

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.2953/M/2018  
Assessment Years: 2012-13**

Shri Nemichand Jain, 28, Sham Seth Street, Zaveri Bazar, Mumbai - 400002 <b>PAN: AABPJ4736H</b>	Vs.	ACIT - 18(2), 302, Earnest House, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

**ITA No.3109/M/2018  
Assessment Year: 2013-14**

Shri Nemichand Jain, 28, Sham Seth Street, Zaveri Bazar, Mumbai - 400002 <b>PAN: AABPJ4736H</b>	Vs.	DCIT, CC - 1(3), Pratishtha Bhavan, Old CGO Bldg., M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Ms. Ritu Kamal Kishor, A.R.  
Revenue by : Ms. Kavita P. Kaushik, D.R.

Date of Hearing : 19.03.2020  
Date of Pronouncement : 10.06.2020

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The above titled appeals have been preferred by the assessee against the orders dated 28.02.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2012-13 & 2013-14.

**ITA No.2953/M/2018 A.Y. 2012-13**

2. The grounds taken by the assessee are as under:

"1. On the facts and in the circumstances of the appellant's case and in law the Ld. CIT(A) erred in confirming the AO's action of disallowing notional interest amounting to Rs. 44.95,618/- on loans taken during the earlier years under the provisions of Income Tax Act.

2. On the facts and in the circumstances of the appellant's case and in law the Ld. CIT(A) erred in directing the AO to compute the alleged unaccounted commission expenses incurred on the alleged unaccounted loans resulting in enhancement of income without giving proper notice.

3. Without prejudice to ground no. 1 & 2 above, the Ld. CIT(A) erred in confirming the additions made by the AO in the assessment order despite the fact that the case was selected for scrutiny under CASS and the issue relating to unsecured loan taken by the appellant was not covered under CASS.

4. On the facts and in the circumstances of the appellant's case and in law the Ld. CIT(A) erred to hold that the loans taken by the appellant from 8 lenders during the earlier years remained unexplained by relying on some information/report received from DGIT(Inv.) and the statements obtained from various persons belonging to Bhanwarlal Jain Group despite the fact that the AO did not provide the so-called report/information and the statements and without affording any opportunity of cross examination of those persons whose statements have been relied upon.

5. On the facts and in the circumstances of the appellant's case and in law the Ld. CIT(A) erred in not independently giving any finding in the case of the appellant and also erred in merely copying the order passed by him or his Ld. Predecessor in the case of Bhanwarlal Jain Group for the purpose of confirming the additions made by the AO in the assessment order.

6. The appellant craves leave to add to, alter, amend and/or delete all or any of the foregoing grounds of appeal.

7. The appellant prays before the Hon'ble Tribunal to delete the additions made by the AO."

3. At the outset, the Ld. Counsel of the assessee submitted that the issues involved in both the years are identical to ones as decided by the co-ordinate bench in ITA No,2641 & ors/Mum/2018 for A.Y. 2010-11 & ors vide order dated 08.07.2019 in assessee's own case. The Ld. A.R. submitted that the present appeal may kindly be allowed following the said order as the issue is same as in the assessment year 2010-11.

4. The only issue raised in ITA No.2953/M/2018 A.Y. 2012-13 is against the confirmation of notional interest of Rs.44,95,618/- by Ld. CIT(A) as made by the AO on the loans taken in the earlier assessment years. The assessee has also challenged the order of Ld. CIT(A) on the ground that Ld. CIT(A) has erred in directing the AO to add commission expenses incurred on alleged unaccounted loans to the income of the assessee which has resulted in the enhancement of income without giving proper notice. These loans were stated to be taken from the entities belonging to Bhanwarlal Jain Group.

5. The facts in brief are that the case of the assessee was selected for scrutiny under CASS and statutory notices were duly issued and served upon the assessee. The assessee is engaged in the business of construction in the name and style of M/s. Neminath Construction and M/s. Neminath Homes and during the year declared total income of Rs.1,37,58,510/-. The AO while completing the assessment for instant year observed that the assessee has introduced loans into the business in F.Y. 2010-11 relevant to A.Y. 2011-12 which is being reopened to consider the genuineness of the loans introduced during that year. The AO noted that since the loans have been borrowed in the earlier years, therefore no addition was required to be made in the subsequent years on account of these loans. During the current year, the only interest on the said loans was charged to the P&L account and therefore the same is being disallowed as paid on the bogus unsecured loans which are subject to the verification whether the same are genuine or not. In the

assessment year 2011-12, the AO accordingly added Rs.44,95,618/- to the income of the assessee.

6. The Ld. CIT(A) affirmed the same on the ground that the interest paid to various parties related to the Bhanwarlal Jain Group on the accommodation entries of loans and thus justified and addition.

7. After hearing both the parties and perusing the material on record and particularly the decision of the co-ordinate Bench in ITA No.2641, 2480 & 2388/M/2018 A.Y. 2010-11, 2011-12 and 2014-15 (supra), we observe that identical issue has been decided by the co-ordinate bench in assessee own case. In the said decision the co-ordinate Bench, the addition qua the loans borrowed from the entities belonging to Bhanwarlal Jain Group have been ordered to be deleted by observing and holding as under:

“15. In this view of the matter and considering the ratio of case laws discussed hereinabove, we are of the considered view that the assessee has discharged initial burden by filing various documents to prove identity, genuineness of transactions and creditworthiness of the parties. Therefore, we are of the considered view that the AO was erred in making additions towards unsecured loan under Section 68 of the Act. The Ld. CIT(A) without appreciating these facts simply confirmed the addition made by the AO. Hence, we reverse the findings of the Ld. CIT(A) and direct the AO to delete the additions made towards unsecured loans under Section 68 of the Act.”

We note that the AO has disallowed interest while framing assessment on the loans taken in the earlier assessment year which stands deleted by the co-ordinate bench, therefore the addition on account of disallowance of interest in the subsequent year can not be sustained on the same loans and

accordingly the addition of Rs.44,95,618/- is ordered to be deleted. The first ground raised by the assessee is allowed.

8. Similarly, the issue in ground No.2 is against the order of Ld. CIT(A) directing the AO to enhance the income of the assessee by computing the unaccounted commission expense incurred by the assessee on the loans taken from Bhanwarlal Jain Group.

9. Since the addition made on account of unsecured loans from Bhanwarlal Jain Group has been deleted in ITA No.2641, 2480 & 2388/M/2018 A.Y 2010-11, 2011-12 & 2014-15 therefore, the issue of charging commission expense is a consequential and can not be sustained. This issue has also been decided in the above ITA in para 16 which is being reproduced below:

“16. Ground Nos. 2 to 5 are in relation to confirming the action of the AO in making notional addition on account of alleged commission by invoking section 69C of the Act. The AO has disallowed interest paid on unsecured loans on the ground that once loans have been treated as bogus accommodation entries, then any interest paid on such unsecured loans also needs to be treated as bogus and accordingly disallowed total interest paid on unsecured loans. Similarly, the AO has estimated 0.2% commission on total unsecured loans taken from companies on the basis of statement of Shri Bhanwarlal Jain where he had admitted that he charged 0.2% commission on all accommodation entries. We noted that the issue of unsecured loans has been decided in preceding paragraphs, where we held that the transactions between the parties are genuine which cannot be considered as unexplained cash credit u/s 68 of the Act, consequently, additions made towards disallowance of interest and estimation of commission on such unsecured loans is also needs to be considered in the light of discussions in the preceding paragraphs. Therefore, we are of the considered view that the AO as well as the Ld. CIT(A) was erred in making additions towards interest on unsecured loans and commission on such unsecured loans. Accordingly, we direct the AO to delete the additions made towards disallowance of interest and estimation of commission.”

10. Accordingly, following the decision of the coordinate bench, the second ground is allowed.

11. The other grounds raised by the assessee are general in nature and do not require any adjudication.

**ITA No.3109/M/2019 A.Y. 2013-14**

12. The grounds raised by the assessee are as under:

“1. On the facts and in the circumstances of the appellant's case and in law the Ld. CIT(A) erred in confirming the addition of Rs. 50,00,000/- made by the AO on account of alleged unexplained cash credit u/s. 68 of the Act.

2. On the facts and in the circumstances of the appellant's case and in law the Ld. CIT(A) erred in confirming the AO's action of disallowing interest amounting to Rs. 19,22,671/- under the provisions of Income Tax Act.

3. On the facts and in the circumstances of the appellant's case and in law the Ld. CIT(A) erred in confirming AO's action of making notional addition of Rs. 1,10,0007- on account of alleged commission on alleged bogus loans by invoking the provisions of section 69C of the Act.

4. Without prejudice to ground nos. 1 to 3 above, the Ld. CIT(A) erred in confirming the additions made by the AO in the assessment order despite the fact that the case was selected for scrutiny under CASS and the issue relating to unsecured loan taken by the appellant was not covered under CASS.

5. On the facts and in the circumstances of the appellant's case and in law the Ld. CIT(A) erred to hold that the loans taken by the appellant from M/s. Daksh Diamonds during the previous year relevant to the assessment year 2013-14 remained unexplained by relying on some information/report received from DGIT(Inv.) and the statements obtained from various persons belonging to Bhanwarlal Jain Group despite the fact that the AO did not provide the so-called report/information and the statements and without affording any opportunity of cross examination of those persons whose statements have been relied upon.

6. On the facts and in the circumstances of the appellant's case and in law the Ld. CIT(A) erred in not independently giving any finding in the case of the appellant and also erred in merely copying the order passed by him or his Ld. Predecessor in the case of Bhanwarlal Jain Group for the purpose of confirming the additions made by the AO in the assessment order.

7. Without prejudice to the above grounds of appeal, the Ld. C1T(A) erred in not applying the theory of peak credit.

8. The appellant craves leave to add to, alter, amend and /or delete all or any of the foregoing grounds of appeal.

9. The appellant prays before the Hon'ble Tribunal to delete the additions made by the AO."

13. The issue raised in ground No.1 is against the confirmation of addition of Rs.50 lakhs by CIT(A) as made by the AO on account of unexplained cash credits which represented the loan borrowed by the assessee from Daksha Diamond a entity related to Bhanwarlal Jain Group.

14. At the outset, the Ld. Counsel of the assessee submitted that the issue is squarely covered by the decision of co-ordinate Bench in assessee's own case in ITA No.2641, 2480 & 2388/M/2018 A.Y 2010-11, 2011-12 & 2014-15 wherein the issue of raising unsecured loans from group entities of Bhanwarlal Jain Group were held to be genuine as the assessee has duly discharged his onus by filing all the necessary evidences before the AO.

15. The facts in brief are that the assessee during the year raised an unsecured loan of Rs.50 lakhs from Daksha Diamond an entity belonging to Bhanwarlal Jain Group. During the course of assessment proceedings, the assessee filed loan confirmation, bank statement of the lender, acknowledgement of the ITR, TDS certificate qua the interest paid on the above loan etc., however, AO relying on the report of investigation wing treated these loans as bogus accommodation entries and accordingly added the same to the income of the assessee.

16. In the appellate proceedings, the Ld. CIT(A) affirmed the addition and hence assessee is in appeal before us.

17. After hearing the rival parties and perusing the material on record, particularly the decision of the co-ordinate Bench in ITA No.2641, 2480 & 2388/M/2018 A.Y 2010-11, 2011-12 & 2014-15, we observe that identical issue has been decided by the co-ordinate Bench in the earlier year wherein the addition made by the AO has been deleted by observing and holding as under:

“15. In this view of the matter and considering the ratio of case laws discussed hereinabove, we are of the considered view that the assessee has discharged initial burden by filing various documents to prove identity, genuineness of transactions and creditworthiness of the parties. Therefore, we are of the considered view that the AO was erred in making additions towards unsecured loan under Section 68 of the Act. The Ld. CIT(A) without appreciating these facts simply confirmed the addition made by the AO. Hence, we reverse the findings of the Ld. CIT(A) and direct the AO to delete the additions made towards unsecured loans under Section 68 of the Act.”

18. Accordingly following the decision of the coordinate bench in assessee own case, the ground 1 is allowed.

19. The issue raised in ground No.2 & 3 is against the confirmation of disallowance of interest of Rs.19,22,671/- and notional addition of Rs.1,10,000/- on account of alleged commission by Ld. CIT(A) as made by the AO by treating the unsecured loans from Bhanwarlal Jain Group as bogus.

20. After perusing the order of the co-ordinate Bench in ITA No.2641, 2480 & 2388/M/2018 A.Y 2010-11, 2011-12 & 2014-15, we find that the issue is squarely covered in favour of the assessee by the decision of the co-ordinate bench. The operative part is reproduced as under:



“16. Ground Nos. 2 to 5 are in relation to confirming the action of the AO in making notional addition on account of alleged commission by invoking section 69C of the Act. The AO has disallowed interest paid on unsecured loans on the ground that once loans have been treated as bogus accommodation entries, then any interest paid on such unsecured loans also needs to be treated as bogus and accordingly disallowed total interest paid on unsecured loans. Similarly, the AO has estimated 0.2% commission on total unsecured loans taken from companies on the basis of statement of Shri Bhanwarlal Jain where he had admitted that he charged 0.2% commission on all accommodation entries. We noted that the issue of unsecured loans has been decided in preceding paragraphs, where we held that the transactions between the parties are genuine which cannot be considered as unexplained cash credit u/s 68 of the Act, consequently, additions made towards disallowance of interest and estimation of commission on such unsecured loans is also needs to be considered in the light of discussions in the preceding paragraphs. Therefore, we are of the considered view that the AO as well as the Ld. CIT(A) was erred in making additions towards interest on unsecured loans and commission on such unsecured loans. Accordingly, we direct the AO to delete the additions made towards disallowance of interest and estimation of commission.”

21. Since the addition on account of unsecured loan from group entities of Bhanwarlal Jain Group has been deleted by the co-ordinate Bench in the above decision, the disallowance of interest and of notional commission expense also relate to the same unsecured loans and therefore following the co-ordinate Bench decision we are inclined to delete the same. Ground no. 2 and 2 are allowed and addition is ordered to be deleted.

22. In the result, both the appeals of the assessee are allowed.

**Order pronounced in the open court on 10.06.2020.**

**Sd/-**  
**(Amarjit Singh)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Rajesh Kumar)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 10.06.2020.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.