

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

**BEFORE SHRI S. RIFAUZ RAHMAN, HON'BLE ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER AND**

**ITA NO. 2499/MUM/2019 (A.Y: 2008-09)**

Sumukh Commercial Pvt. Ltd., Office No. 211 Balaji Arcade Premises Near Sejal glass, S.V. Road Kandivali (W), Mumbai – 400067  <b>PAN: AACCC7400M</b>	v.	DCIT – Central Circle – 1(1) Room No. 903, 9 <sup>th</sup> Floor Pratistha Bhavan Old CGO Building (Annexe) M.K. Road, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA NO. 2501/MUM/2019 (A.Y: 2008-09)**

Spurti Computech Pvt. Ltd., 4-D, Dhanbhavan No. 1 Gazadar Street JSS Road, Chrira Bazar Mumbai – 400004  <b>PAN: AAKCS4398C</b>	v.	DCIT – Central Circle – 1(1) Room No. 903, 9 <sup>th</sup> Floor Pratistha Bhavan Old CGO Building (Annexe) M.K. Road, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>None</b>
<b>Department by</b>		<b>Shri Hemant Chimanlal Leuva</b>
<b>Date of Hearing</b>	<b>:</b>	<b>14.09.2021</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>03.12.2021</b>

## **ORDER**

### **PER S. RIFAUR RAHMAN (AM)**

1. These appeals are filed by different assessees of same group against different orders of the Learned Commissioner of Income Tax (Appeals)–47, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 26.02.2019 for the A.Y. 2008-09.

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2. In spite of issue of notice none appeared on behalf of assessee nor any adjournment was sought. Thus, we proceed to dispose of this appeal on hearing Ld. DR on merits.

3. At the time of hearing, it is brought to our notice by Ld. DR that the credit appearing in the case of assessee from Sparko group as per the details available on record, is nothing but the accommodation entries in the guise of unsecured loans. Assessing Officer observed that the above loan is bogus loan and the genuineness of which is not proved. However, the assessee company is running, operate and controlled by Mr. Praveen Kumar jain (for short "PKJ") for conducting the business of providing accommodation entries. Accordingly, he submitted that the loan appearing in the books of assessee company was added in the hands of

PKJ on substantive basis and the same loan is added in the hands of the assessee on protective basis u/s. 68 of the Act. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and Ld.CIT(A) observed in his order at Para No. 22.5 that in view of the facts and circumstances and various judicial pronouncements, the ground raised by the assessee hereby allowed with the comments that the same shall be revived if the addition made in the case of PKJ is deleted in the appellate proceedings.

4. Aggrieved assessee preferred an appeal before the ITAT raising following grounds in its appeal: -

*"The appellant has preferred an appeal against the order dated 26.02.2019 passed by Id. CIT (A) 47 u/s. 250 of The Income Tax Act, in pursuance of appeal filed against assessment order dated 19.03.2016 passed u/s. 153C r.w.s. 143 (3) of the Income Tax Act, Following are the grounds of appeal without prejudice to one another:*

*I. The learned Commissioner of Income Tax (Appeal) has deleted addition made by Learned Assessing office on protective basis u/s.68 as unexplained cash credit amounting to Rs. 12.50 Crores with comments / observation / order that the same shall revive if the addition in the case of Third Party / Shri Praveen Kumar Jain is deleted in the appellate proceedings.*

*The appellant craves to add, amend or alter the grounds of appeal at the time of or before the hearing of appeal."*

5. Considered submissions of Ld. DR and material placed on record, we observed from the record that substantive addition was made in the hands of PKJ and protective assessment was made in the hands of the

assessee company and we further observed that the Ld.CIT(A) agreed with the assessee that protective assessment cannot be made when substantive assessment is made in the hands of the PKJ. Further, he made an observation that in case the addition is deleted in the hands of the PKJ the addition in the hands of the assessee may be revived. After considering the fact on record we observed that the protective assessment cannot be sustained due to the fact that the Assessing Officer cannot proceed with two additions for the same amount in two different hands. As per various judicial pronouncements protective addition cannot be made in the hands of the assessee when substantive addition is made in the hands of the another assessee with proper evidences on record. Therefore, we deem it fit and proper to agree with the finding of the Ld.CIT(A) without considering his comments on revival of the assessment and we deem it fit and proper to delete the protective addition made in the hands of the assessee. Accordingly ground raised by the assessee is allowed.

**ITA.No. 2501/MUM/2019 (A.Y.2008-09)**

6. Assessee has raised following grounds in its appeal: -

*"The appellant has preferred an appeal against the order dated 26.02.2019 passed by Id. CIT (A) 47 u/s. 250 of The Income Tax Act, in pursuance of appeal filed against assessment order dated 21.03.2016 passed u/s. 153C r.w.s. 143 (3) of the Income Tax Act, Following are the grounds of appeal without prejudice to one another*

*I. The learned Commissioner of Income Tax (Appeal) has deleted addition made by Learned Assessing office on protective basis u/s. 68 as unexplained cash credit amounting to Rs. 6.00 Crores with comments / observation / order that the same shall revive if the addition in the case of Third Party / Shri Praveen Kumar Jain is deleted in the appellate proceedings.*

*II. The appellant craves to add, amend or alter the grounds of appeal at the time of or before the hearing of appeal.*

7. Facts being identical to the case of Sumukh Commercial Pvt. Ltd., in ITA.No. 2409/Mum/2019, the decision taken therein shall apply mutatis-mutandis to the appeal for this appeal also. Grounds raised by the assessee are allowed.

8. In the result, appeal filed by both the assesseees are allowed as indicated above.

Order pronounced on 03.12.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai / Dated 03/12/2021  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

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