

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA Nos.278, 279, 280, 281 & 282/M/2020
Assessment Years: 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13**

M/s. Indravadan Hanjarimal Jain, 701, Near Patel Petrol Pump, Anmol Presitge, Goregaon, Mumbai – 400 104 PAN: AAAPJ9737B	Vs.	ACIT 31(2), Kautilya Bhavan, Bandra Kurla Complex, Mumbai – 400 051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Jain Dixit, A.R.
Revenue by : Ms. Shreekala Pardesh, D.R.

Date of Hearing : 27.07.2021
Date of Pronouncement : 08.09.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeals have been preferred by the assessee against the orders dated 24.10.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13.

ITA No.278/M/2020 A.Y. 2008-09

2. The assessee has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in upholding the reopening of completed assessment made by the Ld AO by issuing notice u/s. 148 of the IT Act 1961 and the reasons assigned for doing so are wrong and contrary to the provision of the Income Tax Act and rules made there under.

2. On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in upholding the addition of Rs. 1,00,00,000/- made by the Ld AO on account of unsecured loan as unexplained cash credit u/s. 68 and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.

3. On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in upholding the addition of Rs.6,55,834/- made by the Ld. AO on account of interest paid on unsecured loan as non-genuine and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.

4. On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in upholding the penalty u/s. 271(1)(c) levied by the Ld AO and the reasons assigned for doing so are wrong and contrary to the provision of the Income Tax Act and rules made there under.

5. On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in upholding the interest u/s. 234B levied by the Ld AO and the reasons assigned for doing so are wrong and contrary to the provision of the Income Tax Act and rules made there under.

6. Your appellant craves leave to add to, amend alter or delete any of the above grounds of appeal on or before the date of hearing."

3. The issue raised in ground no. 1 is not argued at the time of hearing. Therefore ground no. 1 is dismissed as not pressed.

4. We would first like to adjudicate ground No.2 whereby the assessee has challenged the confirmation of addition of Rs.1,00,00,000/- as made by the AO on account of unsecured loans from Bhanwarlal Jain group by treating the same as unexplained cash credit.

5. The facts in brief are that the assessee filed return of income on 27.09.2008 declaring income of Rs.1,66,15,683/-. The assessment was framed under section 143(3) vide order dated 28.10.2010 accepting the return of income. Thereafter, the case of the assessee was reopened and one more assessment was framed under section 143(3) read with section 147 of the

Act assessing the total income at Rs.2,07,76,523/- vide order dated 24.03.2014. Thereafter, the AO received information from the DGIT (Inv.) Mumbai that assessee is beneficiary of accommodation entries. Accordingly, the AO after recording the reason under section 148(2) of the Act reopened the assessment by issuing notice dated 25.03.2015 which were duly served upon the assessee. The assessee complied with the notice vide letter dated 20.04.2015 by submitting that return filed originally may be treated as filed in compliance to this notice. In the reason recorded the AO noted that in the books of accounts of the assessee unsecured loans aggregating to Rs.1,00,00,000/- were credited in the books of accounts of the assessee which were raised from four parties namely Ankita Exports, Megha Gems, Malhar Gems and Milan & Co. all belonging to Bhanwarlal Jain group. The AO also noted that the information was revealed that all these entities were engaged in giving accommodation entries when a search was carried out on group. Accordingly, the assessee was called upon to prove the identity, creditworthiness of the lender and genuineness of these transactions. The assessee filed before the AO the loan confirmation duly signed by the lender and the fact that the money was borrowed through banking channel and interest of 12% was paid per annum after deduction of TDS. The assessee also filed the names and addresses of the lenders, their PAN, ITRs and annual accounts in order to prove the three ingredients of section 68 of the Act. The AO, however, rejected all these evidences by harping on the report of DGIT (Inv.), Mumbai that all these parties were hawala parties related to Bhanwarlal Jain group which were engaged in giving

accommodation entries and finally added the same under section 68 of the Act as unexplained cash credit by holding that these are only accommodation entries and assessee has failed to establish the genuineness of these transactions by framing assessment under section 143(3) read with section 147 of the Act vide order dated 19.03.2016.

6. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by observing that mere furnishing of documents quashed lenders and paying the interest after deduction of TDS at source do not ipso facto prove the genuineness of the transactions. The Ld. CIT(A) while dismissing the appeal primarily relied on the statement given during the course of search on Bhanwarlal Jain and related entities that all these were engaged in advancing accommodation entries and therefore any subsequent retraction would not serve the purpose. The Ld. CIT(A) noted that assessee has been found to be beneficiary of accommodation entries during the course of said search and therefore justified the addition made by the AO.

7. After hearing the rival contentions of both the parties and perusing the material on record, we find that in this case the assessee has taken unsecured loans from four parties related to Bhanwarlal Jain group. The AO made the addition by doubting the genuineness of the loan transactions by citing the reason that a search on Bhanwarlal Jain and related parties has revealed that the entire group was engaged in advancing tax accommodation entries without doing any real business which has affirmed by Ld. CIT(A) by observing that retraction of

statement recorded during the course under section 132(4) of the Act can not be sole basis to treat the transaction as genuine. Undisputedly, the assessee during the course of assessment proceedings filed copy of ITRs, balance sheet, profit and loss account, confirmations and proof of receipt of payment through banking channel along with the evidence of payment of interest at the rate of 12% after deduction of TDS at source. We observe from the records before us that AO has not carried out any further verification and relied on the report of the DGIT(Inv.), Mumbai that assessee is beneficiary of accommodation entries without carrying on any further investigation. We note that the statement taken during the course of search has been retracted in which it has been admitted that Bhanwarlal Jain and related entities were engaged in accommodation entries in the form of unsecured loans of short term and long term capital gain and share capital etc. We also observe from the facts before us that the assessee has filed various evidences before the lower authorities however no further enquiries have been conducted by the AO or Id CIT(A) to dig out the truth or to disapprove the evidences filed. Both the authorities below have heavily relied on the statements recorded during search of Shri Bhanwarlal Jain and other persons without any corroborating evidences. The case of the assessee finds support from the following decisions:

- a) In the case of M/s. Pabal Housing Pvt. Ltd. & ors vs DCIT (ITA No.2687, 2688 & 2689/M/2018) & ors. the coordinate Bench has held that assessee has discharged the initial burden by filing various documents to prove the identity, creditworthiness of the parties and genuineness of the transactions. Whereas the AO has not made any

further investigations or enquiries or brought on record any other evidences which proved otherwise. The operative part of the decision is as under:

“11. We have heard both the parties, perused the material available on record and gone ground through the orders of authorities below. 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 Rs.10,45,00,000/- towards unsecured loans taken from certain companies controlled and managed by Shri Bhanwarlal Jain u/s 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 u/s 68 of the Act.

12. 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 u/s 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 u/s 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.

13. 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.

14. 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 (AllHigh 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 to be 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.com271 (GujHigh 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 assessee 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 if 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."

15. 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.

16. 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 reopened 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 unsecure 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.”

17. Coming to the cases relied upon by the Ld. DR in light of various case laws discussed by the AO as well as the Ld. CIT(A). We have considered the cases relied upon by the Ld. DR as well as the Ld. CIT(A) in light of facts of present case and we found that the case laws considered by lower authorities were rendered under different set of facts which cannot be applied to the facts of the present case. Accordingly, the cases relied upon by the Ld. DR are rejected.

18. 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 u/s 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 u/s 68 of the Act.”

(b) In the case of ITO vs. Abhay Kumar Daga HUF ITA No.6983/M/2018 the Tribunal has held as under:

"4. We have heard the rival contentions and gone through the fact and circumstances of the case. The assessee has complied with the basic conditions of the provision of 68 by submitting the confirmations of loan, copies of the Bank Statements and Copies of Income Tax Return of these four loan creditors. We noted from the assessment order that although the Assessing Officer has written a very elaborate order but he has missed the basic three ingredients of the provision of section 68 of the Act. Hence, not carried any enquiry qua these three conditions rather he mainly relied on the search conducted in the case of Bhawarlal Jain Group of cases. It is also not clear from the assessment order whether these loan parties are genuine or non-genuine and the amount received are unexplained but how. It is a fact that the assessee has discharged its primary onus by filing all these documents which the Assessing Officer should have verified and examined these parties. Even now before us, the learned Sr. DR could not controvert the basic facts of the case except relying on the case law of Pawankumer M Sanghvi vs. ITdo in ITA No. 2447/Ahd/2016 and Pr. CIT vs. NRA Iron & Steel (P) Ltd. (2019) 110 taxmann.com 491 (SC). Without pointing out the factual aspect of this case, we cannot take it as legal proposition laid down in the given facts. Hence, we are of the view that there is no infirmity in the order of the CIT(A) and hence, we confirm the same. The appeal of Revenue on this issue is dismissed.

(c) In the case of DCIT vs. 4. DCIT vs.M/s. Jainam Investments (ITA No.6099/M/2016)the Tribunal has held as under:

"17. There should not be any dispute that the initial burden to prove the cash credits is placed upon the shoulders of the assessee. It has been held by Honourable Courts that the initial burden shall be discharged, if the assessee proves three main ingredients, viz., the identity of the creditor, the creditworthiness of the creditor and genuineness of the transactions. If the assessee has discharged the initial onus, then the onus to disprove the same is shifted to the shoulders of the assessing officer. These legal principles have been reiterated in the cases of Bhan & sons (supra) and M/s Precision Finance P Ltd (supra), which were referred to by Ld CIT-DR. In the instant case, there is no dispute that the assessee has discharged the initial burden of proof placed upon it by furnishing all the materials to prove the three main ingredients, referred above. Hence the burden has shifted to the shoulders of the assessing officer to disprove the evidences furnished by the assessee. We notice that the assessing officer, in the instant case, did not conduct further enquiries or bring any material on record to discharge the burden shifted upon his shoulders. Instead, we notice that the assessing officer has simply placed reliance on the alleged incriminating materials found in the course of search conducted in the hands of Shri Bhanwarlal Jain and his group and also upon the sworn statements given by them.

18. The Ld CIT-DR, by placing reliance on the decision rendered by Hon'ble Delhi High Courts in the cases of Jansampark Advertisement and marketing (supra) and Bikram singh (supra), contended that the appellate authorities are duty bound to conduct further enquiries, if there is deficiency in the enquiry conducted by the AO. However, in the instant case, we notice that the addition has been made u/s 68 of

the Act and the assessee has discharged the onus placed upon him under that section. On the contrary, the assessing officer did not bring any material on record to show that the various evidences furnished by the assessee are not reliable and instead rested fully upon the Sworn Statements and the alleged incriminating materials. Hence, in our view, the question of deficiency in the enquiry of the AO does not arise in the instant case.

19. The Ld DR also placed reliance on the decision rendered by Hon'ble Supreme Court in the case of Sumati Dayal (supra) and Durgaprasad More (supra) to contend that the surrounding circumstances and human probabilities should also be taken into consideration by the tax authorities. He contended that these loan transactions are deceptive transactions. There should not be any doubt with this proposition of law. In the instant case, the Ld CIT(A), as well as the Tribunal in the case of Vama International (supra) has observed that the sworn statements given by Shri Bhanwarlal Jain and others have been retracted. The question whether the revenue is entitled to place reliance on the retracted statements remains unanswered. Further, the assessing officer has placed reliance on the various observations made by the search officials like, sharing of common address by various concerns, inducting employees as directors etc., to come to the conclusion that these transactions are bogus in nature. We notice that the search officials have only drawn adverse inferences on the basis of information gathered by them and it is the duty of the assessing officer to substantiate those inferences by bringing corroborative materials. The Ld CIT-DR has reiterated these inferences as surrounding circumstances. However the moot point that remains is whether the assessing officer could disprove the material evidences furnished by the assessee to prove the cash credits? The various evidences furnished by the assessee, in fact, disprove the inferences drawn by the search officials. When the assessing officer could not disprove the material evidences furnished by the assessee, in our view, he is not entitled to place full reliance on the inferences drawn by the search officials, particularly the assessee could rebut those presumptions drawn by the search officials. Though the sworn statement given by Shri Bhanwarlal Jain may be a relevant piece of evidence, yet it is stated that the said statement has been retracted. Further the AO has not shown that the transactions entered by the assessee with the group of Shri Bhanwarlal Jain were examined by the search officials and he has deposed against the transactions entered between him and the assessee. On the contrary, the Ld CIT(A) has given a finding that the impugned loan transactions have not been specifically stated to be bogus in nature. The key person of the assessee has reiterated in his statement taken from him during the course of survey that the loan transactions are genuine. When it was pointed out that Shri Bhanwarlal Jain has admitted the bogus nature of transactions, the key person has specifically stated that the said admission related to the sale of diamonds and further specifically stated that the loan transactions are not covered in the statement. Hence the Ld CIT(A) was right in observing that the impugned loan transactions have not been specifically covered by the statement given by Shri Bhanwarlal Jain. Hence in our view, the theory of human probabilities and surrounding circumstances need not be applied in this case.

20. It is a fact that the revenue has conducted survey operations in the hands of the assessee and they did not find any incriminating material concerning these loan

transactions at the time of survey. There is also no evidence to show that the cash equivalent to the loan transactions has been given by the assessee to various lenders.

21. The Ld A.R placed his reliance on the decision rendered by Hon'ble Supreme Court in the case of Kishinchand Chellaram (supra) in order to contend that the AO could not have used the materials, which were not put to the assessee. In the instant case, we notice that the assessee has specifically requested the AO twice to give the materials that were relied upon by the assessing officer to take adverse view. Despite the request so made, the AO has not furnished copies of materials to the assessee. Hence, as per the decision rendered by Hon'ble Supreme Court in the above said case, the AO could not have placed his reliance on those materials, which were not confronted with the assessee.

22. The assessee has also asked for copies of sworn statements given by Shri Bhanwarlal Jain and others. The assessee also asked for an opportunity to cross examine them. However, the AO has failed to furnish copies of sworn statements and also did not afford opportunity to cross examine the deponents. Hence the decision rendered by Hon'ble Supreme Court in the case of Andaman Timer Industries (supra) goes in favour of the assessee and accordingly the Ld CIT(A) was justified in placing reliance on the same and holding that the impugned additions are not justified.

23. We notice that the assessee has specifically asked the AO to issue summons to the loan creditors, but the assessing officer has failed to do the same. It is pertinent to note that the assessee has so requested the AO, even after discharging the initial burden of proof by furnishing all the relevant details available with it. In the case of Orissa Corporation P Ltd (supra), the assessee furnished available details and then requested the AO to issue summons to the creditors, since it could not collect further details from them. The AO failed to do so and hence the Hon'ble Supreme Court held that the addition made u/s 68 is not justified. The assessee herein, in our view, stand on a stronger footing. The assessee has furnished all the relevant details, which has been summarized by the Ld CIT(A) in paragraph 6.3.31 of his order as under:-

"6.3.31 In the case before me, the record also shows that to prove the genuineness of the impugned loan entries from the 17 creditors, the appellant has furnished to the Assessing Officer the following details copies of which were also furnished in the present proceedings:

I. PAN details of creditors

II. Constitution and address of the creditors

III. Particulars of income-tax returns filed by the creditors [These show that the creditors are legitimate business entities, having the ability to advance the impugned loans to the appellant.]

IV. Confirmatory letters given by the creditors "

V. Audited financial accounts (including balance sheets) of the creditors [These show that the loans are duly reflected in the books of account of the creditors.]

VI. Relevant bank statements of the creditors [These show that the loan amounts were paid through legitimate banking channels. Further these bank statements do not reflect any movement of cash, essential to hawala transactions.]

VII. Details of interest paid to the creditors

VIII. Details of TDS deducted and paid”.

Even though the assessing officer did not find any fault with these documents, still the assessee has requested the AO to issue summons to these parties. As stated earlier, the assessing officer did not issue summons and instead relied upon the inferences drawn by the search officials. Hence, in our view, the decision rendered by Hon'ble Supreme Court in the case of Orissa Corporation (P) Ltd (supra) will also come to the support of the assessee.

24. We notice from the operative portion of the order passed by Ld CIT(A) that the first appellate authority has placed reliance on various other case laws also. In effect, the Ld CIT(A) has examined the documents furnished by the assessee and has held that the assessee has discharged the initial burden of proof placed upon it u/s 68 of the Act. He has also held that the non-furnishing of documents relied upon by the AO and non-providing of opportunity to cross examine the Shri Bhanwarlal Jain and others would make the addition to fail. Even in respect of documents relied upon by the AO, the Ld CIT(A) has found the same to be inadequate to warrant the additions made u/s 68 of the Act. Hence, we are of the view that the Ld CIT(A) has passed a reasoned order by considering the facts of the case, applicable case laws and has taken a justifiable view in this matter. Hence we do not find any infirmity in the order passed by Ld CIT(A). Accordingly we confirm the order passed by Ld CIT(A) in deleting the addition of Rs.24.75 crores made u/s 68 of the Act.”

8. In view of these facts, we are not in concurrence with the finding of the Ld. CIT(A) and accordingly we set aside the order of Ld. CIT(A) and direct the AO to delete the addition. Ground no. 2 is allowed.

9. The issue raised in ground No.3 is against the confirmation of disallowance of interest of Rs.6,55,834/- by Ld. CIT(A) as disallowed by the AO on the unsecured loan by treating the

same as non genuine. Since we have already allowed the ground No.2 by reversing the order of Ld. CIT(A), therefore this ground being consequential in nature and accordingly ground no. 3 is allowed in favour of the assessee.

10. The issues raised in ground no 4 to 7 are either premature at this stage or general in nature and therefore require no adjudication.

11. Accordingly, the appeal of the assessee is partly allowed.

ITA Nos.279, 280, 281 & 282/M/2020 A.Y. 2009-10, 2010-11, 2011-12 & 2012-13

12. The issues involved in ground no. 1 to 5 in the ITA No.279,280,281/M/2020 are similar to ones as stated above in in ground no. 1 and 3 to 6 in ITA No.278/M/2020 for A.Y. 2008-09. Similarly the issue raised in ITA No. 282?m/2020 are similar to ones as decided by us in ITA No.278/M/2020 for A.Y. 2008-09. Therefore, our decision in ITA No.278/M/2020 for A.Y. 2008-09, mutatis mutandis, would apply to all these appeals as well.

13. Accordingly, the appeals of the assessee are allowed.

14. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on 08.09.2021.

**Sd/-
(Ravish Sood)
JUDICIAL MEMBER**

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

Mumbai, Dated: 08.09.2021.

* 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.