

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
Ms. MADHUMITA ROY, JUDICIAL MEMBER

Sl. No(s)	ITA No(s)/C.O	Asset. Year(s)	Appeal(s) by	
			Appellant	Respondent
1-2	1379/Ahd/2019 With C.O.No.210/Ahd/ 2019	2013-14	D.C.I.T., Central Circle- 1(1), Ahmedabad.	Priyesh Housing Developers, C/o Popular Estate Management, 81, 8 th Floor, 'A' Wing, New York Tower, Opp. Muktidham Derasar, Thaltej, Ahmedabad. PAN: AADFP5860C
3-4.	1382/Ahd/2019 With C.O.No.211/Ahd/ 2019	2013-14	D.C.I.T., Central Circle- 1(1), Ahmedabad.	Prathmesh Land Developers, C/o Popular Estate Management, 81, 8 th Floor, 'A' Wing, New York Tower, Opp. Muktidham Derasar, Thaltej, Ahmedabad. PAN: AADFP5861D

(Applicant)		(Respondent)
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Revenue by :	Ms Nupur Shah, A.R
Asessee by :	Shri Ajay Pratap Singh, CIT. D.R

सुनवाई की तारीख / **Date of Hearing** : **25/01/2022**
घोषणा की तारीख / **Date of Pronouncement**: **25/02/2022**

आदेश/ORDER

PER WASEEM AHMED ACCOUNTANT MEMBER:

The captioned appeals and Cross Objection have been filed at the instance of Revenue and the Assessee against the respective orders of the Learned Commissioner of Income Tax (Appeals), Ahmedabad arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2013-14.

First, we take up ITA No.1379/Ahd/2019, an appeal by the Revenue for the AY 2013-14

2. The only issue raised by the Revenue is that the learned CIT(A) erred in deleting the addition made by the AO under section 68 of the Act for Rs. 7.37 crores on account of unexplained cash credit received by the assessee.

3. The necessary facts required for disposing off the issue on hand are that the assessee in the present case is a partnership firm and engaged in the business of housing development. The assessee in the year under consideration has obtained loan from certain parties which were claimed to be arranged by Shri Rakesh B Patel as detailed under:

<i>Sl.No.</i>	<i>Name Address & PAN</i>	<i>Amount</i>	<i>Remarks</i>
1.	<i>Bahar Traders 9th Floor, BD patel House, Naranpura road, Ahmedabad ABRPP3848D</i>	<i>70,00,000/-</i>	<i>Entity of Rakesh B Patel Group</i>
2.	<i>BD Biotech 9th Floor, BD Patel House, Naranpura Road, Ahmedabad AACCB6840J</i>	<i>40,00,000/-</i>	<i>Entity of Rakesh B Patel Group</i>
3	<i>BD Overseas Fiscal Services Ltd. 9th Floor, BD Patel House, Naranpura Road, Ahmedabad AABCB3574G</i>	<i>20,00,000/-</i>	<i>Entity of Rakesh B Patel Group</i>
4	<i>Omrin Securities Pvt. Ltd.</i>	<i>47,50,000/-</i>	<i>Entity of Rakesh B Patel Group</i>

	<i>9th Floor, BD Patel House, Naranpura Road, Ahmedabad AAACO1831G</i>		
5	<i>Rakeshbhai B. Patel 9th Floor, BD Patel House, Naranpura Road, Ahmedabad AAACO1831G</i>	<i>10,00,000/-</i>	<i>Entity of Rakesh B Patel Group</i>
6	<i>Ansh Traders 116/B, Tejendra Prakash Society, Nikor 18, Ahmedabad-382415 AVRPP1899C</i>	<i>15,00,000/-</i>	<i>Accommodation Entry Provider/Shroff</i>
7	<i>MK Corporation B/23, Samarth Park, Ghodasar, Ahmedabad-380050 BSCPS4783D</i>	<i>3,27,00,000/-</i>	<i>Accommodation Entry Provider/Shroff</i>
8.	<i>Jalaram Finvest Pvt. Ltd.</i>	<i>2,07,50,000/-</i>	<i>Accommodation Entry Provider/Shroff</i>

3.1 The first 5 companies/firms/parties were pertaining to BD Patel group which were controlled and managed by Shri Rakesh D Patel. Likewise, the remaining three parties, were pertaining to the group namely DI Thakkar and other group. However, the impugned loans were arranged by Shri Rakesh B Patel to the assessee from all the companies.

3.2 There was a survey operation at the office premises of the BD Patel group wherein lot of documents were found and seized. These documents were containing the transactions of cash receipts and payments through the banking channel.

3.3 Similarly, there were search and seizure operations under section 132 of the Act in the case of Shri Rakesh B Patel and DI Thakkar group dated 26th October 2012. In the course of search, various statement of different parties were recorded including Shri Rakesh B Patel. In the statements furnished as a result of search, it was duly admitted by the different parties belonging to the group as discussed above that they were engaged in providing accommodation entries to different parties. However, Shri Rakesh B Patel, at the time of search, expressed his inability to furnish the details of the parties to whom he has provided the accommodation entries against the receipt of cash from them.

3.4 Shri Rakesh B Patel further submitted that the amount of cash received from different parties to provide the accommodation entries to them through the banking channel does not belong to him. As such, he has earned only commission income against such accommodation entries and therefore, he agreed to offer an income of ₹ 1 crore from the activity of providing accommodation entries.

3.5 However, Shri Rakesh B Patel subsequent to the search changed his stand of offering the income of ₹1 crore by stating that he is able to re-collect the name of the parties on whose behalf he has provided accommodation entries against the receipt of cash. Thus, Shri Rakesh B Patel furnished the details/ledger of the parties from whom the cash was received. Such details/ledger furnished by Shri Rakesh B Patel was also containing the name of the assessee. As per Shri Rakesh B Patel, the assessee was provided loan entries against the receipt of cash through the involvement of the companies as discussed above. Such amount of cash loan shown by the assessee stands at Rs. 7.37 crore as on 31st March 2013 which was reflected in the financial statement.

3.6 The AO supplied the details of documents impounded and statement recorded during the search and survey proceeding to the assessee vide letter dated 5th August 2015. The assessee vide letter dated 2nd September 2015 requested the AO to provide the opportunity for cross-examination of Shri Rakesh B Patel which was afforded by the AO dated 30th December 2015. During the course of cross-examination, Shri Rakesh B Patel categorically denied to have provided any accommodation entry in the form of loan to the assessee. Rather, Shri Rakesh B Patel acceded that he, along with other companies, has provided genuine loan to the assessee.

3.7 Based on the above, the assessee was issued a show-cause notice dated 07-01-2016 to justify the genuineness of the loan transactions as well as to produce the directors or the persons of the companies as discussed above.

3.8 The assessee to justify the amount of impugned loan taken from the different parties as discussed above made further submissions by contending that none of the document seized and impounded during the search and survey proceeding contains its name. Similarly, in the statement furnished by Shri Rakesh B Patel and other persons, its name (the assessee) was not identified for having accepted accommodation entries. Therefore, no adverse inference can be drawn against it especially considering the fact that in cross examination, Shri Rakesh B Patel, categorically denied to have provided any accommodation entries to the assessee. Rather, he asserted that the loan provided and arranged by him are genuine loan transactions which were returned back in the subsequent years. Further, the requirement of producing the directors in person is also unjustified for the reason that the Shri Rakesh B Patel who has arranged all the loan came forward for cross examination and denied the allegations. Likewise, the materials found from DI Thakkar group also cannot be used against it as assessee firm has not entered into any direct transaction with DI Thakkar group. Furthermore, Shri Rakesh B Patel during cross examination also denied to have any trail of transaction between assessee firm and Rakesh B Patel with DI Thakkar group. The assessee also submitted all the seized document are loose papers written by the third party which were found from the possession of third party, therefore, the same does not carry any evidentiary value to make any adverse inference in its hand.

4. However, the AO disagreed with the contention of the assessee and made certain observations as under:

a. Ansh Traders loan of Rs. 15 lacs

The proprietor of Ansh Traders in the statement recorded under section 131 of the Act dated 3rd May 2013 has admitted to be involved in sharafi business on commission basis for and on behalf of one Shri Ashish Thakkar who in his statement confirmed to have arranged cheques for Shri Mukesh Thakkar who in his statement dated 11th January 2013 has admitted to have received cash from Shri Rakesh B Patel which were layered in the concerns of Shri Rekesh B. Patel. Similar, modus operandi was also adopted for providing fund to Amarpali Group and the Amarpali Group before the settlement commission has offered the tax on the same. Further, summon under section 131 was issued to the above party but none attended. The assessee was also asked to produce the proprietor in person but it (the assessee) failed to do so. Thus, the loan amount of Rs. 15 Lacs was held as unexplained cash credit under section 68 of the Act.

b. M.K. Corporation loan of Rs. 3.27 Crores

On perusal of the bank statement, it was revealed that M/s MK Corporation is only layering the fund of the amount received in bank by immediately transferring to the beneficiaries. The party declared income of Rs. 1,97,104/- whereas it has lent the loan of Rs. 3.27 crores, therefore, the genuineness and credit worthiness was in serious doubt. Thus, the assessee failed in discharging the onus cast under section 68 of the Act. Further similar modus operandi was employed in case of Amarpali group. Thus the loan amount of Rs. 3.27 crores was treated as unexplained cash credit under section 68 of the Act.

c. Jalaram Finvest Ltd loan of Rs. 2.075 Crores

M/s Jalaram Finvest Ltd is part of DI Thakkar group. During the search proceeding at the premises of group, the main person Shri DI Thakkar accepted that none of its group concern doing any business except cheque discounting/shrafi in lieu of commission. Similar, admission was also made in the case of Amarpali group. The

director of Jalaram Finvest Ltd namely Shri Pankaj Thakkar in the statement recorded under section 131 of the Act dated 16th January 2014 categorically accepted that no loan and advance was either received or provided. But, indeed cheques in lieu of cash were provided. Thus, the assessee's contention that the loan arranged by Shri Rakesh B Patel, who in cross examination confirmed the genuineness of transaction, will not be acceptable. Further Shri Rakesh B Patel himself vide letter dated 19-03-2014 submitted before DDIT(Inv.), Unit-1(3) of Ahmedabad has accepted that cash were received from the assessee firm for accommodation entries which was provided through group concern and Jalaram Finvest Ltd. Further, the assessee was asked to produce the director of Jalaram Finvest along with books of accounts in order to explain the receipt but the assessee failed to do so. Thus, the loan amount of Rs. 2.075 crores was treated as unexplained cash credit.

d. Rakesh B Patel concern

There were seized documents found where the name of the assessee being Preisyas was appearing against the receipt of cash. Such amount of cash was layered in different companies before finally handing over to the assessee through the banking channel. The necessary details and trails of layering the impugned cash after the involvement of many companies was discussed by the AO at length in his order on pages 52 to 59.

4.1 Likewise, Shri Rakesh B Patel in the statement furnished under section 132(4)/ 131 of the Act have admitted to have provided accommodation entries to different parties and offered an income of ₹1 crores. But, on a later date he changed the stand by furnishing the details of the parties including the assessee before the DDIT on whose behalf, the accommodation entries were provided. Thus, the AO held that the statement of Shri Rakesh B Patel at the time of cross examination that he has provided genuine loan entries to the assessee is not acceptable.

4.2 In view of the above, the AO treated the amount of loan shown by the assessee for 1,87,50,000/- as unexplained cash credit under section 68 of the Act and added to the total income of the assessee.

5. Aggrieved assessee preferred an appeal before the learned CIT(A).

5.1 The assessee before the learned CIT(A) submitted that it has furnished all the necessary details such as PAN and complete address of all the parties to prove the identity, copies of acknowledgment of ITR in order to establish credit worthiness showing sufficient income and copies of contra ledger confirmation demonstrating that the amount was received through the banking channel and repaid in the subsequent year through banking channel, also submitted copies of bank account. Thus, it has discharged the onus cast under section 68 of the Act, and thus the onus was shifted up-on the AO to disprove the contention of the assessee base on cogent materials. But the AO without having possession of any cogent materials in support of his allegation treated the loan amount as unexplained cash credit. The AO heavily relied on the statement of Shri Rakesh B Patel and loose papers found during the course of search and survey. However it is settles position of law that loose paper and noting found from the premises of third party does not carry any evidentiary value. Furthermore, Shri Rakesh B Patel in cross examination has rendered his statement in its favour. Also in none of the statement referred by the AO, its name has been identified as beneficiary of any accommodation entry. There was not available any cogent materials that it has made cash payment for loan transaction. The assessee in support of its contention relied on various case laws.

6. The Id. CIT-A after considering the fact in totality allowed the appeal of the assessee by observing as under:

*4.4 In respect of the lender party **Bahar Traders (Prop. Rakesh Patel)** having PAN as ABRPP6848D, it has disclosed the income of Rs.1,09,93,829/- in the return of income filed for A.Y.2013-14. The appellant firm has received an unsecured loan amount of Rs.70,00,000/- during the year under consideration. The appellant firm has repaid back the*

loan amount of Rs.70,00,000/- in the F.Y.2013-14 through proper banking channel. During the course of assessment proceedings, the appellant firm has placed on record of the AO the copy of contra confirmation (compiled at Page No. 338 of Paper Book No. II), copy of respective bank statement of Bahar Traders (compiled at Page No. 339 of Paper Book No. II) as well as copy of acknowledgement and return of income for A.Y. 2013-14 (compiled at Page No. 340 to 344 of Paper Book No. II), Thus, the appellant firm has proved the identity, credit **the A.O with respect to the unsecured loan of B.D. Biotech Enterprise Pvt. Ltd. is unjustified and the said addition is deleted.**

4.6 In respect of lender party **B. D. Overseas Fiscal Services Ltd.**, having PAN as AABCB3574G, it has disclosed the income of Rs.4,66,291/- in the return of income filed for A.Y 2013-14. During the course of assessment proceedings, the appellant firm has placed on record of the AO copy of contra confirmation (compiled at Page No. 349 of Paper Book No. II), Acknowledgement of return of income filed for A.Y.2013-14 (compiled at Page No. 350 of Paper Book No. II) as well as copy of respective bank statement of B. D. Overseas Fiscal Services Ltd.(compiled at Page No.351 of Paper Book No. II). The appellant firm has submitted the ledger copy of the lender party B. D Overseas Fiscal Services Ltd. from the books of appellant firm showing the acceptance and repayment of loan and company master data extracted from the website of MCA showing that the said lender company is still active company and filing its financials to MCA as per the Exhibit-V. The appellant firm has further submitted the copy of the Audited Financials of the lender party extracted from the MCA website as per Exhibit-VI. Thus, the appellant firm has proved the identity, creditworthiness and genuineness of transactions of the lender party B. D. Overseas Fiscal Services Ltd. beyond doubt. Therefore, the AO is not justified in making the observations in the assessment order as regards to the identity of the lender party, credit worthiness of the lender party B. D, Overseas Fiscal Services Ltd. The appellant firm has proved the creditworthiness and genuineness of the lender party B. D. Overseas Fiscal Services Ltd. by submitting various details as stated herein above and hence, an addition of Rs.20,00,000/- is not required to be made in the case of the appellant firm. So, the **addition of Rs.20,00,000/- made by the A.O with respect to the unsecured loan of B. D. Overseas Fiscal Services Ltd.is unjustified and the aid addition is deleted.**

4.7 In respect of lender party **Omrin Securities P. Ltd.**, having PAN as AAACO1831G, it has disclosed the income of Rs.5,80,452/- in the return of income filed for A.Y.2013-14. The appellant firm has received unsecured loan amount of Rs.47,50,000/- during the year under consideration. The appellant firm has repaid back the said loan amount of Rs.47,50,000/- in the F.Y. 2013-14 through proper banking channel. During the course of assessment proceedings, the appellant firm has submitted before the AO the copy of contra confirmation (compiled at Page No. 356 of Paper Book No. II), Acknowledgement of return of income of A.Y. 2013-14 (compiled at Page No. 357 of Paper Book No. II) as well as copy of respective bank statement of Omrim Securities P. Ltd. (compiled at Page No.358 & 359 of Paper Book No. II). The appellant firm has submitted the ledger copy of Omrim Securities Pvt.Ltd.from the books of appellant firm showing the acceptance and repayment of loan and company master data extracted from the website of MCA showing that the said lender company Omrim Securities Pvt. Ltd. is still active company and filing its financials to MCA as per the Exhibit-VIII. The appellant firm has further placed on record the copy of the Audited Financials of the lender party extracted from the MCA website as per Exhibit-IX of Synopsis of Arguments. Thus, the appellant firm has proved the identity and creditworthiness of the lender party Omrim Securities Pvt. Ltd. by submitting various details as stated herein above and hence, an addition of Rs.47,50,000/- is not required to be made in the case of the appellant firm. So, the **addition of Rs.47,50,000/- made by the A.O with respect to the unsecured loan of Omrim Securities Pvt. Ltd.is unjustified and the said addition is deleted.**

4.8 In respect of lender party Rakesh Patel having PAN as ABRPP6848D, it has disclosed the income of Rs.1,09,93,8297- in the return of income filed for A.Y. 2013-14. The appellant firm has received unsecured loan amount of Rs.10,00,000/- during the year under consideration. The appellant firm has repaid back the said loan of Rs 10,00,000/- in the F.Y.2013-14 through proper banking channel. During the course of assessment proceedings, the appellant firm has submitted before the AO the copy of contra confirmation (compiled at Page No, 382 of Paper Book No. II), Acknowledgement of return of income of A.Y. 2013-14 (compiled at Page No. 383 of Paper Book No. II) as well as copy of respective bank statement of Rakcsh Pate! (compiled at Page No. 384 of Paper Book No. II), The appellant firm has submitted the ledger copy of the lender party Rakesh Patel from the books of appellant showing the acceptance and repayment of loan. Thus, the appellant firm has proved the identity, creditworthiness and genuineness of lender party Rakesh Patel beyond doubt. Therefore, the AO is not justified in making the observation in the assessment order as regards to the identity of the lender party and creditworthiness of the lender party Rakesh Patel. The appellant firm has proved the creditworthiness and genuineness of the lender party Rakesh Patel by submitting various details as **stated herein above and hence, an addition of Rs.10,00,000/- is not required to be made in the case of the appellant firm. So, the addition of Rs.10,00,000/- made by the A.O with respect to the unsecured loan of Rakesh Patel is unjustified and** the said addition is deleted.

4.9 In respect of lender party Ansh Traders (Prop. Ajaykumar S. Pandey) having PAN as AVRPP1899C, the appellant firm has received an unsecured loan amount of Rs.15,00,000/- during the year under consideration. The appellant firm has repaid back the said loan amount of Rs.15,00,000/- in the F.Y. 2013-14 through proper banking channel. The appellant firm has submitted the ledger copy of the lender party Ansh Traders (Prop Ajaykumar S. Pandey) from the books of appellant firm showing the acceptance and repayment of loan, which has been taken on record. During the course of assessment proceedings, the appellant firm has submitted before the AO the copy of contra confirmation (compiled at Page No.337 of Paper Book No.II), Acknowledgement of return of income (compiled at Page No. 571 of Paper Book No. II) as well as copy of respective bank statement of Ansh Traders (compiled at Page No 572 & 573 of Paper Book No.II). Thus, the appellant firm has proved the identity, credit worthiness and genuineness of lender party Ansh Traders (Prop. Ajaykumar S. Pandey) beyond doubt. Therefore, the AO is not justified in making observation in the assessment order as regards to the identity of the lender party and creditworthiness of the lender party Ansh Traders. The appellant firm has proved the creditworthiness and genuineness of the lender party Ansh Traders by submitting various details as stated herein above and hence, an addition of Rs.15,00,000/- is not required to be made in the case of the appellant firm. So, the addition of Rs.15,00,000/- made by the A.O with respect to the unsecured loan of Ansh Traders (Prop. Ajaykumar S. Pandey) is unjustified and the said addition is deleted.

4.10 In respect of lender party M.K. Corporation (Prop. **Namesh N. Shah**) having PAN as BSCPS4783D, the appellant firm has received unsecured loan amount of Rs.3,27,00,000/- during the year under consideration. The appellant firm has repaid back the said loan amount of Rs,3,27,00,000/- in the F.Y.2016-17 through proper banking channel. During the course of assessment proceedings, the appellant firm has submitted before the AO the copy of contra confirmation (compiled at Page No. 354 & 355 of Paper Book No. II), Acknowledgement of return of income (compiled at Page No. 580 of Paper Book No. II) as well as copy of respective bank statement of M.K. Corporation (compiled at Page No. 581 to 592 of Paper Book No. II). The appellant firm has submitted the ledger copy of the lender party M.K. Corporation from the books of appellant firm showing the acceptance and repayment of loan. Thus, the appellant firm has proved the identity, creditworthiness and genuineness of the lender party M.K Corporation beyond doubt. Therefore, the AO is not justified in making the observations in the assessment order as regards to the identity and

*creditworthiness of the lender party M. K, Corporation. The appellant firm has proved the creditworthiness and genuineness of the lender party M.K Corporation by submitting various details as stated herein above and hence, an addition of Rs.3,27,00,000/- is not required to be made in the case of the appellant firm. So, the **addition of Rs.3.27,00,000/- made by the A.O with respect to the unsecured loan of M.K. Corporation (Prop. Nainesh h N. Shah) is unjustified and the said addition is deleted.***

*4.11 In respect of lender party **Jalaram Finvest Ltd.,** the unsecured loan for an amount of Rs.2,07,50,000/- has been received by the appellant firm during the year under consideration. The appellant firm has stated that the lender company Jalaram Finvest Ltd. regularly filing its annual accounts with the ROC proving its identity & its genuineness and creditworthiness. In support of the same, the appellant firm has submitted the Master data of the company downloaded from the MCA website as per Exhibit-XHI of Synopsis of Arguments. The appellant firm has stated that the identity of the company is well established as during search, the director of the company Shri Pankaj Thakkar and person handling the day to day affairs, Shri D.I. Thakkar had stated in their statement recorded on oath u/s 132(4) and 131 that they are associated with the company. The appellant firm has received the loan through Account Payee Cheques which can be seen from the ledger account submitted by the appellant firm as per Exhibit-XIV of Synopsis of Arguments filed on 30.05.2019. The lender party Jalaram Finvest Ltd. Is on the record of other statutory authorities also namely Ministry of Corporate Affairs (MCA). The transactions made can be vouched from bank statement of the appellant and ledger account from the books of appellant. Therefore, the AO is not justified in making observation in the assessment order as regards to the identity of the lender party and creditworthiness of the lender party Jalaram Finvest Ltd. It is important to mention that Jalaram Finvest Ltd. has also been subjected to search and assessment has been made by the same AO, who made assessment of the appellant u/s.153A of the Act. Thus, the books of accounts & bank accounts of Jalaram Finvest Ltd were available with the AO. The appellant firm has proved the creditworthiness and genuineness of the lender party Jalaram Finvest Ltd. by submitting various details as stated herein above and hence, an addition of Rs.2,07,50,000/- is not required to be made in the case of the appellant firm So, the **addition of Rs.2,07,50,000/- made by the A.O with respect to the unsecured loan of Jalaram Finvest Ltd, is unjustified and the said addition is deleted.***

7. Being aggrieved by the order of the Id. CIT-A, the Revenue is in appeal before us.

8. The Id. DR before us contended that addition was made by the AO based on the documents which were found during the search and the same was also admitted by Shri Rakesh B Patel and the persons of other companies to have provided such loan to the assessee out of the accommodation entry. Shri Rakesh B Patel also agreed to offer an income of ₹1 crore out of the activity of accommodation entries. Furthermore, there was no interest charged by the loan parties from the assessee which is a very unusual practice. The repayment of the loan was made by the assessee post search. Thus, no relief can be given to the assessee on the reasoning

of the re-payment of the loan. The learned DR vehemently supported the order of the AO.

9. On the other hand, the Id. AR before us filed a paper book running from pages 1 to 1014 and contended that the assessee has discharged the primary onus in pursuance to the provisions of section 68 of the Act with respect to the identity, creditworthiness of the parties and genuineness of the transactions. Accordingly, no addition is warranted under the provisions of section 68 of the Act. The learned AR vehemently supported the order of the learned CIT-A.

10. We have heard the rival contentions of both the parties and perused the materials available on record. The provision of section 68 of the Act fastens the liability on the assessee to provide the identity of the lenders, establish the genuineness of the transactions and creditworthiness of the parties. These liabilities on the assessee were imposed to justify the cash credit entries under section 68 of the Act by the Hon'ble Calcutta High Court in the case of CIT Vs. Precision finance (p) Ltd reported in 208 ITR 465 wherein it was held as under:

"It was for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions. On the facts of this case, the Tribunal did not take into account all these ingredients which had to be satisfied by the assessee. Mere furnishing of the particulars was not enough. The enquiry of the ITO revealed that either the assessee was not traceable or there was no such file and, accordingly, the first ingredient as to the identity of the creditors had not been established. If the identity of the creditors had not been established, consequently, the question of establishment of the genuineness of the transactions or the creditworthiness of the creditors did not and could not arise. The Tribunal did not apply its mind to the facts of this particular case and proceeded on the footing that since the transactions were through the bank account, it was to be presumed that the transactions were genuine. It was not for the ITO to find out by making investigation from the bank accounts unless the assessee proved the identity of the creditors and their creditworthiness. Mere payment by account payee cheque was not sacrosanct nor could it make a non-genuine transaction genuine."

10.1 Now 1st we proceed to understand the identity of the party. The identity of the party refers to the existence of such party which can be proven based on the evidences. As such the identity of a party can be established by furnishing the name, address and PAN detail, bank details, passport and other details of the Government agencies.

10.2 The next stage comes to verify the genuineness of the transaction. Genuineness of transaction refers what has been asserted is true and authentic. A genuine transaction must be proved to be genuine from all prospective and not merely on paper. The documentary evidences should not provide a mask to cover the actual transaction or designed in way to present the transaction as true but the same is not. Genuineness of transaction can be proved by submitting confirmation of the party along details of mode transaction but merely showing transaction carried out through banking channel is not sufficient enough. As such, the same (genuineness) should also be proved by circumstantial/ surrounding evidences as held by the Hon'ble supreme court in case of Durga Prasad More reported in 82 ITR 540 and in case of Smt. Sumati Dayal reported in 214 ITR 801.

10.3 The last stage comes to verify the creditworthiness of the parties. The term creditworthiness as per Black Law Dictionary refers as:

"creditworthy, adj. (1924) (Of a borrower) financially sound enough that a lender will extend credit in the belief default is unlikely; fiscally healthy-creditworthiness.

10.4 Similarly in The New Lexicon Webster's Dictionary, the word "creditworthy" has been defined as under:-

"creditworthy, adj. of one who is a good risk as a borrower."

10.5 It the duty of the assessee to establish that creditor party has capacity to advance such loan and having requisite fund in its books of account. The capacity to advance loan can be established by the showing sufficient income, capital and reserve or other fund in the hand of creditor. It is required by the AO to find out the financial strength of the creditor to advance loan with judicious approach and in accordance with materials available on record but not in arbitrary and mechanical manner.

10.6 In the light of the above discussion, we proceed to adjudicate the issue on hand. With respect to the identity of the party, we find that the assessee has furnished PAN and complete address of all the parties, copy of ITR acknowledgment and bank statement of all parties. The AO in his order has also not doubted the existence of the loan parties. It is also pertinent to note that based on such information as discussed above, notices under section 131(1) of the Act were also issued to the above parties. From the above, there remains no doubt as far as the identity of the loan parties is concerned which has been proved beyond doubt.

10.7 As regards the genuineness of the transaction, we note that the entire flow of transaction for the receipt of loan was carried out through the banking channel which were duly recorded in the books of accounts of the assessee as well as in the books of accounts of the loan parties. In the subsequent year entire loan was repaid through banking channel. The transaction of the receipt of loan and repayment was duly confirmed by the loan parties.

10.8 Even during the course of the search proceedings in the case of Shri Rakesh B Patel and DI Thakkar Group and survey proceedings in the case of BD Patel Group, there were not found any documentary evidence that the assessee has received loan from the parties as discussed above against the cash provided to them except the name appearing on the loose paper as "PRIYEASH". The impugned name was interpreted by the AO as the name of the assessee which also appears to be true to some extent. But, on confrontation, Shri Rakesh Patel never identified such name as the name of the assessee. Rather, Shri Rakesh Patel in the statement on question by the search team has not specified the details of the party. The relevant extract of the statement under section 132(4) of the Act dated 21-12-2012 is reproduced as under:

I am showing you Annexure- A3, a notebook, pages 1 to 22, impounded during the course of survey held at your Office premises situated at 9th Floor, BD Patel House, Naranpura Ahmedabad on 26.10.2012. The said notebook was confronted to you during the course of survey proceedings on 26,10.2012 and in reply to question number 18 you had stated that

the said notebook is m handwriting of Shri Dineshbhai, your employee and is record of fund flow which he maintains at personal level, You have a/so stated that you are unable to explain the same and details will be furnished subsequently. However, no details have been furnished by you. A statement of Shri Oineshbhai Champaklal Modi, your employee, was recorded under section 131 of the Income-tax Act, 1961 on 18.12.2012. During the course of his statement he was asked to explain the contents of the said notebook (Annexure A2). In reply he has stated that the said notebook is in his handwriting and contains details of cash received and cash paid. In his statement he has also stated that the said notebook has been maintained by him as per the instructions received by him from you. It has a/so been stated by him that he is not aware as to whether the said transaction have been recorded in your regular books of accounts or not. I am showing you the statement of Shri Dineshbhai Champaklal Modi recorded on 18.12.2012, please go through the statement and the contents of An;texure-A2 and please explain the nature of the said transactions and also state as to whether the same have been reflected in your regular books of accounts or not?

Ans: I have gone through Annexure A2 and the statement of Shn Dinesh Bhai C Modi. I am unable to recollect the nature of transactions recorded in the said notebook and also the names and addresses of the parties with whom the transactions have been entered into. These transactions have not been reflected in my regular books of account. Rut, it is dear front the said diary that cash is being received and paid immediately, thus, the funds are being circulated. In absence of me being able to explain the names and addresses of the parties from whom the cash has been received and the purpose for which it has been paid, I own up the same and offer the peak amount of the entire transactions as my income for the current financial year i.e. 2012-13 and willing to pay taxes on the same. As per my working peak works out at Rs. 98.00 lacs. I thus, offer Rs. 1.00 crore (one crore) as my income 35 stated above.*

10.9 Even during the course of the cross examination, Shri Rakesh B Patel failed to establish the impugned name is of the assessee. Rather, Shri Rakesh B Patel categorically admitted to have provided genuine loan to the assessee which was received back by its group companies in the subsequent year. The relevant extract of the cross-examination in the form of question-and-answer is reproduced as under:

That in your statement dated 23.11.2012 and 21.12.2012, you have stated that you are also providing accommodation entries to various parties. Please clarify whether you have provided any accommodation entries in respect of loans given by yourself and your group concerns and loan arranged from Jalaram Finvest Ltd and M.K. Corporation in favour of Partnership firm M/s Priyesh Housing Developers and M/s Prathmesh Land Developers?

No, I have not provided any accommodation entry to M/s Priyesh Housing Developers and M/s Prathmesh Land Developers. It is a genuine loan by me and Other concerns of my group and also by M.K. Corporation and Jalaram Finvest Ltd 35 stated herein above Answer No. 2. That m my statement dated 23.11.2012 and 21.12.2012, L have not stated anything about the above two partnership firms namely M/s Priyesh Housing Developers and M/s Prathmesh Land Developers as well as I have not identified the partners of the aforesaid firms namely Shri Ramanbhai B. Patel and other partners of the firm. The Inxn given to M/s Priyesh Housing Developers and M/s Prathmesh Land Developers is duly accounted for in my regular books of accounts and regular books of accounts of the concerns of the concerns of our group and for which I have also provided to Shri Ramanbhai B. Patel, partner of the both firms the confirmation

and contra account from our books of account, the copy of which I am producing herewith. That I am also assessed to tax and other concerns of my group are also filing returns of income regularly and Balance Sheet filed with the return of income, loans given to aforesaid two firms have been shown \$s loans advances in regular books of accounts.

Q.5 Whether, the loans given by you and other concerns of your group to M/s M/s Priyesh Housing Developers, and M/s Prathmesh Land Developers have been recovered back?

A.5 Yes, in subsequent financial year 2013-14, we have recovered back majority of the loan funds and the details of loan funds returned by the aforesaid two partnership firms M/s Priyesh Housing Developers and M/s Prathmesh Land Developers are as under:

M/s Prathmesh Land Developers

Sr.No.	Particulars	Amount (Rs.) F.Y.2013-14
1.	Bahar Traders	1,35,00,000/-
2.	B.D. Diotech Enterprises Pvt Ltd	20,00,000/-
3.	B.D. Overseas Fiscal Services Ltd	20,00,030/-
4.	Omrin Securities Pvt Ltd	40,50,000/-
5.	Rakeshhhai B. Pate/	25,00,000/-

Priyesh Housing Developers

Sr.No.	Particulars	Amount (Rs.) F.Y.2013-14
1.	Bahar Traders	70,00,000/-
2.	B.D. Biotech Enterprises Pvt Ltd	40,00,000/~
3.	B.D. Overseas Fiscal Services Ltd	20,00,000/-
4.	Omrin Securities Pvt Ltd	47,50,000/-
5.	Rakeshbhai B. Pate!	10,00,000/-

I am also producing herewith the ledger account of aforesaid two firms from my books of account and from the books of other concerns of my group in respect of loan amount returned back by the aforesaid two firms.

Q.6 Have you taken cash against the loans and advances given by you and other concerns of your group and loan arranged from Jalaran Finvest Ltd and M.K. Corporation in favour of partnership firm M/s Priyesh Housing Developers and M/s Prathmesh Land Developers

From Shri Ramanbhai B. Patel or from any other partners or from any other person on behalf of aforesaid two firms?

A.6 No

Q.7 Please identify the persons Priyesh and Prathmesh as mentioned in the impounded material/seized material, which has been found from your premises, Xerox copy of which I am showing to you?

A.7 I am not in a position to identify the person name called Priyesh and Prathmesh. I have to state that it is not a short form of M/s.Priyesh Housing Developers and M/s.Prathmesh Land Developers.

Q.8 I am showing you statement dated 23.11.2012 in answer no.24 there you have stated that you have given accommodation entries to Shri Prathmesh and Shri Priyesh?

A.8 I am not in a position to identify any person namely Shri Prathmesh and Shri Priyesh and therefore in my statement dated 21.12.2012 in answer to question no.2, I have already stated that I am no in a position to identify any person from the impounded/seized material found from my premises and in respect of the nothing found to be noted in the impounded/seized material I have stated that I will offer peak balance as income in my return of income and pay tax thereon.

A9. Whether in you income-tax assessment you have owned-up all nothing found to be noted in the impounded/seized material found from your premises as your income on the basis of peak balance as stated by you in your statement dated 21.12.2012?

A.9 Yes, I have also in my reply dated 25.02.2015 filed in my assessment proceedings have considered all notings including the entries of Prathmesh and Priyesh found in the impounded/seized material in the peak working and I have offered the peak balance of Rs.1,02,30,665/- as my income and paid taxes thereon and assessment order also rendered in my case wherein aforesaid peak balance of Rs.1,02,30,665/- have already assessed in the assessment order. The peak working attached with my reply dated 25.02.2015 covers all notings found to be noted against Prathmesh and Priyesh as my own cash funds and the same has been considered in the peak working to work out the peak balance which has been accepted by th income-tax department in my assessment order.

10.10 There is no ambiguity to the fact that impugned amount of loan received by the assessee has been returned back through the banking channel to the respective parties. Thus in such facts and circumstances, we find hard to hold that impugned amount of loan was not genuine. In this respect we find support and guidance from the judgment of Hon'ble Gujarat High Court in the case of the CIT Vs. Rohini builders reported in 256 ITR 360 wherein it was held as under:

"The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques."

10.11 At this juncture, it is also important to note that the AO in his order has alleged that the assessee failed to produce the directors/key person of the companies as discussed above. In our considered view, it was the revenue who wanted to treat the impugned amount of loan as unexplained cash credit under section 68 of the Act. Indeed, the primary onus was upon the assessee who has discharged by furnishing the necessary details which has been discussed somewhere in the preceding and following paragraph. Now the onus was shifted on the revenue to disprove the contention of the assessee. Furthermore, the revenue wanted to place the reliance on statements of the different key persons of the companies as discussed above, therefore in our considered view it was the duty of the Revenue to enforce the attendance of these persons. For this purpose, the Revenue was given ample power under the statute as specified under section 131/133(6) of the Act. But the Revenue failed to exercise such powers and shifted its onus to the assessee to produce the persons as discussed above. Moreover, the AO has not disputed the fact that entire amount of loan to the assessee from the parties as discussed above was arranged by Shri Rakesh B Patel who appeared before the Revenue during the cross-examination wherein the allegation of the revenue was categorically denied. Thus, the contention of the AO that the assessee failed to produce the other key persons of the companies is devoid of any merit in the given facts and circumstances.

10.12 Moving further, we also note that it was duly admitted by the key persons of the BD Patel Group and DI Thakkar Group in the statement furnished during the search proceedings to have been engaged in providing accommodation entries. The same group also provided accommodation entry to another group namely Amarpali Group and Amarpali Goup also approached to the settlement commission for resolving the tax disputes. Indeed, this finding is vital and substantiates the allegation of the AO that impugned groups were engaged in providing the accommodation entries. However, based on this fact no inference can be drawn against the assessee to have taken accommodation entries from the parties as

discussed above until and unless it is based on the documentary evidence. On the contrary, Shri Rakesh B Patel- the key person of the group who arranged the loan for the assessee has categorically stated that he has not provided any accommodation entry to the assessee. Furthermore the name appearing in the loose paper as PRIYESH does not establish the fact that it is the name of the assessee until and unless it is brought on record based on the corroborative material. Accordingly, the trail established by the AO alleging that the assessee has received accommodation entry from the parties as discussed above does not support his stand, rather, it is based on wrong assumption of facts.

10.13 The CBDT in instruction number 574 dated 27-07-1973 also advised to the AO to make assessment in reasonable and fairness manner after considering all fact in totality so that unnecessary hardship should not be caused to the assessee. The relevant extract reads as under:

3. The Board would like therefore to impress once again upon the Commissioners that they should advise the assessing officers in their charge to eschew unjustified over-assessments. The assessments have to be made in a reasonable and fair manner after considering all the relevant circumstances of the case. Even where an assessment has to be made ex parte, the information available should be reasonably weighed and a proper estimate made in the exercise of best judgment in the circumstances. There should be no tendency to frame assessments even in such cases mechanically on past basis, if there is evidence to the contrary e.g., the business of the concern has become defunct or is in clearly adverse circumstance.

10.14 Going ahead, we note that the revenue has nowhere doubted on the creditworthiness of the loan parties. The genuineness of the transaction was in doubt which we have already dealt in the preceding paragraph. In view of the above and after considering the facts in totality, we are of the view that the order of the learned CIT(A) does not require any interference and therefore, we direct the AO to delete the addition made by him. Hence the ground of appeal of the Revenue is hereby dismissed.

10.15 In the result, appeal of the Revenue is dismissed.

Coming to CO. No. 210/Ahd/2019, filed by the assessee i.e. Priyesh Housing Developers.

11. At the outset we note that the assessee in the CO filed by it has supported the order of the Ld. CIT-A. Accordingly, we hold that no separate adjudication is required for the CO filed by the assessee. Hence, we dismiss the same as Infructuous.

11.1 In the result CO raised by the assessee is dismissed.

Coming to ITA No. 1382/Ahd/2019, filed by the Revenue in case of Prathmesh land Developer.

12. The Revenue has raised the following grounds of appeal:

1. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.7,05,00,000/- made by the A.O- on account of unexplained unsecured loan u/s 68 of the Act.*
2. *The Ld. CIT(A) erred in ignoring the fact that there were several evidences showing that the assessee had given cash to one RaKesh B. Patel who in turn has arranged entries of unsecured loans for the assessee.*
3. *The Ld. CIT(A) erred in ignoring the categorical admission by Shri Rakesh B. Patel to the fact that he has arranged entry of unsecured loan for the assessee in lieu of cash.*
4. *The Ld. CIT(A) erred in ignoring the fund trail depicting the rotation of funds for arranging the entry of unsecured loans, establishing the fact that the amounts claimed as loan were assessee's own funds.*
5. *The Ld. CST(A) erred in not appreciating the fact that the assessee failed to establish creditworthiness of the lender specially when there was specific evidences to establish that the lender was engaged in providing accommodation entries.*
6. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.*
7. *It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent.*

13. The only issue raised by the Revenue is that the learned CIT(A) erred in deleting the addition made by the AO under section 68 of the Act for 7.05 crores on account of unexplained cash credit received by the assessee.

14. At the outset, we note that the issues raised by the revenue in its grounds of appeal are identical to the issues raised by the Revenue in case of sister concern of the assessee being Priyesh Housing Developers bearing ITA No. 1379/AHD/2019 for the assessment year 2013-14. Therefore, the findings given in ITA No. 1379/AHD/2019 shall also be applicable for the issues raised by the Revenue in this appeal. The appeal of the Revenue for the 1379/AHD/2019 has been decided by us vide paragraph No. 10 of this order against the Revenue. The learned AR and the DR also agreed that whatever will be the findings for the 1379/AHD/2019 shall also be applied for the appeal on hand i.e. ITA No. 1382/Ahd/2019. Hence, the grounds of appeal filed by the Revenue is hereby dismissed.

14.1 In the result appeal of Revenue is dismissed.

15. Coming to CO No. 211/Ahd/2019, raised by the assessee Prathmesh land Developer.

16. At the outset we note that the assessee in the CO filed by it has supported the order of the Ld. CIT-A. Accordingly, we hold that no separate adjudication is required for the CO filed by the assessee. Hence, we dismiss the same as Infructuous.

16.1 In the result, the CO filed by the assessee is dismissed.

17. In the combined result, both the appeals of the Revenue and the CO of the assessee are dismissed.

Order pronounced in the Court on 25/02/2022 at Ahmedabad.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 25/02/2022
Manish