sustainable. It may also be noted that in the said case law Hon'ble Supreme Court had also upheld the addition as undisclosed income u/s 158BC as having resulted lawfully from search and seizure action. In the present case we have already given a finding that the addition is not based upon any incrimination material found upon search in the case of the assessee. Moreover this aspect is only of academic interest as addition has not been made by the assessing officer as deemed dividend. Moreover as held by honourable jurisdictional High Court in the case of CIT versus Surat Cotton Spinning & Weaving Mills (202 ITR 932) once the assessing officer has assessed a particular receipt under a particular head of income the amount is no more available to him for assessment under another head

30. As regards the reference of learned Departmental Representative the decision of assessee's wife in ITAT, we note that the said issue was dealt with by the tribunal on the facts and submissions obtaining in that case. Where, the assessee requested for a remand due to further developments. Moreover the additions were also not sustained by the ITAT.

31. As regards the decision from honourable Delhi High Court regard upon by the learned departmental representative regarding the evidentiary value of statement obtained under section 132(4) is concerned, we note that the said case law by no stretch of imagination propounded that one aspect of the statement obtained can be relied upon and the other aspect is be rejected. Moreover the issue that in case of search and seizure assessment under section 153 A no addition can be made without incriminating material found during search is settled by honourable Supreme Court in the case of *Sinhgad Technical Education Society (supra)*. Since we have already held that these additions are not sustainable in assessment u/s 153A.

32. In the result we set aside the order of learned CIT(A) and decide the issue in favour of assessee.

Before parting we note that this appeal was heard in 20.1.20. The pronouncement is delayed due to lockdown in view of Covid 19 pandemic. The pronouncement is as per rule 34(5) of appellate tribunal rules and Honourable Bombay High Court decision vide order dated 15.4.2020 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 in ITAT Mumbai order in case of *DCIT vs JSW Steel* vide order dt 15.5.2020.

Order has been pronounced in the Court on 18.06.2020 as per rule 34(4) by placing the pronouncement list on notice board.

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

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 18 /06/2020

Copy of the Order forwarded to :

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

//True Copy//

PS

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai