

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)  
"B" BENCH, MUMBAI**

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

**ITA NOs. 8034, 8035 & 8043/MUM/2019  
(A.Y: 2011-12, 2012-13 & 2013-14)**

Asst. CIT – Central Circle - 1(3) 905, 9 <sup>th</sup> Floor Pratistha Bhavan Old. C.G.O. Building (Annexe) Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	M/s. Neminath Associates B-101, Ramji House 1 <sup>st</sup> Floor, Kalbadevi Road 30, Jambul Wadi Mumbai – 400002  <b>PAN: AAHFN7114P</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	:	<b>Ms. Hema Sharma</b>
<b>Department by</b>	:	<b>Shri Tharian Oommen</b>
<b>Date of Hearing</b>	:	<b>20.05.2021</b>
<b>Date of Pronouncement</b>	:	<b>14.06.2021</b>

**ORDER**

**PER C.N. PRASAD (JM)**

1. All these three appeals are filed by the Revenue. Two appeals arises against common order of the Learned Commissioner of Income Tax (Appeals)–47, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 23.10.2019 for the A.Y. 2011-12 and A.Y.2012-13, arising out of Assessment Order passed u/s. 143(3) r.w.s. 147 of the Act. Appeal in

ITA.No. 8043/Mum/2019 for the A.Y. 2013-14 is filed against order of the Ld.CIT(A) in deleting the penalty u/s. 271(1)(c) of the Act.

**ITA NOs. 8034 & 8035 MUM/2019 (A.Y: 2011-12 & 2012-13)**

**2.** The only issue in both these revenue's appeals is in respect of deletion of addition u/s. 68 of the Act made on account of alleged bogus loans obtained by the assessee and consequential disallowance of interest thereon on such loans.

**3.** Briefly stated the facts are that, the Assessing Officer reopened the assessments u/s. 147 of the Act based on information received from DGIT(Inv.), Mumbai that the assessee has taken accommodation entries in the form of loans from various parties as mentioned in the Assessment Order. Assessing Officer was of the view that these parties are managed and controlled by Bhanwarlal Jain Group and assessee is one of the beneficiary of accommodation entries for loans. Based on the statement of Bhanwarlal Jain obtained in the course of the search in Bhanwarlal Jain Group the Assessing Officer concluded that the transactions of loans are nothing but accommodation entries obtained by the assessee from various concerns of Bhanwarlal Jain Group and they were treated as bogus accommodation entries and brought to tax u/s. 68 of the Act as

unexplained cash credits. The Assessing Officer also disallowed interest on such loans.

**4.** On appeal the Ld.CIT(A) following the order of the Tribunal in assessee's own case for the A.Y.2013-14 and A.Y.2014-15 in ITA.Nos. 2436 and 2591/Mum/2018 dated 08.07.2019 deleted the addition made u/s. 68 of the Act and consequential disallowance of interest thereon made by the Assessing Officer as the facts being identical.

**5.** At the time of hearing, Ld. Counsel for the assessee submits that on identical facts similar issue has been decided by the Tribunal in assessee's own case by order dated 08.07.2019 for the A.Y.2013-14 and A.Y.2014-15 and this order of the ITAT was followed by the Ld.CIT(A) and deleted the addition made u/s. 68 of the Act. Therefore, it is submitted issue is squarely covered by the order of the Tribunal in assessee's own case.

**6.** On the other hand, Ld. DR strongly placed reliance on the order of the Assessing Officer.

7. Heard rival contentions perused orders of the Authorities below and the order of the Tribunal dated 08.07.2019 in assessee's own case for the Assessment Years A.Y.2013-14 and A.Y.2014-15. We observe that identical issue came up before the Tribunal for the above assessment years wherein the Assessing Officer made addition u/s. 68 of the Act in respect of alleged bogus loans obtained by the assessee from Bhanwarlal Jain Group. The Tribunal considering various materials placed on record held that the assessee has discharged initial burden by filing various documents to prove identity, genuineness and creditworthiness of the parties. The Tribunal held that the Assessing Officer was erred in making addition towards unexplained cash credits u/s. 68 of the Act and deleted the addition including the disallowance of consequential interest thereon. Facts being identical the Ld.CIT(A) following order of the Tribunal deleted the addition made u/s. 68 of the Act observing as under:

*"7.3 I have noted that the facts and circumstances of the present case at hand are exactly similar to that of the A.Y. 2013-14 & A.Y.2014-15 in Appellant's own case. This issue is not new in the case of the Appellant and the same has travelled to the Hon'ble ITAT, Mumbai "B" Bench. Further, this issue has been decided by the Hon'ble ITAT in their order dated 08.07.2019 in ITA Nos. 2641, 2480, 2388, 2360, 2501, 3018, 2436, 2591, 2661 & 2718/Mum/2018. The Hon'ble ITAT has, after detailed discussion, deleted the addition made on account of unsecured loans and consequent additions on account of interest and commission with the following observations:*

*"7. The solitary issue that needs to be resolved under given facts and circumstances of this case is whether unsecured loans taken from certain companies controlled and managed*

*by Shri Bhanwarlal Jain is unexplained cash credit, which comes under the provisions of section 68 of the Act or not. The AO has made additions of ₹.15,00,000/- towards unsecured loans taken from certain companies controlled and managed by Shri Bhanwarlal Jain under Section 68 of the Act, on the ground that the assessee has failed to file necessary documents in order to prove identity, genuineness of transactions and creditworthiness of the parties. The AO has extensively discussed the issue in his assessment order in light of facts gather during the course of search in case of Bhanwarlal Jain group of cases and survey in the case of assessee's group concern. Accordingly, the AO, opined that although the assessee has furnished various documents including confirmations from the loan creditors and their ITR acknowledgment, but failed to prove the genuineness of transactions and creditworthiness of the parties in order to come out the provisions of Section 68 of the Act. The AO further was of the opinion that mere furnishing certain paper documents is not sufficient enough in light of various facts gathered by the department during the course of search. The AO further was of the opinion that payment through proper banking channel and interest payment to those unsecured loans is not sacrosanct because all these shell companies/hawala operators would keep necessary paper document in order to give colour of genuineness to their transactions. Therefore, he opined that the transactions between the parties are failed to pass the test of genuineness and accordingly made additions under Section 68 of the Act.*

*8. The provisions of section 68 of the Act deals with the cases, where any sum found credited in the books of account of the assessee in any Financial Year, and the assessee offers no explanation about the nature and source thereof or explanation offered by the assessee is not in the opinion of the AO satisfactory, then the sum so credited may be charged to income tax as the income of the assessee of that previous year. A plain reading of section 68 makes it very clear that in order to fix any credit within the ambit of section 68 of the Act, the AO needs to examine three ingredients i.e. identity, genuineness of transactions and creditworthiness of the parties. If the assessee proves all ingredients provided under Section 68 of the Act, then the onus shifts to the AO to prove otherwise. In this legal background, if you examine the identity of the assessee in light of findings recorded by the AO in his assessment order, one has to examine whether the assessee has discharged burden caste upon it u/s 68 of the*

*Act in respect of unsecured loan received from certain companies controlled and managed by Shri Bhanwarlal Jain. The AO never disputed the fact that the assessee furnished various evidences to prove identity of the loan creditors. The AO has categorically admitted that the assessee has filed various details including PAN Card, ITR acknowledgment, financial statements, bank statements, confirmation letters and affidavit from the parties from whom loan has been taken. The AO has disputed the genuineness of transactions and creditworthiness of the parties. The sole basis for the AO to doubt the genuineness of transaction is search conducted in the cases of Bhanwarlal Jain by the DGIT(Inv.), Mumbai unit, where certain incriminating material found and seized as per which Bhanwarlal Jain and his associates were involved in providing accommodation entries and the assessee is one of the beneficiaries of such accommodation entries. The AO has taken note of statement recorded by the department from Shri Bhanwarlal Jain and his associates. The AO has taken note to survey proceedings conducted in the group cases of assessee and statement recorded from directors and employees of the assessee group cases. Except this, no contrary evidences has been brought on record by the AO to disprove the claim of the assessee that these are genuine transactions and unsecured loan taken under normal business circumstances. Therefore, under these factual matrix, we have to examine whether the credits found in the books of accounts of the assessee are hit by the provisions of section 68 of the Act or not. The sole basis for the AO to make additions is statement of Shri Bhanwarlal Jain recorded under Section 132(4) of the Act, where he was admitted that he is involved in providing bogus unsecured loans entries to various beneficiaries. The statement given by Shri Bhanwarla Jain has been retracted by himself by filing affidavits before the income tax authorities. Therefore, there is no reason for the AO to go only on the basis of statement of Shri Bhanwarlal Jain so as to treat unsecured loan taken by the assessee from the firm and companies controlled and managed by Shri Bhanwarlal Jain and his associates.*

*9. Having said so, let us examine what is the basis for the AO to arrive at conclusion that the transactions between the parties are not genuine and which are hit by the provisions of section 68 of the Act. The AO never brought out any further facts to link credits found in the books of accounts of the assessee to the evidences found during the course of search in the case of Shri Bhanwaral Jain except statement of Shri*

*Bhanwaral Jain. Even during the course of survey in group cases of assessee, no incriminating material was found which can be linked to evidences collected during the course of search in case of Shri Bhanwarlal Jain. Further, during the course of survey in assessee's group cases, the directors and employees have categorically admitted that they have personally visited office of Shri Bhanwarlal Jain Group Companies for arranging loans. The AO did not controvert this fact by bringing any other evidences. On the other hand, the assessee has filed complete details including confirmations from loan creditors, their PAN details, master data, affidavit from the directors/partners/proprietors of those companies, income tax acknowledgments receipts along with financial statements, bank statements of loan creditors in order to prove the identity, genuineness of transaction and creditworthiness of the parties.. We, further, noted that all these loans have been taken through proper banking channels. The assessee has paid interest after deducting applicable TDS as per the law. These loans have been repaid during next financial year, All these documents are part of assessment proceedings. The AO has never disputed these factual aspects. Therefore, once the assessee has discharged its initial burden by filing necessary evidences in order to prove identity, genuineness of transactions and creditworthiness of the parties, then there is no reason for AO to suspect the transactions between the parties only on the ground that the person who gave unsecured loan had admitted in his statement u/s 132(4) of the Act that these transactions are accommodation entries, more particularly when the person who gave the statement retracted his statement by filing affidavit. Further, the AO failed to carry out further enquiries in light of evidences gathered during the course of search and survey to establish the fact that in fact these transactions are non-genuine, but merely relied upon the statement of Shri Bhanwarlal Jain to make additions u/s 68 of the Act No doubt, the AO is having every right to suspect the transactions but, that by itself would not give rise an occasion for the AO to make additions u/s 68 of the Act, when the evidences filed by the assessee clearly proves the facts that these transactions were genuine transactions which are undertaken under normal commercial business circumstances. Therefore, we are of the considered view that the AO was erred in making additions towards unsecured loan taken from companies controlled and managed by Shri Bhanwarlal Jain u/s 68 of the Act.*

*10 Coming to the cases relied upon by the assessee, the assessee has relied upon various judicial precedence including the decision of the Hon'ble Supreme Court in the case of CIT vs Lovely Export Pvt Ltd. (2008) 216 CTR 195. The case laws relied upon by the assessee has been dealt as under:-*

***CIT vs. Goa Sponge and Power Ltd (13/02/2012) Tax Appeal No. 16 of 2012 (High Court-Bombay)***

*"Once the authorities have got all the details, including the name and addresses of the shareholders, their PAN/GIR number, so also the name of the Bank from which the alleged investors received money as share application, then, it cannot be termed as "bogus". The controversy is covered by the judgements rendered by the Hon'ble Supreme Court in the case of Lovely Exports Pvt Ltd, vs. CIT, (2008) 216 CTR (SC) 195, as also by this Court in CIT vs. Creative World Tele films Ltd, (2011) 333 ITR 100 (Bom). In such circumstances, we are of the view that the Tribunal's finding that there is no justification in the addition made under Section 68 of the Income Tax Act,, 1961 neither suffers from any perversity nor gives rise to any substantial question of law."*

***CIT vs. Creative World Tele films Ltd (2011) 333 ITR 100 (Born-High Court)***

*"The question sought to be raised in the appeal was also raised before the Tribunal and the Tribunal was pleased to follow the judgment of the apex Court in the case of CIT vs. Lovely Exports (P) Ltd. (2008) 216 CTR (SC) 195. wherein the apex Court observed that if the share application money is received by the assessee-company from alleged bogus shareholders, whose names are given to the AO, then the Department can always proceed against them and if necessary reopen their individual assessments. In the case in hand, it is not disputed that the assessee had given the details of name and address of the shareholder, their PAN/GIR number and had also given the cheque number, name of the bank. It was expected on the part of the AO to make proper investigation and reach the shareholders. The AO did nothing except issuing summons which were ultimately returned back with an endorsement "not traceable In our considered view, the AO ought to have found out their details through PAN cards, bank account details or from their bankers so as to reach the shareholders since all the relevant material details and particulars were given by the assessee to the AO. In the*

*above circumstances, the view taken by the Tribunal cannot be faulted."*

***CIT vs. Lovely Exports (P) Ltd (2008) 216 CTR 195 (SC)***

*"If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company."*

***CIT vs. Steller Investment Ltd (2001) 251 ITR 263 (SC) (civil appeal)***

*"That the increase in subscribed capital of the respondent company could not be a device of converting black money into white with the help of formation of an investment company, on the round that, even if it be assumed that the subscribers to the increased capital were not genuine, tinder no circumstances could the amount of share capital be regarded as un disclosed income, an appeal was taken by the Department to the Supreme Court. The Supreme Court dismissed the appeal holding that the Tribunal had come to a conclusion on facts and no interference was called for."*

***CIT vs. Nav Bharat Duolex Ltd (2013) 35 Taxmann.com289 (All-High Court)***

*"We have considered the arguments of the counsel for the parties. CIT(A) found that five companies subscribing the equity shares amounting to Rs. 25,00,000/- were identified and they had submitted their bank statements, cash extracts and returns filing receipts. As such identity of the share applicant companies and purchase of share had been proved by the assessee. Supreme Court in the cases of CIT v. Steller Investments Ltd. [2001] 251 ITR 263 and Lovely Exports case*

*(supra), has held that the identity of the shareholder alone is required to be proved, in case of the capital contributed by the shareholders. Accordingly CIT(A) and the Tribunal has not committed any illegality in allowing the appeal of the assessee. We do not find any illegality in the judgment of the CIT(A) and the Tribunal."*

***CIT vs. JayDee Securities & Finance Ltd (2013) 32 Taxmann.com91 (All-High Court)***

*"The Tribunal recorded findings that the assessee had produced the return of income filed by the relevant shareholders who had paid share application money. The assessee had also produced the confirmation of share holders indicating the details of addresses, PAN and particulars of cheques through which the amount was paid towards the share application money. The Tribunal thereafter relied upon the judgment of the Supreme Court in CIT V. Lovely Exports (P.) Ltd wherein it was held that if the assessee produces the names, addresses, PAN details of the share holders then the onus on the assessee to prove the source of share application money stands discharged. If the Assessing Authority was not satisfied with the creditworthiness of the shareholders, it was open to the Assessing Authority to verify the same in the hands of the shareholders concerned, The Tribunal has relied upon an order of the Supreme Court in case of CIT v. Divine Leasing & Finance Ltd. In view of the decision of the Supreme Court, we dismiss the appeals with observations that the department is free to proceed to reopen their individual assessments of the shareholders whose names and details were given to the Assessing Officer."*

***ACIT vs. Venkateshwarlspat Pvt Ltd (2009) 319 ITR 393 (Chhatisgarh-High Court)***

*"If the share applications are received by the assessee from alleged bogus shareholders, whose names are given to the Assessing Officer, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as the undisclosed income of the assessee."*

***Mod Creations Pvt Ltd vs. /TO (2013) 354 ITR 282 (Del-High Court)***

*"Held, allowing the appeal, (i) that the assessee had discharged the initial onus placed on it. In the event the Revenue still had a doubt with regard to the genuineness of the transactions in issue or as regards the creditworthiness of the creditors, it would have had to discharge the onus which had shifted on to it. A bald assertion by the Assessing Officer that the credits were a circular route adopted by the assessee to plough back its own undisclosed income into its accounts, could be of no avail. The Revenue was required to prove this*

*allegation. An allegation by itself which is based on assumption will not pass muster in law. The Revenue would be required to bridge the gap between the suspicions and proof in order to bring home this allegation. The Tribunal without adverting to the principle laid stress on the fact that despite opportunities, the assessee and/or the creditors had not proved the genuineness of the transaction. Based on this it construed the intentions of the assessee as being mala fide. The Tribunal ought to have analysed the material rather than be burdened by the fact that some of the creditors had chosen not to make a personal appearance before the Assessing Officer. If the Assessing Officer had any doubt about the material placed on record, which was largely bank statements of the creditors and their income-tax returns, it could gather the necessary information from the sources to which the information was attributable.....If it had any doubts with regard to their creditworthiness, the Revenue could always bring the sum in question to tax in the hands of the creditors or sub-creditors."*

***CIT vs. Al Anam Agro Foods (P.) Ltd (2013) 38 Taxmann.com 375 (All-High Court)***

*Tribunal, however, held that since identity of shareholders stood proved on record, amount of share application money could not be added to income of assessee. According to Tribunal, in such a case amount could be taxed in hands of persons who had invested"*

***CIT vs. Dwarkadhish Investment (P) Ltd (2011) 330 ITR 298 (Del-High Court)***

*"Just because the creditors/share applicants could not be found at the address given, it would not give the Revenue the right to invoke s. 68— Revenue has all the power and wherewithal to trace any person—Moreover, it is settled law that the assessee need not to prove the 'source of source'— In the instant case, the Tribunal has confirmed the order of the CIT(A) deleting the impugned addition holding that the assessee has been able to prove the identity of the share applicants and the share application money has been received by way of account payee cheques."*

***CIT vs. Namastey Chemicals Pvt Ltd (2013) 33  
Taxmann.com 271 (Guj-High Court)***

*"In the present case also, the respondent assessee has received share application money from different subscribers. It was found that large number of subscribers had responded to the letters issued by the Assessing Officer or summons issued by him and submitted their affidavits. In some cases such replies were not received through posts. Rs.9 lacs represented those assesseees who denied having made any investment altogether. The issue thus would fall squarely within the ambit of the judgment of the Supreme Court in the case of Lovely Exports (supra). No error of law can be stated to have been committed by the Tribunal. Tax Appeal is therefore dismissed."*

***CIT vs. Peoples General Hospital Ltd (2013) 356 ITR  
65 (MP-High Court)***

*"Held , dismissing the appeals , that it the assessee had received subscriptions to the public or rights issue through banking channels and furnished complete details of the shareholders, no addition could be made under section 68 of the Income-tax Act, 1961, in the absence of any positive material or evidence to indicate that the shareholders were benamidars or fictitious persons or that any part of the share capital represented the company's own income from undisclosed sources. It was nobody's case that the non-resident Indian company was a bogus or non-existent company or that the amount subscribed by the company by way of share subscription was in fact the money of the assessee. The assessee had established the identity of the investor who had provided the share subscription and that the transaction was genuine. Though the assessee's contention was that the creditworthiness of the creditor was also established, in this case, the establishment of the identity of the investor alone was to be seen. Thus, the addition was rightly deleted."*

***CIT vs. Shree Rama Multi Tech Ltd (2013) 34  
Taxmann.com177 (Guj-HC)***

*"It is noted that Commissioner (Appeals) as well as the Tribunal have duly considered issue and having found complete details of the receipts of share application money, alongwith the form names and addresses, PAN and other*

*requisite details, they found complete absence of the grounds noted for invoking the provision of section 68. Moreover, both rightly had applied the decision of CIT vs. Lovely Exports (P) Ltd to the case of the assessee. Therefore, no reason was found in absence of any illegality much less any perversity too to interfere with the order of the both these authorities, who had concurrently held the due details having been proved. The assessee company had presented the necessary worth proof before both the authorities and it was not expected by the assessee company to further prove the source of the deceased."*

***CIT vs. Nikunj Eximp Enterprises (P.) Ltd (2013) 35 Taxrann.com384 (Bom)***

*"Whether merely because suppliers had not appeared before Assessing Officer or Commissioner (Appeals), it could not be concluded that purchases were not made by assessee - Held, Yes.... Further, there were confirmation letters filed by the suppliers, copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were in fact made. In our view, merely because the suppliers have not appeared before the Assessing Officer or the CIT(A), one cannot conclude that the purchases were not made by the respondent- assessee"*

***CIT vs. Samir Bio- Tech Pvt Ltd (2010) 325 ITR 294 (Del-High Court)***

*"Identities of the subscribers are not in doubt. The transactions have also been undertaken through banking channels inasmuch as the application money for the shares was given through account payee cheques. The creditworthiness has also been established, as indicated by the Tribunal. The subscribers have given their complete details with regard to their tax returns and assessments. In these circumstances, the Department could not draw an adverse inference against the assessee only because the subscribers did not initially respond to the summons. The subscribers, however, subsequently gave their confirmation letters as would be apparent from the impugned order. The identity of the subscribers stands established and it is also a fact that they have shown the said amounts in their audited balance sheets and have also filed returns before the IT authorities. The decision of the Tribunal deleting the addition cannot be faulted."*

11. *The assessee has also relied upon various decision of the Co-ordinate Bench of ITAT, Mumbai. We find that the coordinate Bench of ITAT Mumbai, in number of cases has considered an identical issue in light of search and seizure operations as well as survey conducted by the department in light of statement of Shri Bhanwarlal Jain recorded during the course of search u/s 132(4) of the Act. The Tribunal after considering the relevant facts and also considering the retracted statements filed by Shri Bhanwarlal Jain came to the conclusion that one documents filed by the assessee to prove the identity, genuineness of transactions and creditworthiness of the parties are clearly established the fact that the transactions between the parties are genuine which are undertaken under normal commercial business, no reason for the AO to make additions u/s 68 of the Act.*

12. *We further noted that in most of the cases, the Tribunal has considered the companies controlled and operated by Shri Bhanwarlal Jain in light of observations made by the AO to make addition u/s 68 of the Act. We further noted that the Coordinate Bench of ITAT, Mumbai, in the case of Shri Sumit J. Jain vs ACIT in ITA No.145/Mum/2017 had an occasion to consider identical issue in light of unsecured loans taken from companies controlled and managed by Shri Bhanwarlal Jain. The Coordinate Bench, after considering the relevant facts, has held that when assessee has filed various documents to prove three ingredients provided u/s 68 of the Act, there is no reason for the AO to make additions towards u/s 68 of the Act only on the basis of statement of Shri Bhanwarlal Jain. The relevant findings of the Tribunal are as under:-*

"3. *I have considered the rival submissions and perused the material available on record. The facts in brief are that the assessee an individual engaged in the business of builder and developer declared loss of Rs. 1,29,68,736 in his return on 15.09.2009. The assessment was completed u/s 143(3) of the Act on 30.11.2011 assessing the loss at Rs. 1,13,73,448. The assessee carried the matter in appeal before the learned CIT(A) wherein vide order dated 03.02.2014, part relief was granted to the assessee. Later on, the case of the assessee was re-opened u/s 147 on the basis of information that the assessee has received accommodation entry of unsecured loan from M/s. Laxmi Trading Company, M/s. Mouli Gems, M/s. Minal Gems, M/s. Naman Exports and M/s. Prime Star, pertaining to Bhawarlal Jain Group. As per the*

*assessee, during the assessment proceedings, documentary evidences pertaining to loan from aforementioned parties like confirmation, bank statement and acknowledgment of return of income of loan, bank statement of the assessee reflecting the amounts and genuineness of transactions were filed. However, the learned Assessing Officer treated the loan as unexplained cash credit on the plea that the assessee could not produce the parties. Thereafter, the learned Assessing Officer computed the peak of unsecured loan amounting to Rs. 1,91,00,000 and made addition of Rs. 40,00,000 u/s 68 of the Act. On appeal, before the learned CIT(A), the addition so made was directed to be deleted. The assessee is in appeal before the Tribunal.*

*4. If the observations made in the assessment order leading to the addition and the conclusion arrived at in the impugned order, if kept in juxtaposition, and analysed there is a factual finding in Para-5.3 that the assessee discharged the primary onus as the lender had responded to notices issued u/s 133(6) of the Act confirming the transaction. The learned Assessing Officer did not controvert the claim of the assessee. The loans were taken through banking channel and the receipt of taking the loan has been duly examined in Para-5.3 (Page-13) of the impugned order. The loans were duly reflected in the loans and advances column in the Balance Sheet and there is further factual recording that there was neither any cash deposit nor any withdrawal in any bank account castigating the same as accommodation entries. It is further noted that the assessee duly paid the interest on the loan amount and deducted. Copy of Form no.16A was also filed and the learned Assessing Officer has not brought on record any evidence / reason to disbelieve the evidence filed by the assessee. I am satisfied with the reasoning of the learned CIT(A) that the addition was merely made on the basis of presumption that all the five concerns from whom loan was taken were managed and controlled by Shri Bhawarlal Jain. The statement was also recorded wherein there is no mention that any accommodation entry was obtained. Rather, the case of the assessee is fortified by the reply to question no.40 and 41 wherein it has been tendered that the loan was advanced and interest @ 9% p.a. was charged. The name of the assessee is nowhere*

*mentioned in the list of suspicious dealer / person. Thus, I find no infirmity in the conclusion of the learned CIT(A), resulting into dismissal of the impugned ground raised by the Revenue.*

*5. The next ground pertained to deletion of addition of Rs. 5,78,278, made on account of interest expenditure on alleged bogus loans. The learned D.R. defended the addition, whereas, the learned Counsel for the assessee invited my attention to the finding recorded in Para-6.1 of the impugned order. On a perusal of record and the assertions made by the respective Counsels. There is a finding in the impugned order that the assessee duly produced the bank statement from where interests were paid also copies of form no.16A evidencing the TDS made and deposited into the Government account with respect to payment of interest. Since in earlier paras of this order since I have upheld the order of the learned CIT(A), therefore, the issue of interest is consequential in nature, therefore, the conclusion drawn in the impugned order is upheld."*

*13 We have also considered the judgements relied upon by the learned A.R. such as: -*

- 1. Order dated 12.03.2018 passed by Hon'ble ITAT, Mumbai in the case of ACIT vs. Sumit Jain in ITA No. 145/Mum/2017*
- 2. Order dated 12.04.2017 passed by Hon'ble ITAT, Mumbai in the case of Reliance Corporation vs. Income Tax Officer in ITA Nos. 1069 to 1071/Mum/2017*
- 3. Order dated 26.05.2016 passed by Ld. CIT(A) - 44, Mumbai in the case of Reliance Corporation vs. Income Tax Officer*
- 4. Order dated 23.05.2017 passed by Hon'ble ITAT, Mumbai in the case of Income Tax Officer vs. Vikram Muktilal Vora in ITA No. 842/Mum/2017*
- 5. Order dated 05.11.2018 passed by Hon'ble ITAT, Mumbai in the case of Keynote Fincorp Ltd. vs. DCIT in ITA Nos. 1643 & 1647/Mum/2018*
- 6. Order dated 24.05.2017 passed by Hon'ble ITAT, Mumbai in the case of Income tax Officer vs. Gujarat Construction in ITA No. 7040/M/2016*
- 7. Order dated 30.05.2018 passed by Hon'ble ITAT, Mumbai in the case of ACIT vs. Vashu Bhagnani in ITA No. 5648/M/2016*
- 8. Order dated 10.08.2018 passed by Hon'ble ITAT, Mumbai in the case of DCIT vs. Jainam Investments in ITA No. 6099/M/2016*

9. *Order dated 03.05.2019 passed by Hon'ble ITAT, Mumbai the in the case of M/s. Pabal Housing Pvt. Ltd. in ITA Nos. 2687 to 2689/Mum/2018*
10. *Order dated 03.05.2019 passed by Hon'ble ITAT, Mumbai the in the case of M/s. Poonam Skyline Construction in ITA Nos. 2692 to 2694/Mum/ 2018*
11. *Order dated 03.05.2019 passed by Hon'ble ITAT, Mumbai the in the case of M/s. P.S. Construction in ITA Nos. 3226 to 3229/Mum/2018*
12. *Order dated 03.05.2019 passed by Hon'ble ITAT, Mumbai the in the case of M/s. Poonam Shanti Developers in ITA No. 2690/Mum/2018*
13. *Order dated 03.05.2019 passed by Hon'ble ITAT, Mumbai the in the case of M/s. Poonam Mega Developers in ITA Nos. 2691/Mum/ 2018*

14. *We have also considered the following judgements relied upon by the learned D.R.: -*

1. *Principal Commission of Income Tax vs. NRA Iron & Steel (P.) Ltd. (2019) 103 taxmann.com 48 (SC)*
2. *Principal Commission of Income Tax vs. NDR Promoters (P.) Ltd. (2019) 102 taxmann.com 282 (Del.)*
3. *Pee Aar Securities Ltd. vs. DCIT (2018) 96 taxmann.com 602 (Delhi-Trib)*
4. *Pavankumar M. Sanghvi vs. Income Tax Officer (2018) 97 taxmann.com 398 (SC)*

*After considering the case law relied upon by the learned D.R. i.e. the case of NRA Iron & Steel (P.) Ltd. we note certain distinguishing features vis-a-vis factual matrix of the present case. Upon perusal of paras 3.7 & 3.8 of the said judgement, it is noted that the Ld. AO had issued summons to as many as 19 investor entities but nobody appeared on behalf of the investor companies. Submissions were received through DAK only which created a doubt about the identity of the investor company. Further the AO independently got field inquiries conducted at the location of investor companies, the result of which has been tabulated in the said para. Notice was served on few entities but the same were not replied to. In few cases, the notices were returned back Submissions were received in few cases through DAK wherein the company only provided the mode of investment but no reasons were supplied for paying a huge premium of `190/- per share. Another striking feature was that most of the investors had reflected meagre income during assessment year under dispute. The two companies in Mumbai as well as Guwahati were found to be*

*non-existent. With respect to Kolkata companies, the response came through DAK only and nobody appeared. Further, the bank statements were not produced in most of the cases to establish the source of funds for making huge investments. However, the factual matrix, before us, in the present case is quite different. In the present case, we find that the assessee has duly discharged the initial onus of proving the identity of the investors, creditworthiness of the transactions and genuineness of the transactions. Notices issued u/s 133(6) have been responded to. In such a scenario, the onus to dislodge the assessee's claim, in our opinion, was shifted back to Ld. AO and he was duty bound to investigate the case further. However, the facts on record nowhere establishes that such further inquiries / investigations have subsequently been conducted by Ld. AO in the present case. For the said proposition, we draw strength from the land mark case of Kale Khan Mohammad Hanif Vs. CIT [50 ITR 1] and Roshan Di Hatti Vs. CIT [107 ITR 938] as already cited in the above decision of Hon'ble Apex Court. Similar is the ratio of Hon'ble Apex Court rendered in CIT Vs. Orissa Corporation [159 ITR 78]. It is trite law that additions could not be made merely on the basis of doubts, conjectures or surmises. After considering the entire case law as discussed above we find that the case law considered by the Revenue authorities were rendered under different set of facts which cannot be applied to the facts of the present case. Accordingly the case law relied upon by the learned D.R. are rejected.*

*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.*

*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.*

*17. In the result, the appeal filed by the assessee is allowed.*

*18. In all the other appeals the assesseees have raised identical grounds. Therefore the findings given in the paragraphs above are mutatis mutandis apply to all the appeals. In the nutshell all the appeals of the assesseees are allowed."*

*7.4 Since, the facts of the present case at hand are identical to that before the Hon'ble Tribunal, I respectfully follow the binding decision of the higher judicial authority, reproduced above. It is also brought on record that the undersigned have earlier taken a contrary stand in the Neminath Group of cases, but now the CIT(Appeal) being a lower subordinate authority in the judicial hierarchy had to follow the decision of Hon'ble ITAT, which is a higher & superior judicial authority.*

*7.5. ....*

*7.6. ....*

*7.7. ....*

*7.8. ....*

*7.9. ....*

*7.10 Respectfully following the decision of the Hon'ble Tribunal in the Appellant's Group concerns and in Appellant's own case, the*

*Assessing officer is directed to delete the addition made u/s 68 of the Act in respect of unsecured loans and disallowance made on account of interest and commission. In view of these facts and circumstances of the case, the Grounds of appeal No. 1 to 8 of the present appeal for the A.Y. 2011-12 are hereby allowed."*

**8.** On a perusal of the order of the Ld.CIT(A), we do not find any good reason to interfere and reverse the findings of the Ld.CIT(A), especially when the facts being identical to the A.Y.2013-14 and A.Y.2014-15 wherein the Tribunal deleted the addition made u/s. 68 of the Act which order has been followed by the Ld.CIT(A). Thus, we do not find any infirmity in the order passed by the Ld.CIT(A). Grounds raised by the revenue are dismissed.

**ITA NO. 8043/MUM/2019 (A.Y: 2013-14)**

**9.** This appeal is filed by the revenue against deletion of penalty u/s.271(1)(c) of the Act for the A.Y. 2013-14 by the Ld.CIT(A). The Ld. Counsel for the assessee submitted that the addition made u/s. 68 of the Act in assessment proceedings has been deleted by the Tribunal in ITA.No. 2436/Mum/2018 by order dated 08.07.2019. Therefore, it is submitted that since the quantum addition has been deleted by the Tribunal the penalty levied on such addition will not survive.

**10.** On hearing both sides and perusing order of the Tribunal, we observe that the Tribunal has deleted the quantum addition made by the Assessing Officer u/s. 68 of the Act. Since the quantum addition has been deleted by the Tribunal the Ld. Commissioner of Income-tax (Appeals) has rightly deleted the penalty as no penalty will survive. Thus, we sustain the order of the Ld.CIT(A) and reject the grounds raised by the revenue.

**11.** In the result, appeals of the revenue are dismissed.

Order pronounced on 14.06.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated 14.06.2021  
Giridhar, Sr.PS

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

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**