

**IN THE INCOME TAX APPELLATE TRIBUNAL “F”  
BENCH, MUMBAI**

**BEFORE SHRI PAWAN SINGH, JM&  
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 7004/Mum/2017  
(निर्धारणवर्ष / Assessment Year: 2014-15)

ACIT 4(2)(1) 6 <sup>th</sup> floor, Room no. 642, Aayakar Bhavan, M. K. Road, Mumbai-400 020	<b>बनाम/ Vs.</b>	M/s VGC Diamond Pvt. Ltd. 308/382, 1 <sup>st</sup> floor, NNS Building, Chira Bazar, Kalabadevi, Mumbai-400 002
स्थायीलेखासं./जीआइआरसं./PAN No. AACCV5319C		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mrs. Samatha Mullamudi,DR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri Vimal Punamiya, AR
सुनवाईकीतारीख/ Date of Hearing	:	20.02.2020
घोषणाकीतारीख / Date of Pronouncement	:	08.07.2020

आदेश / ORDER

**Per S. Rifaur Rahman, Accountant Member:**

The present Appeal has been filed by the revenue against the order of Ld. Commissioner of Income Tax (Appeals) – 9 in short referred as ‘Ld. CIT(A)’, Mumbai, dated 11.09.17 for Assessment Year (in short AY) 2014-15.

2. The brief facts of the case are, the assessee company engaged in the business of manufacturing and trading of diamond, Gold jewellery and labour work. Assessee filed its return of income for A.Y. 2013-14 on 20.11.14 declaring total income of Rs. 24,09,410/- and subsequently the case was selected for scrutiny and notices u/s 143(2) and 142(1) of the I.T. Act were issued and served on the assessee. In response, AR of the assessee attended and filed the relevant information as called for. AO observed that assessee has taken unsecured loan from its director Mr. Vivek Surana. Assessee was asked to submit the documents to prove the genuineness of the transactions. Assessee has submitted bank statement and income tax return. Assessee has not submitted balance sheet and confirmation of the loan from the director. AO could not verify the nature of transaction, whether it is out of accumulated capital. Since assessee has not submitted balance sheet and confirmation, AO treated this transaction as unexplained credit since assessee has failed to substantiate the identity, credit worthiness and genuineness of the transaction. Further, AO observed that assessee was having business transaction with seven trade creditors and in order to

verify the genuineness of the trade transactions, he issued notice u/s 133(6) of the Act to all these creditors. Since most of the parties are not traceable, he issued notice 131 to the assessee to produce the parties. No parties were produced before him, he treated these transactions as not genuine and he made addition u/s 68 of the Act as the genuineness and identity of the creditors are not established. He made addition to the extent of Rs.3,86,58,127/-.

3. AO observed that Kalash Enterprises is part of Rajendra Jain group concern and he observed that the investigation wing, Mumbai, has investigated thoroughly on this group and found that this group involves in providing accommodation entries. Since, Kalash Enterprises is part of this group, assessee must have received accommodation entries. As the assessee receives the sales bills from Rajendra Jain group, assessee must have arranged or purchased from grey market. Considering the fact that assessee must have earned benefit by booking higher value by taking accommodation entries, AO disallowed the GP embedded in this transaction. Accordingly, he disallowed 5% of

the purchase value of the diamonds purchased from Kalash Enterprises.

4. After considering the submission of assessee, AO made the assessment u/s 143(3) of the Act by making certain additions u/s 68 of the Act determining the total income at Rs. 4,91,44,120/-. Apart from this, AO also initiated penalty u/s 271(1)(c) of the Act.

5. Aggrieved with the above order, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the submission of assessee, partly allowed the appeal of the assessee with the following observations:-

a) With regard to unsecured loan from Director, which is mentioned in para no. 2.4.7 of the order of Ld. CIT(A) and the same is reproduced below:-

*2.4.7. Having perused the records and after weighing the pros and cons, it is seen that in para 5.3 of the assessment order, Ld.AO had himself recorded that the appellant had submitted the details including confirmations and selected pages of bank statements and at para 5.4, he stated that no confirmation was*

*given whereas bank statement and ITR was filed. Thus, the action of Ld.AO in doubting the identity and creditworthiness of the creditor being Director of the company does not match with the facts brought before him and once the bank statement and ITR copies were filed, Ld.AO could not have arrived at a different conclusion. In the case at hand, the appellant has satisfied all the 3 ingredients of section 68 of the Act and hence, the addition made cannot be sustained. Accordingly, Ground No.3 is **Allowed**.*

b) With regard to trade creditors, which is mentioned in para no. 2.4.8 to 2.4.10 of the order of Ld. CIT(A) and the same is reproduced below:-

*2.4.8. Ground No.4 is against the action of Ld.AO in treating the credits outstanding in the books of accounts of the appellant company as its income u/s.41(1) of the Act. During the course of appellate proceedings, it was submitted that in respect of M/s.Divya Jewels, there was no business transactions during the impugned assessment year and the credit outstanding was re-paid in AY 2015-16. The details of transactions were filed before the Ld.AO vide appellant's letter dated 23-11-2016. As regards Shri Girish Agarwal and Smt. Poonam Agarwal, it was*

*stated by Ld. AR that first was Director's remunerations and the second was salary paid on which IDS was regularly deducted and hence, there was no ground on which such addition can be made. Further as regards Jewel Diamond, it was stated that no business transaction was carried out with the said entity during the impugned assessment year and here again it was re-paid in AY 2015-16. As far as Renisha Impex P Ltd. is concerned, it was stated that during the year, regular business transaction with the said entity for purchase and payments were also made and the outstanding balance was re-paid in AY 2015-16. As far as Varun Gems is concerned, it was again stated that there were regular business transactions with the appellant during the AYs 2014-15 and 2015-16 for purchase and payments thereof and hence, it could not be the case of a ceased liability. In respect of Kingstar, it was stated that no business transaction was undertaken during the AY 2014-15 and entire amount was re-paid in AY 2015-16. It was thus stated that Ld.AO had failed to discharge his duty to prove that the transactions were bogus or that it was the case of cessation of liability. In this regard, Ld.AR has relied on the decisions which are cited by him in the submissions made and it was stated that in view of the facts and confirmations submitted before the Ld.AO, no*

*addition should have been made in respect of purchase made in regular course of business.*

*2.4.9. Having weighed the pros and cons, whereas I find that Ld.AO had himself stated at para 5.14 that replies for purchases and trade confirmation both were received from M/s. Renisha Impex Pvt. Ltd. and M/s. Jewel Diamond, at the next para i.e. 5.15, he made the addition without giving any reason.*

*2.4.10. From the records, it is apparent that the company had not taken any loan from the parties and that entire transaction was either of purchase or of remuneration / salary payable and hence, recourse could not be had to sec. 68. Moreover, while dealing with section 41(1), Ld.AO had not examined the fact whether liabilities actually ceased to exist or not and in case of regular purchase and Director's remuneration / salary, invocation of section 41(1) cannot be contemplated. Ld.AO has made the above addition in a perfunctory manner without substantiating the grounds, so much so that the notice u/s 131 was issued towards the fag end of the assessment proceedings on 23.12.2016 and the order was issued on 28-12-2016. In the circumstances, when all the details of purchases and payments were filed before the Ld.AO, addition*

*made cannot be sustained. Accordingly, ground raised is Allowed.*

c) With regard to bogus purchases, which is mentioned in para no. 2.4.11 to 2.4.12 of the order of Ld. CIT(A) and the same is reproduced below:-

*2.4.11. Ground No.5 is against the action of Ld.AO in making an addition of 5% of the purchase made from Kalash Enterprises of Rs. 1,26,587/- by treating the same as bogus purchase in view of section 69C of the Act. Ld.AO had made the addition in respect of Kalash Enterprise which belongs to Rajendra Jain group that was engaged in providing accommodation entry and hence, as per the margin in Diamond Industry ranging from 1 to 4.5%, he made the addition of 5% as the appellant's transactions were in the grey market. During the course of appellate proceedings, Ld. AR argued that merely on the basis of suspicion, no addition could be made and even the said Rajendra Jain had retracted his statement. Ld.AR has relied on the decision of Hon'ble Bombay High Court in the case of Babulal C. Borana - 282 ITR 251 where it was held that amounts could not be added as undisclosed investment only because the vendor denied the transaction. He also relied on the decision of Hon'ble*

*ITAT. Mumbai in the case of Raieev G Kalathil in ITR 6727/M/2012 dated 20-08-2014. Ganpat A Sanqhvi in ITR 2826/M/2013 and Rarnjla Pravin S. in ITR 5246/M/2013 to substantiate that even in case of Hawala Dealers in the Sales Tax Department, no addition could be made only on the grounds of suspicion, if payments were duly recorded by account payee cheques and no evidence was available that cash had been received back.*

*2.4.12. Having considered the pros and cons, I find that the issue at hand is squarely covered by the decisions cited at hand and Ld.AO had not brought anything on record to show that Rajendra Jain had made any statement regarding the payments by stating that he had provided accommodation entries to the appellant. It is also an un-controverted fact that the payment was made for the purchase by account payee cheque and was recorded in regular books of account and Ld.AO had not rejected appellant's books of accounts. In above view of the matter, addition made merely on suspicion cannot be sustained. Accordingly grounds raised is **Allowed**.*

6. Aggrieved with the above order, revenue has preferred the appeal before us on the ground mentioned herein below:-

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of unexplained cash credit of Rs. 79,50,000/- from Vivek Surana without appreciating the fact that the assessee failed to satisfy the AO about the nature and source thereof."*
2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of unexplained cash credit of Rs.3,86,58,127/- from various parties without appreciating the fact that the assessee failed to establish the genuineness and identity of the liabilities."*
3. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made on bogus purchase u/s 69C of Rs. 1,26,587/- without appreciating the fact that the assessee failed to establish the identity of the parties for verification in spite of ample opportunities."*
4. *"The appellant craves leave to amend or alter any ground or add new ground which may be necessary."*
7. Before us, with regard to Ground No. 1, Ld. DR brought to our notice findings of AO in para no. 5.3 to 5.5 of the assessment order and page 13 of the order of Ld. CIT(A). She submitted that

Mr. Vivek Surana does not have creditworthiness and assessee has not filed any document in support of creditworthiness of Mr. Vivek Surana, therefore she supported the findings of AO by submitting that assessee has not proved credit worthiness and genuineness of the transaction.

7.1 With regard to Ground No. 2, Ld. DR brought to our notice para 5.14 of the assessment order and para 2.4.8 & 2.4.9 of the order of Ld. CIT(A) and submitted that assessee has not proved the genuineness and creditworthiness of these parties, even though AO issued notice u/s 133(6) to all the parties and none of the parties has attended before the AO, which clearly indicates that the transactions with these parties are not genuine and she supported the findings of AO.

7.2 With regard to Ground No. 3, Ld. DR submitted that the purchases made by assessee are not proved to be genuine and assessee has taken these purchases from the group concerns which are controlled by Rajendra Jain, she submitted that the investigation wing has found that these group is involved in hawala and providing of accommodation entries. Therefore, AO

has fairly made addition only to the extent of benefit enjoyed by the assessee.

8. On the other hand, Ld. AR brought to our notice the written submission filed by assessee, which is reproduced below:-

**• Submission on ground no. 1: Unexplained Cash Credit on account of outstanding loan balance of Director - Mr. Vivek Surana amounting to Rs.79,50,000/-.**

3. *During the year under an appeal, the appellant company has regular loan transactions with one of its director named Mr. Vivek Surana. There was a opening credit balance of Rs.60,00,000/- and appellant company has received an amount of Rs.79,50,000/-, made payment of Rs.57,50,000/- and final closing credit balance of Rs.82,00,000/-. Copy of ledger account along with bank statements are attached at page no. 63 to 72 of the paper book.*

4. *While making addition, the Ld. Assessing officer noted;*

I. *That the appellant filed only the copy of bank statement and ITR.*

II. *That copy of confirmation of transaction and balance sheet was not furnished by the appellant and hence, the appellant failed to discharge its onus as laid down u/s 68 of the Act.*

5. *Assessee's contentions of making addition:-*

• ***Section 68 of the Act reads as under: -***

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

*It is settled position that to prove the genuineness of the transaction, the burden lies on the assessee and to discharge the onus, the assessee must prove the following -*

- a. Identity of the Creditor*
- b. Capacity of the Creditor*
- c. Genuineness of the Transaction*

*Accordingly, loan amount received during the year under an appeal was treated as unexplained u/s. 68 and addition of Rs. 79,50,000/- was made by the Ld. AO.*

6. *During the course of assessment proceedings, the Ld. Assessing Officer has asked the appellant to submit the documentary proof and evidences to substantiate the Creditworthiness of the parties.*

7. *In response to this, appellant has submitted the following documents to prove the Identity, Creditworthiness and Genuineness of the above loan transaction even though appellant not required to prove:*

I. **To prove the identity,** *appellant has submitted the addresses, PAN through the copy of Income Tax Return. Further the fact was also submitted that Mr. Vivek Surana is the director*

*of the company. Hence, the identity was duly proved by the appellant company.*

**II. To prove the Creditworthiness of the subscribers,**

*appellant has submitted the copy of Income Tax Return along with the copy of bank statement but no comments were given by the Ld. AO.*

**III. To prove the Genuineness of the above loan transaction,**

*appellant has submitted the extract of Bank Statement for all receipt and payment of loan transaction with the director Mr. Vivek Surana, duly highlighting the entries of loan received and paid by the appellant company.*

*Your honor can refer **page no. 63 to 72 and 153 to 189** of the paper book, the details in length were submitted. Therefore, the findings given by the Ld. AO was in the contradiction of section 68 of the Act.*

8. *By submitting the above details, the appellant has discharged his primary onus of proving the loan transaction as Genuine Transaction. However, the Ld. Assessing Officer without considering the facts and circumstances of the case erred in making addition of Rs.79,50,000/- being the amount received towards loan transaction u/s. 68 as Unexplained Cash Credit without having any jurisdiction.*

9. *In para 2.4.7 of CIT(A) order, the CIT(A) had clearly stated that the assessee had satisfied all the 3 ingredients of section 68 of the Act and hence, the addition made cannot be sustained.*

**> Further, following legal position/ judicial rulings on the subject under consideration must be considered before arriving at any conclusion:-**

*i. As held by Andhra Pradesh High Court in the case of **R.B. Mittal v/s. CIT 246 ITR 283 (AP)** in an enquiry u/s 68, the rule of audi alteram partem has to be observed and the assessee must be given a fair and reasonable hearing to discharge the burden cast on him u/s 68 of the Act. Further, it is settled law that in the matter of cash credit, the initial onus lies on the assessee to prove the genuineness of the transaction along with the identity of the lender/investor and his creditworthiness. Having done so, the appellant in the instant case has discharged the onus cast upon it. Beyond this, for the charge of unexplained cash credit to stick, the onus lies on the Assessing Officer to disprove the claim of the assessee by establishing that the evidence filed by the assessee was false and by bringing new material on record and failure to do so would vitiate the addition made on this count*

*ii. It was also held by the **Apex court** in the case of **CIT v. Bedi & Co. P. Ltd. (1998) 230 ITR 580 (SC)** that where prima-facie the inference on facts is that the assessee's explanation is probable, the onus will shift to the revenue to disprove it and the assessee's explanation in such case cannot be rejected on mere surmises. Other similar judiciary ruling are as under:-*

- Khandelwal Constructions v. CIT (1997) 227 ITR 900 (Gau.)**
- CIT v. Orissa Corporation Pvt. Ltd. 158 ITR 78 (SC)**
- CIT v. Rohini Builders 256 ITR 360 (Guj.).**

*iii. It is also settled law that where the assessee provides identity and details pertaining to the lenders/creditors investor of share application money and is unable to produce them and requests the AO to issue summons u/s 131 for their attendance, it is the duty of the AO to issue such summons, failing which the addition would get deleted. Reference in this regard can be made from the decisions made in the following judiciary ruling:-*

- N.P. Garodia (order dated 13.01.2009 of Hon'ble P & H High Court in ITA no. 808 of 2008)*
- Brij Pal Sharma (order dated 17.02.2009 in ITA no. 685 of 2008 of Hon'ble P & H High Court)*

*iv CIT vrs. Orissa Corporation Pvt. Ltd. 158 ITR 78 (SC) and Anis Ahmed 297 ITR 441 (SC) that mere non-production of the lender /shareholder cannot be ground for making addition u/s 68 of the Act.*

*v. Similarly as held in the case of CIT v. Metachem Industries (2000) 245 ITR 160 (MP) where a credit is shown to have come from a person other than the assessee, there is no further responsibility of the assessee to show that it has come from accounted source of the lender, as long as the fact that he had made the advance and was capable of making the advance are established.*

*vi. It was held by the Hon'ble Madras High Court in Hastimal (S) v. CIT (1963) 49 ITR 273 that after a lapse of decade, the assessee should not be placed upon the rack and called upon to explain not merely the origin and source of a*

*capital contribution, but also the origin of origin and source of the source.*

vii. *Recently in a similar case that of the Assessee, The honorable ITAT Delhi in the case of ITO, Ward 15 (2) vs. M/s. Rakam Money Matters P. Ltd. has held that "AO has to bring on record any valid material or evidence to discredit the evidences and the explanation given by the assessee company and cannot rely only on statement of third parties recorded by the investigation wing.*

***Thus it is settled law that in the matter of cash credit, assessee needs to prove the genuineness of the transaction along with the identity of the lender/investor and his creditworthiness. By submitting the following documents, Identity as well as the creditworthiness have been proved and hence the addition would not be justifiable and would be against the law.***

viii. ***In another landmark judgment of Hon'ble Gujarat High Court in the case of Varshaben S Patel vs. ITO,[2015] 64 taxmann.com 179 (Gujarat) has also held in notice u/s 148 that the issue of notice u/s 148 pursuant to direction by DG Investigation is bad in law as the satisfaction has to be on your own and not a borrowed satisfaction.***

ix. *Similar to above referred judgment, The Appellant would like to humbly submit to learned assessing officer a recent landmark decision given by Jurisdictional Hon'ble ITAT Mumbai in an identical case of ITO -10*

**(2) (4) Vs. M/s. Superline Construction P. Ltd. (and many others in this consolidated order) pronounced on 30.11.2015 ITA No. 3645/Mum/2014.**

*x. The Supreme Court held in the case of CBI v/s. V.C. Shukla that there must be at least an iota of Independent evidence in support of accusation levelled against the party.*

*xi. Hon'ble ITAT Mumbai in an identical case of Asstt. Commissioner of Income Tax, Central Circle 18 and 19, Mumbai Vs. Nitin Fire Protection Ind. Ltd. pronounced on 09.02.2016 ITA No. 757/Mum/2015.*

*xii. The Appellant would like to humbly submit to your honour a recent landmark decision by Hon'ble ITAT, Hyderabad in an identical case and having the same issue of Komal Agrotech Pvt. Ltd. Vs. The Income Tax Officer 2(1), Hyderabad pronounced on 25.11.2016 IT-66/2014-15.*

*xiii. Jurisdictional Hon'ble ITAT, Mumbai for an identical case i.e. Arceli Realty Limited Vs. The Income Tax Officer 15(1) (1), Mumbai pronounced on 21.04.2017 ITA-6492/Mum/2016-17.*

*xiv. Hon'ble ITAT, Mumbai for an identical case i.e. Income Tax Officer, 12(2)(3) Vs. M/s Shreedham Construction Pvt. Ltd. On 14.11.2017 ITA-3754/3755/3756/Mum/2017.*

*xv. Recent Judgment delivered by Jurisdictional Hon'ble ITAT, Mumbai for an identical case i.e. Income Tax Officer, M/s Shree Laxmi Estate Pvt. Ltd. V/s. 15(3)(3) On 29.12.2017 ITA-5954/Mum/2016.*

*> Further with the similar facts, similar judgments were pronounced and are hereby outlined as under :-xvi. ITAT E Bench in M/s. SDB Estate Pvt Ltd vs. ITO-(5)(3)(2) in ITA No. 584/Mum/2015: AY 2008-09.*

*xvii. Further ITAT-"D" Bench has decided the following cases in favour of the assessee on similar issues.*

*a) ITO - 10(2)(1) vs. M/s. Deep Darshan Properties Pvt Ltd in ITA No. 2117/Mum/2014 : AY 2006-07 and ITA No.2118/Mum/2014 : AY 2007-08*

*b) ITO -10(2)(3) vs. Aajivan Computers Pvt Ltd in ITA No.2160/Mum/2014 :AY 2006-07*

*c) ITO -10(2)(3) vs. Dignity Securities Trading Pvt Ltd in ITA No.2157/Mum/2014 :AY 2006-07*

*d) ITO -10(2)(1) vs. M/s. Blue Hill Properties Pvt Ltd in ITA No.2119/Mum/2014 :AY 2006-07*

*With the facts and various Judicial rulings as discussed above, it is crystal clear that the Unsecured Loan Received by the appellant was genuine and cannot be treated as Accommodation entry.*

*Humble Prayer:-*

*The unsecured loan is genuine and duly supported by documentary evidence. Hence, the addition of Rs. 79,50,000/- made by the Ld. AO requires to be deleted as the same was on assumption basis which does not have any stand in law and requires to be deleted. Therefore, we request your honor to kindly rely on CIT(A) order.*

**• Submission on ground no. 2 and 3: Unexplained Cash Credit on account of outstanding loan balance of various creditors and under the head of cessation of liability amounting to Rs.3,86,58,127/- & bogus purchase of Rs.1,26,587.[U/s. 68 and u/s. 41(1) and estimation of profit on bogus purchase u/s 69C]**

10. During the year under an appeal, the Ld. AO has made an addition of closing credit balances of following parties

Sr. No.	Additions	Amount	Remark
1.	M/s. Divya Jewels	45,00,000/-	Creditor
2.	Mr. Girish Agarwal	16,08,440/-	Director Remuneration
3.	M/s. Jewel Diamond	1,22,73,273/-	Creditor
4.	Ms. Poonam Agarwal	5,50,810/-	Salary A/c.
5.	M/s. Renisha Impex Pvt. Ltd.	1,45,77,298/-	Creditor
6.	M/s. Varun Gems	36,48,306/-	Creditor
7.	M/s. Kingstar	15,00,000/-	Creditor

8.	M/s. Kalash Enterprise	1,26,587/-	Estimation of Profit @5% on Bogus Purchase
----	---------------------------	------------	--

11. While making addition, the Ld. Assessing officer noted;

I. That the appellant failed to prove **identity and genuineness** of the

liabilities appeared in books of accounts and hence provisions of section 68 were applicable.

II. That without prejudice to the above contention, i.e. addition u/s. 68 of the Act, there is no possibility of non-genuine / non-existing creditors claiming their debts in future and therefore this is a case of cessation of liability and it is a income as per section 41(1) of the Act.

12. Assessee's contention of deleting the addition:-

Section 41(1) produced as under:-

Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the appellant (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,-

a. the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure **or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained bti such person or the value of benefit accruing to him shall be deemed to be profits**

**and gains of business or profession and accordingly chargeable to income-tax, as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or**

b. the successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in clause (a) by way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year.

*Explanation 1.-For the purposes of this sub-section, the expression "loss or expenditure or some benefit in respect of any such trading liability by way of remission or cessation thereof shall include the remission or cessation of any liability by a unilateral act by the first mentioned person under clause (a) or the successor in business under clause (b) of that sub-section by way of writing off such liability in his accounts.*

*Explanation 2.-For the purposes of this sub-section, "successor in business" means,-i.where there has been an amalgamation of a company with another company, the amalgamated company;*

*ii. where the first-mentioned person is succeeded by any other person in that business or profession, the other person;*

*iii. where a firm carrying on a business or profession is succeeded by another firm, the other firm;*

*iv. where there has been a demerger, the resulting company.*

*> The section 41(1) applies where a trading liability was allowed as a deduction in an earlier year in computing the business income of the appellant and the appellant has obtained a benefit in respect of such trading liability in a later year by way of remission or cessation of the liability.*

*> In such a case the section says that whatever benefit has arisen to the appellant in the later year by way of remission or cessation of the liability will be brought to tax in that year.*

*> The principle behind the section is that the provision is intended to ensure that the appellant does not get away with a double benefit, once by way of deduction in an earlier assessment year and again by not being taxed on the benefit received by him in a later year with reference to the liability earlier allowed as a deduction.*

*> The factual matrix, which is to be considered by the learned AO is that while making the addition under section 41(1) of the Income Tax on account of cessation of the liability, namely as the appellant had not written off the liability in the books of accounts, and therefore, the liability is not ceased.*

*> Considering the aforesaid factual matrix and when in the books of accounts the appellant had carried forward and continued the liability and **Thus, where appellant had not***

*written off its liability in books of account, said liability could not be ceased under section 41(1) on account of cessation of liability.*

13. Before proceeding further, we would like to draw the attention of your honor to the following factual position.

<i>Sr. No.</i>	<i>Additions</i>	<i>Amount</i>	<i>Remarks</i>
1.	<i>M/s. Divya Jewels</i>	45,00,000/-	<i>Creditor: No business transaction during the A.Y.2014-15. Amount was repaid in A.Y.2015-16 [PB - page 49 &amp; 50]</i>
	<i>Mr. Girish Agarwal</i>	16,08,440/-	<i>Director Remuneration:</i> <ul style="list-style-type: none"> <li>• <i>The appellant regularly making payment.</i></li> <li>• <i>IDS was deducted on remuneration.</i></li> <li>• <i>It is not the case that where there was accumulation of last so many years.</i></li> <li>• <i>Each and every year, the appellant paying off liability of remuneration to director, [paper book - page 51]</i></li> </ul>
	<i>M/s. Jewel Diamond</i>	1,22,73,273/-	<i>Creditor: No business transaction during the A.Y.2014-15. Amount was repaid in A.Y.2015-16 [paper book - page 52 &amp; 53]</i>

			<b>53]</b>
	<i>Ms. Poonam Agarwal</i>	<i>5,50,810/-</i>	<p><i>Salary A/c.: The appellant regularly making payment. TDS was deducted on monthly basis, [paper book - page 54] Paid taxes to government, income tax return filed, computation of total income, Income and expenditure A/c, capital A/c, Balance sheet [paper book -page 190 to 194].</i></p>
	<i>M/s. Renisha Impex Pvt. Ltd</i>	<i>1,45,77,298/-</i>	<p><i>Creditor: There were regular business transaction during the A.Y.2014-15, i.e. regular purchase and payments thereof. Entire outstanding amount was repaid in A.Y.2015-16 [paper book - page 55 &amp; 56]</i></p>
	<i>M/s. Varun Gems</i>	<i>36,48,306/-</i>	<p><i>Creditor There were regular business transactions during the A.Y.2014-15 and A.Y.2015-16, i.e. regular purchase and payments thereof. [paper book - page 57,58 &amp; 59] Hence, question of payment of outstanding liability does not arise</i></p>

**I.T.A. No. 7004/Mum/2017**  
**M/s VGC Diamond Pvt. Ltd**

	<i>M/s. Kingstar</i>	15,00,000/-	<p><i>Creditor:</i></p> <ul style="list-style-type: none"> <li>• <i>No business transaction during the A.Y.2014-15.</i></li> <li>• <i>Entire amount was repaid in A.Y.2015-16 [paper book - page 60&amp;61]</i></li> </ul>
	<i>M/s. Kalash Enterprise</i>	1,26,587/-	<p><i>Estimation of Profit @5% on Bogus Purchase:</i></p> <ul style="list-style-type: none"> <li>• <i>Copy of Ledger Account, Invoice and payment for purchase, all the documentary evidences were furnished.</i></li> <li>• <i>No defects found in Sales.</i></li> <li>• <i>No defects found in stock records.</i></li> <li>• <i>Addtion was merely on assumption that this enterprise is engaged with Rajendra Jain who was engaged in providing accommodation entry. Without furnishing any evidences.</i></li> </ul>

*After going through the above repayment details, the fact is very clear that the contention of Ld. AO that outstanding liabilities were no more payable is not tenable. Hence, the addition made u/s. 41(1) and 68 stands dismissed after going through the factual scenario.*

**Reliance is placed on:**

> **In the case of CIT Vs. Smt. Sitadevi Juneia (2010) 325 ITR 593 (P&HL).**

*It was held that assessee having shown the impugned liabilities in its balance sheet and filed copies of account of sundry creditors signed by the concerned creditor, such liabilities cannot be treated to have ceased merely because they are outstanding for six years and therefore, the addition made by invoking Section 41(1) cannot be sustained. > **CIT Vs. Tamil Nadu Warehousing Corporation (2007) 212 CTR (MAD) 228,***

*An amount representing liability was being shown year after year. It was held that unless and until there is cessation of said liability, Section 41 (1) was not applicable.*

***Thus addition u/s 41(1) is itself not attracted***

***14. Further. Ld. AO failed to discharge his duty to prove the transaction as bogus :*** *The initial burden to prove the transaction as genuine is on appellant which is discharged by producing the confirmation, bank statement, financial of lender, etc. Thus, the burden shifts on the department to prove that transactions are bogus. However, the AO has no material in possession to prove the same. He has just made opinion on the basis of information from investigation wing and without any independent enquiry made by him. Thus, the AO failed to discharge his duty. Hence, the addition cannot be made on leaps on the part of the revenue.*

***15. Transaction duly supported by the evidence, no evidence that cash received back. Addition cannot be made:***

*The only Reliance is on the basis of third party enquiry and suspicions and there is no finding evidence of cash given by the suspicious lender to the assessee nor is any cash found over and above the cash as per books. The third party unilateral act cannot be the basis of addition. Your assessee has already submitted the relevant details of party with their confirmations, their banks statements, their ITR Acknowledgement and the payments made by "Account Payee Cheque" which is also verify by the Ld. AO u/s 133(6). Thus the addition purported to be made is made on suspicious. In present case transactions are duly supported by the documents and AO has not any evidence*

*that cash is received back by the respondent. Therefore, the addition cannot be made.*

*Ratio of the below mentioned judgments: {suspicious cannot take place the evidence} The Ld. AO suspected and noted that as the purchases were from one of the group concern of Mr. Rajendra Jain who was engaged in providing bogus entries.*

*But the Ld. AO failed to appreciate fact that the said statement was retracted by him. Hence, the same cannot be relied in assessee case. LD. AO suspected the transaction, but same cannot be treated as evidence, Hence, the addition made by AO on suspicious is not tenable in law and require to be delete.*

***suspicion of highest degree cannot take place of evidence - DCIT v. Shri Rajeev G. Kalathil, (Mum) (Trib) (ITA No. 6727/M/2012 dt.20/8/2014.***

***Additions cannot be made merely on assumptions or presumptions or surmises or conjectures***

*(i) K.P. Varghese v. ITO, (1981) 131 ITR 579 (SC);*

*(ii) CIT v. Roman & Co., (1968) : 67 ITR 11 (SC);*

*(iii) CIT v. Calcutta Discount Co. Ltd.<sup>1</sup>, (1973) 91 ITR 8 (SC);*

*(iv) Umacharan Shaw & Bros v. CIT, (1959) 37 ITR 271 (SC)*

***Mere suspicion, no matter howsoever strong, is not sufficient to treat the purchases as bogus.***

***Case Laws for Reference***

***DY. CIT v. ADINATH INDUSTRIES (2001) 252 ITR 476 (2002) 120 TAXMAN 822 (GUJ)***

*The Assessing Officer observed that purchases made by assessee from 'XGT' were fake and latter was only a billing agent, its S.T. Registration had been cancelled and payments made by bearer cheques were withdrawn on same day- Assessee, however, submitted all details like bills, gate pass, receipt note, weight note, laboratory report, sample report, truck number etc. Assessing Officer had himself accepted existence of 'XGI' in another case for assessment year 1985 -86 - Whether since assessee had produced all relevant materials to show purchase of materials and their use in production, Tribunal was justified in deleting addition made. - Held, yes **BABULAL C. BORANA v. ITO (2006) 282 ITR 251 (BOM)(HC)***

*The assessee has recorded the transaction relating to 50 M.Ts OF HOPE in the regularly maintained books of account and the assessee has offered explanation regarding the nature and source of investment but the same was not accepted. However, books of accounts were not rejected. Identity of vendor was disclosed, source of investment was explained. Held, amounts could not be added as unexplained investment only because the vendor denied the transaction. The Court held that though the assessee's contention that he had no bank account was found to be false, the disallowance was not justified. And the fact that Sales Tax was not paid by the party who sold the goods does not affect the genuineness of transaction. **ACIT v. KISHAN LAL JEWELS (P) LTD (2012) 147 TTJ 308 (DEL) (TRIB)** The assessee while furnishing necessary information reading the transactions and the aforesaid parties like purchase bills issued against goods purchased, sales tax registration numbers of the parties, PAN's, their confirmations and Bank statements showing the debit of the amount paid through account payee*

*cheques to them in the account of assessee and credited in the Bank Account of sellers, had discharged its primary onus, thereafter the onus shifted on the department to rebut the same.*

*Addition under section 69C was held to be not justified.*

**C.G. DIAMOND INTERNATIONAL v. DY CIT (2006) 104  
TTJ 809 (MUM) (TRIB)**

*It is not the case of the Revenue that the assessee is not maintaining books of account. The purchases are recorded in the books of account. Payments are made by cheques to the immediate purchasers. They accepted and confirmed the sale. To hold otherwise, there should be some evidence in the possession of the Revenue.*

*Suspicion, however strong, cannot take the place of evidence and that alone cannot be the criteria for deciding the matter.*

**DY. CIT v. KIRTILAL KALIDAS JEWELLERS (P) LTD.  
(2012) 54 SOT 529 (CHENNAI) (TRIB)**

*During assessment proceedings, Assessing Officer found that for some of purchases effected by assessee, no details or address of vendors were available in purchase vouchers. He, therefore considered such purchases to be non genuine and an addition was made on that account. Since purchases were recorded in books of accounts of assessee and were also shown in its stock, in such circumstances merely because those purchases did not carry full addresses of vendors, could not be a reason to treat the said purchases as unexplained. Therefore, impugned addition made by assessing officer was to be deleted.*

*CIT vs. LEADERS VALVES (P) Ltd (285ITR 435 (P&H-High court) 'The assessee is engaged in the manufacture of valves, cocks, boilers fittings, etc.The A.O observed that assessee had made purchased gun metal scraps in collusion with certain suppliers and thereafter invoking sec. 145 made addition of bogus purchase.*

*The Ld. CIT(A) deleted the entire dis-allowance of purchase. The Hon'ble ITAT upheld the order of Ld. CIT(A) on holding that addition is not sustainable."*

*The Hon'ble High court dismissed revenue's appeal and decided that the addition on account of bogus purchases cannot be sustained for the reasons that:*

*a) In case the purchase of goods are treated as bogus, then it is impossible to manufacture the goods as shown to have been manufactured by it out of purchases;*

*b) Further, the supplier of the assessee are in existing business and has vast financial resources at their disposal;"*

***Sales Tax department acknowledge that purchases are genuine.***

*BALAJI TEXTILE INDUSTRIES P LTD v. ITO 49 ITD 177  
(MUMBAI -ITAT)*

***AO failed to discharge his duty to prove the transaction as bogus- ITO Vr. Permanand (2008 25 SOT 11), DCIT vrs. Shri Rajeev G. Kalathil (Mum) Trib (ITA No. 6727/Mum/2012 dated 20/08/2014).***

*Payments were made by account payee cheques. This fact would over shadow all other short comings.*

*MATHER & PLATT (INDIA) LTD v. CIT 168 ITR 493 CAL*

*ITO v. KASHMIR IND. PALACE 99 TAXMANN  
(CHD)(MAG)*

*RAMANANDSAGAR v DCIT 256 ITR 134 (BOM)*

*CIT - I v. NANGALIA FABRICS (P) LTD (2013) 40*

*TAXMANN.COM 206 (GUJARAT)*

*CIT v. KORLAY TRADING CO. LTD (1998) 232 ITR 820  
(CAL)*

*CIT v. BASANT INVESTMENT CORPORATION (1999) 238  
ITR 680 (CAL)*

*Transaction duly supported by the evidence, no evidence that cash received back. Addition cannot be made.*

*CIT v. M K BROS (163 ITR 249)*

*ITO v. KANCHANWALA GEMS 122 TTJ 854*

*Identity, source of payment explained, bank payment, books of account accepted, then addition of book entries cannot be take place.*

*BABULAL C BORANA v. ITO (282 ITR 251)*

*Issue is also decided by the Hon'ble Jurisdictional Tribunal in case GANPATRAJSANGHI*

*SHRI GANPATRAJ A. SANGHAVI v ACIT I.T.A. No 2826/  
MUM/2013*

*Alternatively, Without prejudice to the above, the credit of  
bogus purchase will be allowed if the same is sold or lying in  
stock.*

*FREE INDIA ASSURANCE SERVICE LTD v. DCIT  
(2011) 12 TAXMANN.COM 424 (MUM)*

*Bogus purchases: Fact that suppliers names appear in the list  
of hawala dealers of the sales tax department and that assesses  
is unable to produce them does not mean that the purchases  
are bogus if the payment is through banking channels and GP  
ratio abnormally high.*

*ASSTT. CIT v. SHRI RAMILA PRAVIN S NO.  
5246/MUM/2013*

*If the payment of purchases are made by account payee  
cheque and the same has not been received back in any form,  
even if the seller of the goods declares, that he has simply  
issued bill and he has not sold goods, still nothing can be  
added in the case of the assessee.*

*CITv.M.K. BROS 163 ITR*

*The Ld AO cannot conveniently claim the genuineness of  
business as it's the assessee who is far better acquainted and  
familiar with the trade practices than the department.*

*CIT v.BHUVANENDRA 303 ITR 235 (MAD)*

*VINOD SOLAIMKI v UOI (233) ELT 157 (SC)*

*CIT v KASHIRAM TEXTILE MILLS (P) LTD (2006) 284ITR 61  
(GUJ)*

*SARASWATHI OIL TRADERS v. CIT (2000) 254 ITR  
259 (SC)*

**HUMBLE PRAYER**

*The transactions are genuine and duly supported by documentary evidence. Hence, the addition made by the Ld. AO requires to be deleted as the same was on assumption basis which does not have any stand in law and requires to be deleted. Therefore, we request your honor to kindly rely on CIT(A) order.*

*Thus, in view of the above facts, circumstances and the referred judicial pronouncements, the appellant humbly requests your goodself to consider the above submission and extend a sympathetic consideration.*

9. Considered the rival submissions and material placed on record, we notice from the record that revenue is in appeal against the relief given by Ld. CIT(A) to the assessee and revenue has raised before us mainly 3 grounds. In the first ground, AO observed that the assessee has taken unsecured loan from the Director. Since the assessee has only submitted bank statement and return of income of the Director. AO came to conclusion that assessee has not proved identity, credit

worthiness and genuineness of the transaction. After considering the submissions, we are of the view that AO himself observed that this unsecured loan is from director of the company and all the transactions are through banking channel. Therefore, identity and credit worthiness is already proved considering the fact that these transactions were carried out throughout the year and it is accepted fact that Mr. Vivek Surana is director of the assessee's company.

10. Coming to genuineness of the transaction, there is no bar in the I. T. Act that assessee cannot deal or take unsecured loan from the director. Disallowance u/s 68 of the Act is far fetched and the loan transaction with Director cannot be termed as non-genuine. Therefore, we are inclined to accept the findings of Ld. CIT(A). Accordingly, ground no. 1 is **dismissed**.

11. With regard to ground No. 2, we notice from the record that AO disallowed the trade creditors because the assessee could not bring them to AO in person. We notice that these are trade creditors and also two directors accounts are involved. We considered the findings of the Ld CIT(A) carefully and found

that trade creditors M/s Divya Jewels, M/s Jewel Diamond and M/s Kingstar has no business transaction during this assessment year and these are outstanding balances of previous assessment year. Since these are transactions of earlier AY and its settlements were made in the subsequent AY, in our view there is no scope for disallowance u/s 68. Therefore, we are inclined to accept the findings of Ld CIT(A).

12. With regard to M/s Renisha Impex and Varun Gems, it is noticed that these parties are having regular business transactions and without any findings on transactions with them as bogus or accommodation entries, there is no scope for AO to disallow these transactions. Therefore, we are inclined to accept the findings of Ld CIT(A).

13. With regard Mr Girish Agarwal and Poonam Agarwal, these are directors and their accounts shows regular salary payments and tax deductions. Since these are directors, there is issue of identity and genuineness issues. Accordingly, we are inclined to accept the findings of Ld CIT(A) and accordingly grounds raised by revenue is dismissed.

14. With regard to bogus purchase, there is no findings by the AO that these are bogus transaction or findings from any other external agencies that these party is involved in providing accommodation entries to assessee. It is only presumption made by the AO simply because Kalash Enterprises is associated with the Rajendra Jain Group. Unless there is specific finding that these are bogus entries, AO cannot presume and disallow the same. Accordingly, we are inclined to accept the findings of Ld CIT(A). Accordingly, Ground raised by the revenue is dismissed.

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

16. It is pertinent to mention here that this order is pronounced after a period of 90 days from the date of conclusion of the hearing. In this regard, we place reliance on the decision of co-ordinate bench of this Tribunal in the case of JSW Ltd in ITA Nos. 6264 & 6103/Mum/2018 dated 14.5.2020, wherein this issue has been addressed in detail allowing time to pronounce the order beyond 90 days from the date of conclusion of hearing by excluding the days for which the lockdown announced by the Government was in force. The relevant observations of this tribunal in the said binding precedent are as under:-

7. However, before we part with the matter, we must deal with one procedural issue as well. While hearing of these appeals was concluded on 7th January 2020, this order thereon is being pronounced today on 14<sup>th</sup> day of May, 2020, much after the expiry of 90 days from the date of conclusion of hearing. We are also alive to the fact that rule 34(5) of the Income Tax Appellate Tribunal Rules 1963, which deals with pronouncement of orders, provides as follows:

(5) The pronouncement may be in any of the following manners:—

(a) The Bench may pronounce the order immediately upon the conclusion of the hearing.

(b) In case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date for pronouncement.

(c) In a case where no date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a future day for pronouncement of the order, and such date shall not ordinarily (emphasis supplied by us now) be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the noticeboard.

8. Quite clearly, “ordinarily” the order on an appeal should be pronounced by the bench within no more than 90 days from the date of concluding the hearing. It is, however, important to note that the expression “ordinarily” has been used in the said rule itself. This rule was inserted as a result of directions of Hon’ble jurisdictional High Court in the case of **Shivsagar Veg Restaurant Vs ACIT [(2009) 317 ITR 433 (Bom)]** wherein Their Lordships had, inter alia, directed that **“We, therefore, direct the President of the Appellate Tribunal to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of Anil Rai (supra) and to issue appropriate administrative directions to all the benches of the Tribunal in that behalf. We hope and trust that suitable**

*guidelines shall be framed and issued by the President of the Appellate Tribunal within shortest reasonable time and followed strictly by all the Benches of the Tribunal. In the meanwhile (emphasis, by underlining, supplied by us now), all the revisional and appellate authorities under the Income-tax Act are directed to decide matters heard by them within a period of three months from the date case is closed for judgment". In the ruled so framed, as a result of these directions, the expression "ordinarily" has been inserted in the requirement to pronounce the order within a period of 90 days. The question then arises whether the passing of this order, beyond ninety days, was necessitated by any "extraordinary" circumstances.*

9. Let us in this light revert to the prevailing situation in the country. On 24th March, 2020, Hon'ble Prime Minister of India took the bold step of imposing a nationwide lockdown, for 21 days, to prevent the spread of Covid 19 epidemic, and this lockdown was extended from time to time. As a matter of fact, even before this formal nationwide lockdown, the functioning of the Income Tax Appellate Tribunal at Mumbai was severely restricted on account of lockdown by the Maharashtra Government, and on account of strict enforcement of health advisories with a view of checking spread of Covid 19. The epidemic situation in Mumbai being grave, there was not much of a relaxation in subsequent lockdowns also. In any case, there was unprecedented disruption of judicial wok all over the country. As a matter of fact, it has been such an unprecedented situation, causing disruption in the functioning of judicial machinery, that Hon'ble Supreme Court of India, in an unprecedented order in the history of India and vide order dated 6.5.2020 read with order dated 23.3.2020, extended the limitation to exclude not only this lockdown period but also a few more days prior to, and after, the lockdown by observing that "**In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown**". Hon'ble Bombay High Court, in an order dated 15th April 2020, has, besides extending the validity of all interim orders, has also observed that, "**It is also clarified that while calculating time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended**

*accordingly”, and also observed that “arrangement continued by an order dated 26th March 2020 till 30th April 2020 shall continue further till 15th June 2020”. It has been an unprecedented situation not only in India but all over the world. Government of India has, vide notification dated 19<sup>th</sup> February 2020, taken the stand that, the coronavirus “should be considered a case of natural calamity and FMC (i.e. **force majeure** clause) maybe invoked, wherever considered appropriate, following the due procedure...”. The term ‘**force majeure**’ has been defined in Black’s Law Dictionary, as ‘**an event or effect that can be neither anticipated nor controlled**’ When such is the position, and it is officially so notified by the Government of India and the Covid-19 epidemic has been notified as a disaster under the National Disaster Management Act, 2005, and also in the light of the discussions above, the period during which lockdown was in force can be anything but an “ordinary” period.*

*10. In the light of the above discussions, we are of the considered view that rather than taking a pedantic view of the rule requiring pronouncement of orders within 90 days, disregarding the important fact that the entire country was in lockdown, we should compute the period of 90 days by excluding at least the period during which the lockdown was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to interpreted. The interpretation so assigned by us is not only in consonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act 2005, is causing unprecedented disruption in the functioning of our justice delivery system. Undoubtedly, in the case of **Otters Club Vs DIT [(2017) 392 ITR 244 (Bom)]**, Hon’ble Bombay High Court did not approve an order being passed by the Tribunal beyond a period of 90 days, but then in the present situation Hon’ble Bombay High Court itself has, vide judgment dated 15<sup>th</sup> April 2020, held that directed “**while calculating the time for disposal of matters made time- bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly**”. The extraordinary steps taken suomotu by Hon’ble jurisdictional High Court and Hon’ble Supreme Court also indicate that this*

*period of lockdown cannot be treated as an ordinary period during which the normal time limits are to remain in force. In our considered view, even without the words "ordinarily", in the light of the above analysis of the legal position, the period during which lockout was in force is to be excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963. Viewed thus, the exception, to 90-day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case. Of course, there is no, and there cannot be any, bar on the discretion of the benches to refer the matters for clarifications because of considerable time lag between the point of time when the hearing is concluded and the point of time when the order thereon is being finalized, but then, in our considered view, no such exercise was required to be carried out on the facts of this case.*

*11. To sum up, the appeal of the assessee is allowed, and appeal of the Assessing Officer is dismissed. Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the noticeboard.*

17. Respectfully following the aforesaid judicial precedent, we proceed to pronounce this order beyond a period of 90 days from the date of conclusion of hearing.

18. Order pronounced as per Rule 34(5) of ITAT Rules and by placing the pronouncement list in the notice board on 08.07.2020.

<i>Sd/-</i>	<i>Sd/-</i>
(Pawan Singh)	(S. Rifaur Rahman)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member
मुंबई Mumbai; दिनांक Dated : Sr.PS. Dhananjay	08.07.2020

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File  
**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**