

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

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

**ITA No.7456/M/2019
Assessment Year: 2008-09**

**ITA Nos.7457, 7458 & 7459/M/2019
Assessment Years: 2012-13, 2013-14 & 2014-15**

**ITA Nos.7466, 7467 & 7468/M/2019
Assessment Years: 2009-10, 2010-11 & 2011-12**

ACIT, Central Circle-1(3), 905, 9 th Floor, Pratishtha Bhavan, Old CGO Bldg. (Annexe) M.K. Road, Mumbai - 400020	Vs.	M/s. Key Tech, G/B, Shiv Chayya CHS Ltd., Sir M.V. Road, Andheri(E), Mumbai - 400 069 PAN: AAIFK9271B
(Appellant)		(Respondent)

**ITA Nos.7475 & 7476/M/2019
Assessment Years: 2010-11 & 2012-13**

**ITA Nos.7494, 7495, 7496 & 7497/M/2019
Assessment Years: 2009-10, 2011-12, 2013-14 & 2014-15**

ACIT, Central Circle-1(3), 905, 9 th Floor, Pratishtha Bhavan, Old CGO Bldg. (Annexe) M.K. Road, Mumbai - 400020	Vs.	M/s. New India Construction Co., G/B, Shiv Chayya CHS Ltd., Sir M.V. Road, Andheri(E), Mumbai - 400 069 PAN: AAAFN0287E
(Appellant)		(Respondent)

**ITA Nos.7477, 7478 & 7479/M/2019
Assessment Years: 2010-11, 2013-14 & 2014-15**

**ITA Nos.7491, 7492 & 7493/M/2019
Assessment Years: 2009-10, 2011-12 & 2012-13**

ACIT, Central Circle-1(3), 905, 9 th Floor, Pratishtha Bhavan, Old CGO Bldg. (Annexe)	Vs.	M/s. Aditi Construction, G/B, Shiv Chayya CHS Ltd., Sir M.V. Road, Andheri(E),
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M.K. Road, Mumbai - 400020		Mumbai - 400 069 PAN: AAIFA1679F
(Appellant)		(Respondent)

ITA No.7455/M/2019
Assessment Year: 2012-13

ACIT, Central Circle-1(3), 905, 9 th Floor, Pratishtha Bhavan, Old CGO Bldg. (Annexe) M.K. Road, Mumbai - 400020	Vs.	M/s. Triumph Builders Pvt. Ltd., G/B, Shiv Chayya CHS Ltd., Sir M.V. Road, Andheri(E), Mumbai - 400 069 PAN: AAAct3183A
(Appellant)		(Respondent)

ITA No.7345/M/2019
Assessment Year: 2010-11

ACIT, Central Circle-1(3), 905, 9 th Floor, Pratishtha Bhavan, Old CGO Bldg. (Annexe) M.K. Road, Mumbai - 400020	Vs.	M/s. Chirag Construction Co. Pvt. Ltd., 201A, Vertex Vikas, Sir M.V. Road, Andheri(E), Mumbai - 400 069 PAN: AABCC6725E
(Appellant)		(Respondent)

ITA No.7346/M/2019
Assessment Year: 2008-09

ACIT, Central Circle-1(3), 905, 9 th Floor, Pratishtha Bhavan, Old CGO Bldg. (Annexe) M.K. Road, Mumbai - 400020	Vs.	M/s. Rushabh Enterprises, 201A, Vertex Vikas, Sir M.V. Road, Andheri(E), Mumbai - 400 069 PAN: AAIFR2943K
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Mihir Naniwadekar, A.R. &
Shri Suyog Bhawe, A.R.

Revenue by : Shri Thavian Oommen, D.R.

Date of Hearing : 29.07.2021

Date of Pronouncement : 31.08.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeals have been preferred by the Revenue against different orders dated 23.09.2019 & 30.09.2019 & 25.09.2019 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, 2013-14 & 2014-15. First of all we would take the appeal in ITA No.7456/M/2019 A.Y. 2008-09.

ITA No.7456/M/2019 A.Y. 2008-09

2. The grounds raised by the Revenue are as under:

"1. Whether on facts and in the circumstances of the case and in law, the Ld. CIT(A) was Justified in holding that the reopening proceedings u/s 147 of the I T Act were without jurisdiction without appreciating the fact that no regular assessment was done in the case of the assessee u/s 143(3) of the I T Act and the decision of the Hon'ble Supreme Court in the case of ACTT Vs Rajesh Jhaveri was squarely applicable in the instant case?

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 3,83,00,000/- made on account of Bogus loan without appreciating the findings of the search and post search proceedings in the case of Bhanwarlal Jain group of cases wherein the group has admitted u/s 132(4) of the Act to have indulged in providing accommodation entries in the nature of unsecured loans and the findings of the survey and post survey proceedings in the case of the assessee group wherein it was clearly established that the assessee had availed accommodation entry of bogus unsecured loan from the Bhanwarlal Jain Group when statement of Shri Bhanwarlal Jain recorded u/s 132(4) of the Act clearly falls under the provisions of section 115 of the India Evidence Act and hence, the case is hit by provision of section 115 of the Indian Evidence Act?

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not appreciating the fact that the Assessing Officer had brought sufficient evidence on record to establish that the identity, genuineness and creditworthiness of the lenders have remained unexplained?

4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not upholding the addition made by the A. O. even though it is well established that the modus operandi of obtaining accommodation entries of unsecured loan had to be considered in the light of surrounding

circumstances, normal course of human conduct and preponderance of probability?

5. Whether on the facts and in the circumstances of the case and in law, the Ld CJT(A) was justified in not upholding the additions made by AO in view of the judgment by the Apex court in the case of Principal Commissioner of Income Tax (Central)-1 Vs NRA Iron & Steel Pvt. Ltd (arising out of SLP(Civil) No. 29855 of 2018) where it is held by the Apex court that the practice of conversion of un-accounted money must be subjected to careful scrutiny under CASS and statutory notices were duly issued and served upon the assessee.

6. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not upholding the addition made by the A.O. in view of the judgment by the Apex court in the case of Commissioner of Income Tax Vs Golcha Properties Put Ltd (in Liquidation) (1996) 136 CTR 222 (RAJ.) upholding the genuineness of transaction could be decided on the basis of primary facts on record. The Department is not required to lead a clinching evidence to prove that transaction in question is bogus.

7. Whether on the facts and in the circumstances of the case and in law, in consequence to the question of law at 1 (Supra), the Ld. QT(A) was justified, in not upholding the additions made by the Assessing Officer amounting to Rs.8,44,416/- on account of interest paid on bogus loan and Rs. 1,59,200/- on account of commission."

3. The brief facts of the case are that the assessee filed the return of income for the instant assessment year by declaring a loss of Rs.30,816/- and the same was duly processed u/s 143(1) of the Act. That in the year 2014, on account of information received from the Ld. DDIT, Mumbai, the case of the assessee was reopened under section 147 of the Act and subsequently on 27.03.2014 a notice under section 148 of the Act was issued which was duly served to the Assessee. That the reasons recorded by the Ld. AO for reopening the assessment are extracted below for the sake of ready reference and convenience:

"A search and seizure action was carried on 03/10/2013 in the case of Bhawanrlal Jain Group by the DCIT(Inv.) Mumbai. And intimation was received from DIT(Inv.)-II, Mumbai containing detailed information of accommodation entries given by the group companies controlled by Shri. Rajendra Jain and submitted a list of beneficiaries. The data contains the details of transactions of each beneficiaries with their names, address, year, amount, PAN details and name of bogus companies

controlled by Bhanwarlal Jain and his son through which the beneficiaries has taken accommodation entries, who has taken accommodation entries like bogus purchases, sales, unsecured loans etc. from group of companies controlled by Shri. Bhanwarlal Jain. On perusal of data given by DIT (Inv.)-II, Mumbai it is found that you have acquired entry from one of companies controlled by Bhanwarlal Jain and his sons.

In order to verify the genuineness of transaction which is more than one lakhs, the assessment is reopened by the prior approval of Joint CIT Range I Mumbai.”

4. The assessee complied with the notice issued under section 148 by submitting that the return filed on 18.07.2008 may kindly be treated as filed in response to notice under section 148 of the Act and further requested for the copy of reasons recorded for the reopening. Thereafter, the Ld. AO supplied copy of reasons recorded u/s 148(2) of the Act for reopening along with copies of statement of Shri Bhanwarlal Jain, Shri Ritesh Siroya employee and key person of the Bhanwarlal Jain group. In para 4 of the assessment order the AO justified the reopening by observing that during the course of search and post search enquiry in the case of Bhanwarlal Jain group it was found that entire group was engaged in providing accommodation entries of bogus loans/bogus sales & purchase through 70 concerns operated by the said group. Even Shri Bhanwarlal Jain has admitted in the statement recorded under section 132(4) on 11.10.2013 that he is engaged in issuing accommodation entries through a network of 70 concerns managed by him. Similar admission was made by Shri Ritesh Siroya, Shri Rohit Birawat, Shri Lunkarana Khotari, Shri Basant Jain, Shri Shreyash Labchand Jain, Shri Mahavir M Jain and various other persons connected with the group. The AO also noted in para 4.3 that an intimation was received from DDIT (Inv.), Unit-IX(2), Mumbai vide letter dated 10.03.2014 that assessee is one of the

beneficiaries of accommodation entries of loans taken from Rose Impex, Meridian Gems and Rose Gems Pvt. Ltd. Based on these specific information, the AO reopened the assessment of the assessee after obtaining approval as per provision of section 151(2) of the Act. According to the AO since the assessee did not disclose all material facts fully and truly necessary for the assessment of income for the instant year in respect of accommodation entries from the various concerns as stated above and therefore the income of the assessee has escaped assessment. The AO, during the course of assessment proceedings, called for various details and information from the assessee as to the loans from the following parties:-

1. M/s. Rose Impex – Rs.50,00,000/-
2. M/s. Meridian Gems – Rs.1,10,00,000/-
3. M/s. Rose Gems P. Ltd. – Rs.1,00,00,000/-
4. M/s. Harsh Gems – Rs.50,00,000/-
5. M/s. Panna Gems – Rs.73,00,000/-

During the course of the proceedings, the assessee provided the details/information before the AO from time to time comprising loan confirmations from the lenders, bank statements of all the lenders, bank statements of the assessee, acknowledgement of ITRs of the lenders, balance sheet and profit & loss account of the lenders, details of interest paid, TDS deducted, TDS returns of the assessee etc. along with details as to names and addresses of the lenders. The AO, however, was not satisfied with the genuineness of the loan transactions of the assessee and treated the same as sham and non genuine accommodation entries. The AO also discussed in detail the modus operandi followed by Bhanwarlal Jain group in issuing accommodation entries in para 5 & 6 of the assessment order. Finally, the AO

held that the loans raised by the assessee are not genuine and accordingly added a sum of Rs.3,83,00,000/- to the income of the assessee in the assessment framed under section 143(3) read with section 147 of the Act vide order dated 30.03.2015. The aggrieved assessee challenged the order of AO before the Ld. CIT(A) on the jurisdictional issue as well as on merit.

5. The Ld. CIT(A) allowed the appeal of the assessee on jurisdictional issue by holding that there was no tangible material available before the Ld.A.O to form the reasons to believe that income has escaped assessment. While allowing the appeal of the assessee on legal issue the Ld. CIT(A) observed and held as under:

“7.0 I have considered the facts of the case, submissions of the Appellant, the observations of the AO contained in the assessment order and the other material on record on this issue.

7.1 As per facts on record, the return of income for the A.Y. 2008-09 had been filed by the Appellant u/s. 139 (1) of the Act on 18.07.2008, declaring a loss of Rs.30,816/-. The said return of income was duly processed u/s. 143(1) of the Act. I have noted that the AO had duly recorded the reasons *for* reopening, before issuing the notice u/s. 148 of the Act dated 27.03.2014. The reasons recorded were also communicated to the Appellant, vide letter dated 27.08.2014 and the same are reproduced hereunder, for ready reference:-

"A search and seizure action was carried on 03/10/2013 in the case of Bhawanlal Jain Group by the DCIT(Inv.) Mumbai. And intimation was received from DIT(Inv.)-II, Mumbai containing detailed information of accommodation entries given by the group companies controlled by Shri. Rajendra Jain and submitted a list of beneficiaries. The data contains the details of transactions of each beneficiaries with their names, address, year, amount, PAN details and name of bogus companies controlled by Bhanwarlal Jain and his son through which the beneficiaries has taken accommodation entries, who has taken accommodation entries like bogus purchases, sales, unsecured loans etc. from group of companies controlled by Shri. Bhanwarlal Jain. On perusal of data given by DIT (Inv.)-II, Mumbai it is found that you have acquired entry from one of companies controlled by Bhanwarlal Jain and his sons.

In order to verify the genuineness of transaction which is more than one lakhs, the assessment is reopened by the prior approval of Joint CIT Range I Mumbai.

7.2: The Appellant had objected to the reopening of assessment by contending that the assessment cannot be reopened for the purpose of 'verification', but can only be reopened if there is reason to believe that there is 'escapement of income'. Further, the Appellant had asserted that the intimation received from DIT (Inv.), Mumbai in the case of Shri Bhanwarlal Jain doesn't constitute tangible information to reopen the case of the Appellant. Further, the Appellant had stated that in support of the genuineness of loan transactions, the Appellant had provided the following documentary evidences;-

- a). Copies of Ledger accounts of all parties, who have given unsecured loans to the Appellant Firm.
- b) Photocopies of Bank statement showing transaction with the lender.
- c) Loan confirmation from the lender.
- d) TDS returns filed for all quarters for A.Y. 2008-09, showing TDS deducted from Interest paid to the lenders.
- e) Details of interest paid and Tax deducted at source for the A.Y. 2008-09.

7.3 The Appellant has also contended that though the AO has dealt with the objections raised by the Appellant, wherein the AO has neither considered the documents filed by the Appellant to prove the genuineness of the transactions, nor conducted any prima-facie enquiry for coming to an independent conclusion of his own. The AO has only and merely relied on the information received from the Directorate of Investigation, Mumbai, as regards the modus operandi of providing accommodation entries, as was revealed during the course of search and seizure action conducted on the Bhanwarlal Jain Group of cases.

7.4 According to the AO, since the Appellant Firm had taken loans from concerns that are part of the Bhanwarlal Jain Group, such loans are bogus/mere accommodation entries. It had also been asserted by the Appellant that M/s Harsh Gems and M/s Panna Gems are not part of the Bhanwarlal Jain Group of cases. Thus, as per the Appellant the AO has proceeded to reopen the assessment based on the information received from DIT(Inv.), Mumbai mechanically and without any application of mind. It is also a view point of the Appellant that the reasons recorded by the AO are vague and there is no specific instance of failure pointed out on the part of the Appellant for escapement of income. The Appellant had pointed out that the reason recorded does not demonstrate as to which is the party or parties from whom the Appellant had taken accommodation entries/bogus loans. The Appellant had also contended that there is no nexus between the material before the AO and the formation of the reason to believe that income has escaped assessment on account of the failure on the part of the Appellant to disclose material facts necessary for assessment.

7.5 On the perusal of the reasons recorded by the AO, it is seen that the AO has merely relied on the information received from the Directorate of Investigation -II, Mumbai for reopening of the assessment u/s 147 of the Act. In the reasons for

reopening, the AO had stated that the reopening is based on the data given by Directorate of Investigation II, Mumbai, which reveals that the Appellant has taken entry from one of the companies controlled by Bhanwarlal Jain and his son. The Appellant had contended that in the return of income furnished u/s. 139(1) on 18.07.2008, the Appellant had clearly disclosed the names of the parties along with the amounts from whom loans had been taken. Thus, there was no failure on the part of the Appellant to disclose all material facts fully and truly necessary for assessment.

7.6 According to the Appellant, the AO had proposed the reopening of assessment u/s 147 of the Act, so as to verify the "genuineness of transactions". The provisions of law empower the AO to issue notice u/s148 of the Act after the expiry of 4 years from the end of relevant assessment year, when there is failure on the part of the assessee to make a return u/s 139 or in response to notices issued wider subsection (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for assessment year. The Appellant had stated that there was no failure on the part of the assessee to disclose all material facts, truly & fully, which are necessary for assessment.

7.7 The Appellant had contended that for reopening to be valid, it has to be on the basis of "reason to believe" and not "reason to suspect". Mere suspicion, however strong or probable it maybe, is no effective substitute for the legal proof required to substantiate a charge, which the learned AO had failed to furnish. There is a long mental distance between 'may be true' and 'must be true' and this basic and golden rule helps to maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of a dispassionate judicial enquiry based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of evidence brought on record. Reliance is placed on *Ashish Batham v. State of MP*, AIR 2002 SC 3206.

7.8 It is a trite law that the suspicion howsoever strong cannot partake the character of legal evidence. Reference in this regard is made to the decision of Hon'ble Supreme Court in the case of *Lalchand Bhagat Ambica Ram vs. CIT* [37 ITR 288 (SC)]. In this context, further reference is made to judgment of Hon'ble Special Bench of Mumbai Tribunal in the case of *GTC Industries Ltd. V. ACIT* [164 ITD 1 (Mum)(SB), wherein the Hon'ble Tribunal observed as under:

“Ultimately the entire case of revenue hinges upon the presumption that assessee is bound to have some large share in so called secret money in the form of premium and its circulation. However, this presumption or suspicion how strong it may appear to be true but needs to be corroborated by some evidence to establish a link that GTC actually had some kind of share in such secret money. It is quite trite suspicion howsoever strong may be but cannot be the basis of addition except for some material evidence on record. The theory of preponderance of probability is applied to weigh the evidence of either side and draw a conclusion in favour of party which has more favourable factors in his side. The conclusion has to be drawn on the basis of certain admitted facts and material and not on the basis of presumption of facts that might go against the assessee. Once nothing has

been proved against the assessee with the aid of any direct material especially when various round of investigation have been carried out, then nothing can be implicated against the assessee".

7.9 For the proposition that while issuing notice u/s. 148 of the Act, the AO has acted mechanically on the information supplied by Investigation Wing and hence, the reopening is bad in law, reliance had been placed by the Appellant on the Following judicial precedents:

i. Signature Hotels (P) Ltd. vs. Income Tax Officer & Anr 338 ITR 0051 (Delhi High Court)

Reassessment—Reason to believe—Information received from Director of IT (Inv) vis-a-vis accommodation entry—For reopening. an assessment the AO must have "reason to believe" that certain income chargeable to tax has escaped assessment and such reasons are required to be recorded in writing by the AO—Sufficiency of reasons is not a matter which is to be decided by the writ Court but existence of belief can be subject-matter of scrutiny—Notice under s. 148 can be quashed if the "belief" is not bona fide or one based on vague, irrelevant and non-specific information—Basis of the belief should be discernible from the material on record which was available with the AO when he recorded the reason—There should be a link between the reasons and the material available with the AO—In the instant case, the first sentence of the reasons recorded by the AO states that information has been received from Director of IT (Inv.) that assessee has introduced unaccounted money amounting to Rs. 5 lacs during the relevant year as per the details given in the Annexure—Said Annexure mentions a cheque received by assessee from SS Ltd. and the account number—Last sentence states that as per the information the amount received was an accommodation entry—Aforesaid information and the reasons are extremely scanty and vague and do not satisfy the requirements of s. 147—There is no reference to any document or statement, except the Annexure—Said Annexure cannot be regarded as a material or evidence that prima facie shows or establishes escapement of income- Further, it is apparent that the AO did not apply his own mind to the information and examine the basis of the information—He accepted the information in a mechanical manner—CIT also acted on the same basis by mechanically giving his approval—Company SS Ltd. had applied for and was allotted shares in the assessee company on payment of Rs. 5 lacs by cheque – SS Ltd. is an incorporated company and it has been allotted PAN – Facts on record do not show that SS Ltd. is a non-existing and a fictitious entity—Proceeding under s, 147 quashed.

ii. Commissioner of Income Tax vs. SFIL Stock Broking Ltd. 325 ITR 0285 (Delhi High Court)

The first sentence of the so-called reasons recorded by the AO is mere information received from the Dy. Director of IT (Inv.), The second sentence is a direction given by the very same Dy. Director to issue a notice under s. 148 and the third sentence again comprises of a direction given by the Addl.

CIT to initiate proceedings under s. 148 in respect of cases pertaining to the relevant ward. These three sentence are followed by the following sentence, which is the concluding portion of the so-called reasons: "Thus, I have sufficient information in my possession to issue notice under s. 148 in the case of M/s SFIL Stock Broking Ltd. on the basis of reasons recorded as above." From the above, it is clear that the AO referred to the information and the two directions as 'reasons' on the basis of which he was proceeding to issue notice under s. 148. These cannot be the reasons for proceeding under s. 147/148. The first part is only an information and the second and the third parts of the beginning para of the so-called reasons are mere directions. From the so-called reasons, it is not at all discernible as to whether the AO had applied his mind to the information and independently arrived at a belief that, on the basis of the material which he had before him, income had escaped assessment. Consequently, the Tribunal has arrived at the correct conclusion on facts. There is no substantial question of law which arises for consideration.—Asstt. CIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd. (2007) 210 CTR (SC) 30 : (2007) 291 ITR 500 (SC) relied on.

iii. Sarthak Securities Co. (P) Ltd. vs. Income Tax Officer 329 ITR 0110 (Delhi High Court)

Reassessment—Reason to believe—Absence of material or rational belief—AO was made aware of the situation by the Investigation Wing and there is no mention that the companies who had invested shares in petitioner company were fictitious—What is mentioned is that these companies were used as conduits—Assessee in his objections had clearly Stated that the companies had bank accounts and payments were made to the assessee company through banking channel—Identity of companies was not disputed—It would not be appropriate to require the assessee to go through the entire gamut of reassessment proceedings – Neither the reasons in the initial notice nor the communication providing reasons remotely indicate independent application of mind by AO—Notice under s. 148 quashed.

7.10 In this context, it is pertinent to advert to the Judgment of the Hon'ble High Court of Bombay in the case of M/s Rushabh Enterprises, which is a group concern of the Appellant. M/s Rushabh Enterprises had approached the Hon'ble Bombay High Court through a Writ Petition No. 167 of 2015 challenging the notice issued by the AO u/s 148 of the Act on the basis of information received from the Director General of Income Tax (Inv.) that the assessee had taken unsecured loans by way accommodation entries. After considering the entire gamut of facts and circumstances and the position in law, the Hon'ble High Court had held that the proposal for reopening lacks jurisdiction. Accordingly, the Hon'ble Bombay High Court had quashed the notice issued u/s 148 of the Act issued by the AO. The relevant paragraphs from the said judgment are reproduced below, for ready reference:

8. On behalf of the revenue, Mrs. Bharucha submitted that all the four parties concerned has facilitated accommodation entries. They were not genuine and bonafide loans advanced to the petitioner. She has supported the order of the Assessing Officer. The

Commissioner of income Tax while rejecting the objections on 19th December, 2012 once again reiterated that the Petitioner has routed unaccounted cash through bogus loans and has been found in the books of account of the Petitioner. According to her, the revenue has received information from the Director General of Income Tax(Inv) that the assessee has taken unsecured loans from the above parties by way of unaccounted cash/accommodation entries. We are unable to agree since the Petitioner has clearly stated that all the payments were made by account payee cheques which were encashed in the bank account of the Petitioner in the regular course of business, We find that the Petitioner has also paid interest on this loans after deduction of tax at source and TDS returns are also accordingly filed. There is no dispute in regard to the above. We find nothing to support the said contentions of the revenue. The revenue's contention in the affidavit in reply no merit. On the other hand, the loans appear to be taken in the regular course of business and were found amongst the 45 members in respect of which all particulars have already been furnished by the assessee to the Assessing Officer. The fact remains that the Assessing officer had power to reopen the assessment provided there was some tangible material on the basis of which he has reason to believe that income chargeable to tax Chad escaped assessment.

9. We find no such reasons for the Assessing Officer or the revenue to come to a conclusion that income had escaped assessment. All the communication and evidence provided by the Petitioner to the revenue authorities disclosed that the loans were bonafide, taken in the regular course of business through account payee cheques. In the circumstances, the proposed reopening in our view lacks justification and the impugned notice deserves to be quashed had set aside, So also the impugned order dated 19th December, 2014 passed by the Commissioner of Income Tax (Appeals) rejecting the objections deserves to be quashed and set aside. Hence, we pass the following order.

7.11 I have noted that the facts and circumstances of the present case at hand are exactly similar to that of M/s Rushabh Enterprises, which is a group concern of the Appellant. Further, there is no material on record to show that the Department had obtained any stay against the said order of the Hon'ble Bombay High Court and hence, the same needs to be fully followed in letter and spirit. Since, the undersigned is legally bound by the decision of the Hon'ble Bombay High Court on this issue, the Ground No. 1 & 2 of the present appeal for AY. 2008-09 are allowed in favour of the Appellant, being fully covered by the judgment of the Hon'ble Bombay High Court."

6. Aggrieved by the appellate order passed by the Ld. CIT(A), the revenue preferred an appeal before this Tribunal and vide ground No.1 of the Appeal the Department has challenged the

impugned order passed by the Ld. CIT(A) whereby the Ld. CIT(A) has held the reopening of assessment under section 147 of the Act to be bad in law and facts as the re-opening was done without having any valid jurisdiction. The DR further stated that the Ld. CIT(A) has allowed the appeal of the assessee on this legal and jurisdictional issue by ignoring the fact that no regular assessment was done in the case of the assessee under section 143(3) of the Act. The Ld. D.R. submitted before the Bench that the reopening of the assessment has wrongly been held to be invalid by the Ld. CIT(A) by overlooking the facts that a specific information has been received by AO from DDIT (Inv.), Unit-IX(2), to the effect that the assessee is a beneficiary of bogus accommodation entries of loans from Bhanwarlal Jain group. The Ld. D.R. further also submitted that the said fact has been brought to light during a search conducted on Bhanwarlal Jain group on 03.10.2013 and thus the re-opening was based upon substantive material. The Ld. D.R. submitted that during the course of search on Shri Bhanwarlal Jain several incriminating documents were seized and statements under section 132(4) were also recorded of Shri Bhanwarlal Jain and various other key persons who were managing these concerns and all these persons admitted in their respective statements that the entire group was engaged in providing accommodation entries for bogus loans, bogus sale & purchase etc. The Ld. D.R. re-iterated that the DDIT (Inv.), Unit-IX(2), Mumbai vide letter dated 18.03.2014 intimated the AO that assessee is a beneficiary of Hawala loan entries from the concerns related to Bhanwarlal Jain group. The Ld. D.R also submitted that in view of the facts and circumstances of the

case , the findings of the Ld. CIT(A) that there was no tangible material before the Ld.A.O to form reasons to believe is fallacious and wrong and deserved to be quashed. The Ld. D.R. also referred to the assessment order and specifically pointed out the verification/investigation carried out by the A.O during the course of assessment proceedings which proved that these were accommodation entries and were not genuine loans. The Ld. D.R. also pointed out modus operandi followed by these entities in providing accommodation entries. The Ld. D.R. submitted that it is not necessary to establish the amount of concealment at the stage of recording of reasons but it is sufficient to form a prima facie belief that income has escaped assessment and thus prayed before the Bench that order of Ld. CIT(A) may be reversed on this issue. The ld DR argued that while allowing the appeal of the assessee , the ld CIT(A) relied on the decision of Bombay High Court in *Rushabh Enterprises Vs ACIT WP 167 of 2015* which is a sister concern of the present respondent assessee and also one of the respondents in these bunch of appeals before the bench. The ld DR submitted that the said decision is distinguishable on facts as there was scrutiny assessment under 143(3) of the Act in that case , whereas in some of the present case, there was no scrutiny assessment framed under s 143(3) of the Act and the return were processed u/s 143(1) of the Act.

7. On the other hand, the Ld. A.R. strongly relied on the order of Ld. CIT(A) by submitting that Ld. CIT(A) has rightly held that there were a lack of tangible material for forming reason to believe qua the escapement of income. The Ld. A.R., while referring to the reason recorded under section 148(2) of the Act

dated 24.08.2014, submitted that a bare reading of the said reasons makes it abundantly clear that AO sought to verify the genuineness of the transactions made with Bhanwarlal Jain group by reopening the assessment. The Ld. A.R. submitted that in other words the reopening was made just for the purpose of verification which is not permissible under the Act and thus strongly supported the order of Ld. CIT(A) on this issue. The Ld. A.R. vehemently submitted before the Bench that reopening of assessment proceedings of the assessee was done without valid and lawful jurisdiction by the AO and therefore the assessment proceedings as well as the consequent assessment framed by the AO are invalid, void ab-initio and bad in law. The Ld. A.R. vehemently argued before the Bench that the assessment can not be reopened just for making verification of facts and information which have been received by the AO. The Ld. A.R. contended that the AO is required to form a belief on the basis of said information received that income of the assessee has escaped assessment failing which the AO has no jurisdiction to initiate the proceedings under section 147 read with section 148 of the Act. The Ld. A.R. argued that the AO is required to form a reasonable belief that that income chargeable to tax has escaped assessment on the basis of information available with him which is missing in the instant case as is apparent from the reasons reproduced above. The AO has resorted to the provisions of section 147 of the Act to merely verify the information received from DDIT(Inv), Mumbai and therefore the notice issued under section 148 of the Act for verification of information received is invalid and unsustainable in the eyes of law. The Ld. A.R. argued that AO can not be allowed to reopen

an assessment under section 147 of the Act to undertake fishing or robbing enquiry or seeking to verify claims as if it were a scrutiny assessment. Therefore, the Ld. A.R. submitted that if verification is proposed in the reasons recorded, the same can not be a substitute for reason to believe which empowers the AO to reopen the assessment on the ground that income chargeable to tax has escaped assessment. The Ld. A.R. therefore, argued before the Bench that there is no formation of belief or finding by the AO that income has escaped assessment and therefore the proceedings u/s 147 of the Act as well as the consequent assessment order framed u/s 143(3) r.w.s. 147 of the Act are bad in law and was rightly held to be invalid. In defence of his arguments, the Ld. A.R. relied on a series of decisions as under:

1. PCIT v Manzil Dineshkumar Shah (406 ITR 326)(Guj)
2. SLP dismissed by the Hon'ble Supreme Court against the judgment of the Hon'ble Gujrat High Court in the case of PCIT v Manzil Dineshkumar Shah
3. Inductotheran (India) P. Ltd. v DCIT (356 ITR 481)(Guj)
4. Chhugamal Rajpal v S P Chaliha and Ors. Ltd. (416 ITR 435)(SC)
5. Nivi Trading Ltd v Union of India (375 ITR 308)(Bom)
6. CIT v Maniben Lalji Shah (283 ITR 453)(Bom)
7. CIT v Batra Bhatia Company (321 ITR 526)(Bom)

8. The Ld. A.R., therefore, prayed that in view of the ratio laid down by the Apex Court and various High Courts in the judgments mentioned supra, the assumption of jurisdiction under section 147 of the Act for verification of facts/information received from DIT(Inv.), Mumbai, is bad in law and so is the consequent assessment framed u/s 143(3) r.w.s. 147 of the Act. Accordingly, the Ld. A.R. prayed that the order of ld. CIT(A) may kindly be affirmed and upheld.

9. The ld. A.R. further argued that in any case, there is no tangible material forming the basis of reasons to believe that income has escaped assessment. The assessment was sought to be re-opened merely on the basis of information received from the Investigation Wing regarding the purported practice of the Bhanwarlal Jain group in providing accommodation entries. It is pertinent to note that vide the Remand Report dated 13.3.2018, the Assessing Officer has admitted that no incriminating evidence/information specifically pertaining to the Respondent-Assessees were found during the course of the search operation on the Bhanwarlal Jain group. The ld AR argued that the reliance placed on the statements of Shri Bhanwarlal Jain and his associates for reopening assessment is also misplaced in view of the subsequent retraction of said statements. Further, during the course of the reassessment proceedings, the respondent-assessee has proved the genuineness of the transactions, in particular exhibiting that all the transactions have been carried through proper banking channels and by account payee cheques. The ld AR in defense of his arguments relied heavily on the decision of Hon'ble Bombay High Court in the case of *M/s Rushabh Enterprises Vs ACIT [WP 167/2015]* a copy of which is filed at page 1 of the PB, which is a group concern of the respondent assessee herein and also a respondent in one of the appeals in this group, has quashed the notice u/s 148 of the Act and held in the assessee's favour. The ld AR submitted that the facts of the case are identical as the said reopening was also purportedly based on the statements made by the Bhanwarlal Jain group. The ld AR while referring to the Remand Report dated March 13, 2018 sought by the Ld.

CIT(A), submitted that it quite clear that no appeal has been filed against the judgment in the case of *Rushabh Enterprises VS ACIT* (supra) and consequently no stay has been granted against the said judgment. The ld AR argued that thus, the Ld. CIT(A) has rightly held that the present issue is squarely covered by the judgment of the Hon'ble Bombay High Court in *Rushabh Enterprises Vs ACIT* and accordingly held the reopening is liable to be held as invalid.

10. On the arguments of ld DR that the judgment of the Bombay High Court in *Rushabh Enterprises Vs ACIT (supra)* is *distinguishable on facts* on the ground that in *Rushabh Enterprises*, there was scrutiny assessment under 143(3) of the Act, while in some of the present cases before the bench, there was no scrutiny assessment completed under s 143(3) of the Act. The ld AR rebutting the arguments of the ld DR submitted that the Hon'ble Bombay High Court has not based its judgment on the non-compliance with Proviso to section 147 (applicable to cases of reopening beyond 4 years when there has been a scrutiny assessment earlier). The judgment is not simply based on the reasoning that the assessee in that case had fully and truly disclosed the relevant materials, and hence reopening beyond four years is barred. Instead, the judgment proceeds on a far more fundamental aspect of total lack of jurisdiction to reopen. The judgment of the Hon'ble Bombay High Court proceeds on the basis of lack of tangible material, and on the basis of lack of 'reason to believe', and these jurisdictional requirements apply to all cases of reopening even when there is no scrutiny assessment earlier.

11. As regards, the reliance sought to be placed by the appellant revenue on the decision in *ACIT v. Rajesh Jhaveri Stock Brokers Pvt. Ltd.* [(2007) 29 ITR 500 (SC)], the ld AR submitted that the Hon'ble Bombay High Court in *Ankita A. Choksey v. ITO* [(2019) 411 ITR 207 (Bom)] (pg. 9 of the Compilation of Case Law), taking into account the decision in *Rajesh Jhaveri*, has categorically held that irrespective of whether the return of income was processed by intimation under section 143(1) or by scrutiny assessment under section 143(3) of the Act, the Assessing officer has no jurisdiction to issue a reopening notice without satisfaction of the condition precedent of having the 'reason to believe' that income has escaped assessment. In this regard, reliance is also placed on the decision of the Hon'ble Delhi High Court in *CIT v. Orient Craft Ltd.* [(2013) 354 ITR 536 (Del)].

12. The Ld. AR finally prayed before the bench that keeping in view the judgment of the Hon'ble Bombay High Court in *Rushabh Enterprises* (which admittedly is based on similar underlying facts and pertaining to the very same group), the reopening of the case may kindly be declared to be invalid and done wholly without jurisdiction and the order of the ld CIT(A) may kindly be upheld.

13. After hearing both the parties and perusing the material on record including the reasons recorded under section 148(2) of the Act, we note that the case has been reopened by the AO in order to verify the genuineness of the loan transactions of the assessee with Bhanwarlal Jain group. The said reopening was done following receipt of information from DDIT (Inv.), Unit-IX(2),

Mumbai vide letter dated 18.03.2014 vide which the AO was informed that the assessee is a beneficiary of hawala loan transactions taken from Bhanwarlal Jain group and from various entities as detailed hereinabove. For the sake of convenience the reasons recorded as under:

"A search and seizure action was carried on 03/10/2013 in the case of Bhawanrlal Jain Group by the DCIT(Inv.) Mumbai. And intimation was received from DIT(Inv.)-II, Mumbai containing detailed information of accommodation entries given by the group companies controlled by Shri. Rajendra Jain and submitted a list of beneficiaries. The data contains the details of transactions of each beneficiaries with their names, address, year, amount, PAN details and name of bogus companies controlled by Bhanwarlal Jain and his son through which the beneficiaries has taken accommodation entries, who has taken accommodation entries like bogus purchases, sales, unsecured loans etc. from group of companies controlled by Shri. Bhanwarlal Jain. On perusal of data given by DIT (Inv.)-II, Mumbai it is found that you have acquired entry from one of companies controlled by Bhanwarlal Jain and his sons.

In order to verify the genuineness of transaction which is more than one lakhs, the assessment is reopened by the prior approval of Joint CIT Range I Mumbai."

14. Thus we note that AO has mentioned in the reasons recorded that the genuineness of the loan transactions are to be verified which in our opinion is obviously not the formation of belief as the reopening of assessment can not be resorted to for just verification of genuineness of the loan transactions. Thus, we find merit in the contentions and arguments of the Ld. A.R. that AO has not formed any independent belief or recorded a finding that income of the assessee has escaped assessment but merely stated that in order to verify the genuineness of the loan transactions, the assessment is reopened. In our opinion, reopening of the assessment in order to verify the genuineness of the transaction is not permissible under the Act. The case of the assessee is squarely covered by a series of decisions referred to by the Ld. Counsel during the hearing:

(a) In the case of PCIT vs Manzil Dinesh kumar Shah (supra), the Hon'ble Gujrat High Court has held that formation of independent opinion by the AO is mandatory condition and mere mentioning of need for deep verification of information received is not a valid ground for reopening. The Hon'ble court has held that reopening of assessment could not be permitted for fishing or robbing enquiry as it would not satisfy the requirement of the AO having reasons to believe that income chargeable to tax has escaped assessment. In this case, the AO has recorded that I have reason to believe that income chargeable to tax has escaped assessment for the assessment year 2009-10 due to omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment and thus the case needs to be reopened as the information received by this office needs deep verification. The Hon'ble Court has held that had the AO on the basis of information made available to him and upon applying his mind to such information formed a belief that income chargeable to tax has escaped assessment, the court would have rightly allowed him to reassess the income but in the present case he recorded that information required deep verification and later reconstitution of mandatory words that he believed that income chargeable to tax has escaped assessment would not cure this fundamental defect. The Hon'ble Supreme Court has dismissed the special leave petition filed by the Revenue in the above case as reported in (2019) 101 taxmann.com 259 (SC) wherein thereby upholding the

view taken by the Hon'ble Gujarat High Court in the above case.

(b) In the case of Inductotheran (India) P. Ltd. v DCIT (supra) the Hon'ble Gujarat High Court has held that the reassessment notice is not permissible merely for verification of claim made under section 80HHC of the Act. The relevant extract of the decision of the Hon'ble Gujarat High Court is reproduced below:

"18. Reverting to the facts of the present case, we notice that in two out of the four reasons recorded by the Assessing Officer for reopening the assessment, he stated that he need to verify the claims. In the second ground, he had recorded that the admissibility of the bad debts written off required to be verified. In the fourth ground also, he had recorded that the admissibility of royalty claim was required to be verified. We are in agreement with the contention of the counsel for the petitioner that for a mere] verification of the claim, the power for reopening of assessment could not be exercised. The Assessing Officer in the guise of power to reopen ai assessment, cannot seek to undertake a fishing or roving inquiry and see] to verify the claims as if it were a scrutiny assessment."

(c) In the case of Chhugamal Rajpal v S P Chaliha and Ors. Ltd. (supra), the Hon'ble Supreme Court has held that the AO must have prima facie grounds for issuing notice u/s 148. The operative part is reproduced as under:

"Held, (i) that the Income-tax Officer had not even come to a prima fade conclusion that the loan transactions to which he referred were not genuine transactions : he appeared to have only a vague feeling that they might be bogus transactions. Such a conclusion did not fulfil the requirements of section 151(2). Under that section he had to give reasons for issuing a notice under section 148. He should have some prima facie grounds before him for taking action under section 148. His conclusion that there was a case for investigating the truth of the alleged transactions was not the same thing as saying that there were reasons for the issue of the notice. The Commissioner had mechanically accorded permission. The important safeguards provided in sections 147 and 151 were lightly treated by the officer and the Commissioner. The Income-tax Officer could not have had reason to believe that income had escaped assessment by reason of the appellatant-firm's failure to disclose material facts and if the Commissioner had read the report carefully he could not have come to the conclusion that

this was a fit case for issuing a notice under section 148. The notice issued under section 148 was therefore invalid.”

Thus the court observed that AO has recorded in his report that there is a case for investigation as to the truth of the alleged bogus transactions and court held that this does not meet the requirements to issue notice under section 148 of the Act.

(d) In the case of Nivi Trading Ltd v Union of India (supra) & others (supra) the Hon’ble Bombay High Court has held that if more details are sought or some verification is proposed that can not be a substitution for reason which led the AO to believe that income chargeable to tax has escaped assessment. The court has held as under:

“Held, allowing the petition, that the return of income was filed. There was a processing and verification thereof. In the return of income and on the respondents' own showing on its verification, the long-term capital gains and dividend income in the sum came to be disclosed and equally another sum (Rs. 1,21,33,429) as gift. The Revenue proceeded on the footing that these shares were gifted without consideration. It was this fact which it wanted to verify and particularly whether the value of these shares had been computed on the market value. The tax authorities did not state that any income chargeable to tax had escaped assessment: All that the Revenue desired was verification of certain details and pertaining to the gift. That was not founded on the belief that any income which was chargeable to tax had escaped assessment and, hence, such verification was necessary. That belief was not recorded. The notice of reassessment was not valid.”

(e) In the case of of CIT v Maniben Lalji Shah (supra) the Hon’ble Bombay High Court has held that the reopening of assessment under section 147 to scrutinize the investment made in the flat purchased is not valid as the AO only seeks to find out the source of funds and same does not constitute any reason for belief that income has escaped assessment so as to invoke section 148 of the Act and accordingly the appeal of the Revenue was dismissed.

(f) In the case of CIT v Batra Bhatia Company (supra) the Hon'ble Delhi High Court has held while dismissing the appeal of the Revenue that Ld. CIT(A) as well as Tribunal had given a concurrent finding that there was no material before the AO on the basis of which the AO would have had a belief that agricultural land sold by the assessee was a capital receipt within the meaning of section 2(14) of the Act and expression of the AO "requires much deeper scrutiny" indicated that he was mere embarking on mere presumptions without any belief much less belief based on reason and material and thus the reassessment was not valid.

15. In view of the ratio laid down in the various decisions as discussed above vis a vis facts of the assessee case, we are of the considered view that the AO has not formed a prima facie and independent belief on the reasons recorded that income has escaped assessment but reopened the assessment only for carrying out the verification of facts/information qua the unsecured loans raised by the assessee. Under these facts and circumstances, we are in agreement with the findings/decision of the Ld. CIT(A) holding the re-opening of assessment as invalid. Under these facts and circumstances, the order of Ld. CIT(A) needs to be affirmed on the jurisdictional issue that reassessment proceedings are invalid and so is the assessment framed under section 143(3) read with section 147 of the Act.

16. We also note that the case of the assessee is squarely covered by the decision of the Hon'ble Bombay High Court in the case of M/s. Rushabh Enterprises vs. ACIT in WP No.167 of 2015 dated 15.04.2015 which is a group concern of the

respondent assessee and also respondent in ITA No.7345/M/2019 A.Y. 2008-09 which is also heard by us with the present appeal wherein the Hon'ble Bombay High Court has quashed the notice under section 148 of the Act. Under similar facts, in this case also the case of the assessee was reopened purportedly on the basis of statement made by Shri Bhanwarlal Jain. We also find that the Revenue has not filed any appeal against the above decision of High Court in the case of above sister concern. The said decision of the Hon'ble Bombay High Court was sought to be distinguished by the Ld. D.R. by submitting that in the case of M/s. Rushabh Enterprises the assessment was framed under section 143(3) of the Act whereas in the present case no scrutiny assessment has been done. We find that the Hon'ble Bombay High Court has held that there was a lack of tangible material and the basis for reasons to believe and therefore we are of the opinion that in all reopening of cases even if there is no scrutiny proceedings these requirements have been satisfied. The decision relied upon by the Ld. D.R. in the case of ACIT v. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (supra) has been considered by the Hon'ble Bombay High Court in Ankita A. Choksey v. ITO (supra) wherein the decision of the Hon'ble Apex Court in the case of ACIT v. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (supra) has been considered and held that irrespective of whether the income was processed by the intimation under section 143(1) or by scrutiny assessment under section 143(3) of the Act, the AO has no jurisdiction to reopen the assessment without satisfaction of condition of having the reasons to believe that income has escaped assessment. The case of the assessee is also supported by the

Hon'ble Delhi High Court in the case of CIT v. Orient Craft Ltd. (supra) relied by the Ld. Counsel of the assessee. In view of these facts, we are inclined to hold that order of Ld. CIT(A) does not suffer from any legal infirmity and therefore the ground No.1 of the Revenue's appeal is dismissed.

17. In the ground No.2 to 6, the Revenue has challenged the order of Ld. CIT(A) on merit wherein the Ld. CIT(A) has deleted the addition of Rs.3,83,00,000/- on account of bogus loans on the ground that the assessee has discharged its onus by filing necessary evidences and AO has not brought any substantive evidences to prove to contrary.

18. The facts of the case have been discussed while deciding the legal issue (supra), however, the main facts are being reiterated and discussed for ready reference. During the year the assessee raised loan from 5 parties namely M/s. Rose Impex – Rs.50,00,000/-, M/s. Meridian Gems – Rs.1,10,00,000/-, M/s. Rose Gems P. Ltd. – Rs.1,00,00,000/-, M/s. Harsh Gems – Rs.50,00,000/- and M/s. Panna Gems – Rs.73,00,000/- aggregating to Rs.3,83,00,000/-. All these lenders are group concerns of Bhanwarlal Jain group. According to the AO these loans are non genuine as brought out by the search action on the Bhanwarlal Jain group conducted on 03.10.2013 wherein a lot of incriminating materials were found and seized which proved beyond doubt that Bhanwarlal group is only engaged in advancing accommodation entries. Besides, Shri Bhanwarlal Jain and other various key persons also admitted that all these concerns were engaged in providing accommodation entries. During the course of assessment proceedings the AO called

upon the assessee to prove the identity and creditworthiness of the lenders and genuineness of the transactions. The assessee replied the various notices issued and queries raised by the AO by filing various documents such as names, addresses of the lenders, loan confirmations from lenders, bank statement of the lenders, bank statement of the assessee, ITRs, balance sheet and profit & loss account of the lenders and details of interest paid, TDS deducted, deposited and TDS returns etc. filed by the assessee. The assessee even submitted the details and evidences of repayment of these loans. All these loans were received through banking channels. However, the AO was not convinced with the contentions of the assessee qua the genuineness of these loans and ultimately the AO treated all these loans as non genuine and added the same to the income of the assessee.

19. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee after calling for the remand report on the additional evidences filed by the assessee before Ld CIT(A). The AO filed the remand report before the Ld. CIT(A) on 13.03.2018. Thereafter, the Ld. CIT(A) recorded a finding of fact that AO has not done any query or verification on the evidences filed by the assessee. Therefore, the AO has failed to revert the evidences produced before him by the assessee. In para 11.17 Ld. CIT(A) noted that survey under section 133A of the Act was carried out on the respondent, however, there is no mention of the same in the assessment order of any incriminating documents or impounded material during the said survey action. The Ld. CIT(A) also noted that no incriminating material has been brought on record by the AO either in the assessment order or in the remand report which is found during the course of search

action conducted on Shri Bhanwarlal Jain and related entities. The Ld. CIT(A) also noted that AO has mentioned in the remand report that there is no seized material or incriminating material found during the course of search on Bhanwarlal Jain group relating to the assessee. Finally, the Ld. CIT(A) deleted the addition by noting that assessee has proved identity, creditworthiness of the parties and genuineness of the transactions by furnishing necessary evidences as stated hereinabove and therefore the burden shifts to the AO which has not been discharged by making further enquiries or investigation to disapprove the evidences filed by the assessee. The Ld. CIT(A) relied on a series of decisions from para 11.21 to 11.60 and finally allowed the appeal of the assessee on merit also.

20. After hearing both the parties and perusing the material on record, we also note that the assessee has filed all the evidences relating to the lenders as stated hereinabove. However, the AO has not conducted any enquiry to find out these loan transactions. Moreover, we find that Ld. CIT(A) has given a finding of fact that there is no incriminating material found during the survey conducted under section 133A on the assessee or during the course of search conducted on Bhanwarlal Jain group. We note that all the transactions were made through account payee cheques and interest has been paid to the lenders after deduction of tax at source and assessee has filed all the TDS returns after depositing the tax in the government treasury. We also note that the statements relied upon by the AO of Shri Bhanwarlal Jain and other key persons of the group were subsequently retracted and AO has failed to bring any material on record to corroborate the evidence on

record is proving the claim of genuineness of the loans raised by the assessee. The case of the assessee is covered by the CBDT circular No.F. No.286/2/2003-IT (Inv.) dated March 10, 2003 wherein the CBDT has given instruction to its officer to gather evidence in addition to statements recorded and base the assessment on such independent assessments. Besides, we also find that the decision in the case of PCIT vs. NRI Iron 103 taxmann.com 48 is not applicable in the present case as in that case the AO had made independent and detailed enquiry including survey of the so called investor companies from Mumbai, Kolkata, Guahati to verify the creditworthiness of the parties, source of funds and genuineness of the transactions and the field report revealed that shareholders were not non existent or lacked worthiness but this is not the case before us as the AO has not carried out any enquiry. Moreover, the statement of Shri Bhanwarlal Jain which has not been retracted later on does not specifically speak about the loans taken by the assessee as bogus. The case of the assessee is supported by a series of decisions as under:

1. DCIT vs. M/s. Jainam Investments (ITA Nos.4286 & 4474/M/2019)
2. M/s. Pabal Housing Pvt. Ltd. & ors vs DCIT (ITA No.2687, 2688 & 2689/M/2018) & ors.
3. DCIT vs. M/s. Manish Flour Mills (ITA No.6729/M/2016)
4. DCIT vs. M/s. Jainam Investments (ITA No.6099/M/2016)
5. ITO vs. Abhay Kumar Daga HUF (ITA No.6983/M/2018)
6. ACIT vs. M/s. H.K. Pujara Builders (ITA No.5307/M/2017)

Considering these facts and circumstances, we are inclined to uphold the order of Ld. CIT(A) even on merit by dismissing the ground No.2 to 6 of the Revenue.

21. The issue raised in ground No.7 is against the deletion of Rs.8,44,416/- on account of interest and Rs.1,59,200/- on account of commission as added by the AO on these bogus loans.

22. The addition of interest and commission are consequential to the issue as decided by us (supra) by holding that the loan taken by the assessee are genuine and directed the AO to delete the addition under section 68 of the Act. Consequently, the interest on commission disallowances as deducted by the Ld. CIT(A) also upheld by dismissing the ground No.6 of the Revenue.

23. Accordingly, the appeal of the Revenue is dismissed.

ITA No.7457/M/2019 A.Y. 2012-13;
ITA No.7491, 7492, 7477 & 7493/M/2019 A.Y. 2009-10, 2010-11, 2011-12 & 2012-13;
ITA No.7476/M/2019 A.Y. 2012-13
ITA No.7345 & 7346/M/2019 A.Y. 2008-09 & 2010-11

24. The issue involved in these appeals is identical to the one as stated above in ITA No.7456/M/2019 for A.Y. 2008-09. Therefore, our finding in ITA No.7456/M/2019 for A.Y. 2008-09, mutatis mutandis, would apply to these appeals as well. Accordingly, the appeals of the Revenue are dismissed.

ITA No.7466, 7467, 7468, 7458 & 7459/M/2019;
ITA No.7478 & 7479/M/2019;
ITA No.7494, 7475, 7495, 7496 & 7497/M/2019 &
ITA No.7455/M/2019

25. At the outset, it is brought to the notice of the Bench by the Ld A.R. that the CBDT recently has amended the CBDT Circular No. 3/2018 dated 11.07.2018 vide Circular No. 17/2019, F.No. 279/Misc.142/2007-ITJ(Pt.) dated 08.08.2019 increasing the limit for filing of appeal before Income Tax Appellate Tribunal i.e. Rs.50 lacs in each of the case. We noted that earlier Circular No. 3 of 2018 was made applicable to pending appeals also and this clause of the circular remains unchanged even after the amendment. Admittedly, in this case tax effect is below the prescribed limit for filing the appeal before the Tribunal by the Revenue i.e. Rs.50 lacs.

26. When this was confronted to the learned Departmental Representative, he could not point out that this appeal falls under any of the exception as provided in Circular No. 17 of 2019. Admittedly, the tax effect in this appeal of Revenue is much below the prescribed limit of Rs.50 lacs as per CBDT circular No. 17 of 2019. In view of the above, this appeal of Revenue is dismissed as withdrawn in view of Circular No. 17 of 2019.

27. Now, before us, the learned CIT Departmental Representative only requested that he wants to verify whether this appeal falls under any of the explanation provided in CBDT Circular No. 3/2018. Here, we are giving liberty to Revenue that in case, after passing of the order it comes to the notice of the Revenue that this appeal does not fall under any explanation of the CBDT by 3/18, the AO can move for recalling of the order within the prescribed time limit under section 254 of the Act.

Hence, this appeal is dismissed as low tax effect covered by CBDT Circular No. 17/2019.

28. In the result, all the appeals of the Revenue are dismissed.

29. In the result, all the appeals of the Revenue are dismissed.

Order pronounced in the open court on 31.08.2021.

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

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

Mumbai, Dated: 31.08.2021.

* 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.