

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.6558/M/2019**

**Assessment Year: 2010-11**

Shri Shailesh J. Jogani, DW-3010, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051 <b>PAN: AEBPJ3548M</b>	Vs.	DCIT, Central Circle-5(3), Room No.1906, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai
(Appellant)		(Respondent)

**ITA No.6559/M/2019**

**Assessment Year: 2010-11**

M/s. S. Jogani Exports Pvt. Ltd., DW-3010, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051 <b>PAN: AALCS4862J</b>	Vs.	DCIT, Central Circle-5(3), Room No.1906, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai – 400 021
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Bhupendra Shah, A.R.  
Revenue by : Shri Amol B. Kirtane, D.R.

Date of Hearing : 10.03.2022  
Date of Pronouncement : 22.03.2022

**O R D E R**

**Per Kuldip Singh, Judicial Member:**

For the sake of brevity aforesaid appeals bearing common question of law and facts are being disposed of by way of composite order.

2. The appellant Shri Shailesh J. Jogani (hereinafter referred to as 'the assessee') by filing the present appeals, sought to set aside the impugned order dated 12.08.2019 passed by Commissioner of Income Tax (Appeals)-53, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2010-11 on identically worded grounds inter alia that :-

***“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in treating unsecured loans of Rs.1,50,75,000 and Rs.1,50,32,268/- in ITA No.6558/M/2019 & ITA No.6559/M/2019 respectively as not genuine without considering the evidences produced by the appellant to prove genuineness of lenders.***

***2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding in disallowance of interest on unsecured loan of Rs.8,97,065 & Rs.40,335/- in ITA No.6558/M/2019 & ITA No.6559/M/2019 respectively without appreciating the fact that the loan taken is genuine.***

***3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ignored all the evidences and documents produced by the appellant to prove the genuineness and credit worthiness of the lender.***

***The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”***

3. Briefly stated facts necessary for adjudication of the controversy at hand are : on the basis of search and seizure operation conducted on 05.05.2014 by the investigation wing in case of assessee, assessment proceedings under section 153A were initiated by way of issuance of notice under section 143(2) along

with notice under section 142(1) read with section 129 of the Income Tax Act (for short 'the Act') on even date 10.08.2016 in both the cases. During the course of search at the residential premises of Shri Shailesh Jogani it was noticed that the assessee had taken unsecured loans through various suspicious concerns qua which details were called from the assessee. Disagreeing with the details filed by the assessee and on the basis of statement of Shri Shailesh Jogani recorded under section 132(4) of the Act during search proceedings the Assessing Officer (AO) proceeded to hold that the assessee has taken bogus unsecured loan entries, amounting to Rs.1,50,75,000/- from Kriya Impex Pvt. Ltd. and Karnawat Impex Pvt. Ltd. being run and managed by Rajendra Jain Group, Shri Sanjay Chaudhary and Dharmichand Jain and thereby made addition of Rs.150,32,268/- and Rs.1,50,75,000/- in ITA No.6559/M/2019 in M/s. S. Jogani Exports Pvt. Ltd. and in ITA No.6558/M/2019 in Shri Shailesh Jogani respectively under section 68 of the Act. The AO also made disallowance of interest on the unsecured loan of Rs.40,335/- and Rs.8,97,065/- on aforesaid bogus loans qua the year under assessment and thereby framed the assessment at Rs.4,84,01,630/- & Rs.8,97,065/- in case of M/s. S. Jogani Exports Pvt. Ltd. & M/s. S. Jogani Exports Pvt. Ltd.

respectively under section 153A read with section 143(3) of the Act.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing the appeal who has upheld the addition made by the AO. Feeling aggrieved with the impugned orders passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

6. At the very outset it is brought to our notice by the Ld. A.R. for the assessee that the entire addition has been made on the basis of statements of Shri Rajendra Jain, Shri Sanjay Chaudhary and Dharmichand Jain as well as statement of assessee recorded under section 132(4) of the Act, however, the assessee had retracted his statement during assessment proceedings which has not been considered by the AO and brought on record the letter supported with an affidavit/letter dated 17.11.2016 addressed to the AO containing the factum of retraction of his earlier statements

recorded during search proceedings under section 132(4) of the Act.

7. When we peruse the impugned order passed by the Ld. CIT(A), particularly para 4.2 it has also come on record that the addition has been sustained by the Ld. CIT(A) on the basis of statement of the assessee recorded during the search proceedings under section 132(4) of the Act as well as by considering the statement of Shri Rajendra Jain and Shri Dharmchand Jain. Even the assessment order shows that the entire addition has been made on the basis of statement of assessee as well as statement of Shri Rajendra Jain and Shri Dharmchand Jain but “retracted statement” of the assessee has not been taken into consideration. This factual position has not been controverted by the Ld. D.R. for the Revenue.

8. In these circumstances, we are of the considered view that since retraction statement made by the assessee during the search/assessment proceedings has not been taken into consideration, to meet with ends of justice, the entire issue requires to be considered and decided afresh by the AO to decide the controversy once for all. Moreover, co-ordinate Bench of the Tribunal in assessee’s own connected case based upon the same search and seizure operation, identical issue has already been

remitted back to the AO vide order dated 21.03.2022 passed in ITA No.7354/M/2016 for A.Y. 2008-09.

9. Resultantly, impugned order passed by the Ld. CIT(A) is set aside without expressing any opinion on merit and file is remitted back to the AO to decide afresh after taking into consideration the retraction statement made by the assessee after providing opportunity of being heard to the assessee. Both the appeals of the assessee are allowed for statistical purposes.

**Order pronounced in the open court on 22.03.2022.**

**Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 22.03.2022.

\* 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.