

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND  
SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)**

**ITA No. 6477/MUM/2018  
Assessment Year: 2013-14**

ACIT-33(1),  
Room No. 711, C-12, Pratyakshkar  
Bhavan, B.K.C., Bandra,  
Mumbai-400051.

**Vs.** M//s CNP Cotton,  
B/50, Cotton Exchange, Near  
Cotton Green Railway Station,  
Cotton Green (East),  
Mumbai-400033.

**Appellant**

**PAN No. AAIFC 5376 P  
Respondent**

Revenue by : Mr. Sunil A. Umap, CIT-DR  
Assessee by : Mr. Ankur Shah, AR

Date of Hearing : 31/01/2022  
Date of pronouncement : 28/02/2022

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal has been preferred by the Revenue against order dated 02/07/2018 passed by the Ld. Commissioner of Income Tax(Appeals)-45, Mumbai [in short the Ld. CIT(A)] for assessment year 2013-14 raising following grounds:

- 1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of unsecured loan of ₹12,00,00,000/- without appreciating the fact that the identity, genuineness and creditworthiness of unsecured loans parties, from*

*whom the assessee has acquired loan of ₹12,00,00,000/- are not proved.*

2. *The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.*

2. Briefly stated facts of the case are that the assessee is a partnership firm, which was incorporated *vide* partnership deed dated 22/01/2013. The firm was constituted by two partners namely Shri Chandra Kant N Patel and his wife Bhavana Chandrakant Patel. The firm was engaged in business of dealing in raw cotton and other agro commodities. The assessee filed its return of income for the assessment year under consideration on 30/09/2013 declaring total income of ₹ 7,94, 550/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income Tax Act, 1961 (in short the 'Act') were issued and complied with. The assessment under section 143(3) of the Act has been completed on 31/03/2016, wherein the Assessing Officer made addition of ₹12 crores, treating the unsecured loan received as unexplained cash credit in terms of section 68 of the Act. Aggrieved, the assessee filed appeal before the Ld. CIT(A), who after considering additional evidences submitted by the assessee, deleted the addition and allowed the appeal in favour of the assessee. Aggrieved with the finding of the Ld. CIT(A), the Revenue is in appeal before the Tribunal by way of raising grounds, as reproduced above.

3. Before us, the parties appeared through videoconferencing facility. The Ld. counsel of the assessee filed a paper book containing pages 1 to 91.

4. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that during the year under

consideration the assessee received certain unsecured loans, which at the end of the year remained outstanding amounting to ₹12 crores. A list of said unsecured loans is reproduced as under :

<b>Unsecured Loans Taken:-</b>				
<b>Name of the Party</b>	<b>P.A.N. No.</b>	<b>Address</b>	<b>Amount (in ₹)</b>	<b>Occupation/Relation</b>
Mr. Nayan Mansukhlal Dudia	AULPD 0562 B	Saviaya Faliya Bhuj, District: Kachchh, State Gujarat-37001.	2,00,00,000/-	Farmer
Mr. Mamad Sumar Kumbhar	ALKPK6976G	Sabhrai Mandvi, District : Kachchh, State Gujarat:370450	2,00,00,000/-	Farmer
Mr. Jaykumar Mahesh Thacker	APUPT4640N	Mothala, Mothala Abhdasa, District: Kachchh State Gujarat-370625	2,00,00,000/-	Farmer
Mr. Karshan Sajmji Maheshwari	BSKPM1742C	Dumra, Abhdasa, District-Kachchh, State Gujarat-370655	2,00,00,000/-	Farmer
Ms. Chandrikaben Vashudev Bachani	BHVPB3631F	405, K, Geeta Nagar-2, Verval, 34, Patan, Junagadh, State Gujarat-362268	2,00,00,000/-	Farmer
Mr. Parshotam Vashudev Bachani	ATQPB6676G	Bhoywads, Panjarapor Makan, Veraval Junagadh, State Gujarat:362265.	2,00,00,000/-	Farmer
<b>Total</b>			<b>12,00,00,000/-</b>	

4.1 The observation of the Assessing Officer, regarding those unsecured loans made in assessment are summarized as under:

- (i) the assessee received loans from parties, claimed to farmers.
- (ii) In the handwritten bank statement of the so-called farmers, credit entries of crores of rupees were found immediately prior to debit entries.
- (iii) In the confirmation of accounts of six parties filed by the assessee, signature appearing on the confirmation of the accounts were not matching with the signature of those parties on their PAN cards.
- (iv) Inquiries were carried out from the bankers of the unsecured loan parties i.e. the Kuchh district central cooperative Bank Ltd; bankers of the assessee i.e. Bank of India; and by way of commission issued to Income Tax Officer, Gandhidham.
- (v) The notices issued under section 133(6) of the Act by the Assessing Officer were not complied by the four unsecured loan parties namely Navan

*Mansukhlal Dudia, Mamad Sumar Kumbhar, Jaykumar Mahesh Thacker and Mr Karshan Sahji Maheshwari.*

- (vi) *In respect of the two parties, namely Chandrikaben Vasudev Bachani, and parshotam Vasudev Bachani, the notice under section 133(6) were responded and documents including bank statement, computation of income, balance sheet and profit and loss account were filed. It was observed that extract of 7/12 (land revenue documents showing crops sown on land) filed by those parties were not matching with the 7/12 filed by the assessee in respect of those two parties. It was also observed that Chandrikaben was engaged in Gruh Udhog Work ( household -related work) and not as farmer. Sh Parshotam was also found to be engaged in contract work. The financial capacity of both these persons were not found sufficient to extend loan to the assessee. The signature of the parties appearing on the confirmation of the account and PAN card were also not found matching.*
- (vii) *The 'Kutch district central corporate bank' denied having accounts of Chandrikaben, Parshotam, and Jaykumar Thaker. The signature on the account opening form of sh Karsan Maheshwari, mamad Kumbhar and Nayan Mansukh Dudiya were not found matching with their signature on their confirmation of accounts filed by the assessee. The debit and credit entries of bank accounts were not found matching with the bank statement of those parties supplied by the assessee.*
- (viii) *During enquiry through commission issued to ITO, Gandhidham , it was found that sh Nayan Mansukh Dudiya was an employee having monthly salary of ₹ 15,000 per month. He explained that some person from 'CNP cotton' approached for the loan and he was introduced to the persons of Bhadresh trading Corporation, who deposited rupees 2.00 crore in his account maintained with 'Mandali' cooperative, in which he was member. He submitted that he was not agriculturist and not holding any agriculture land. Similar observation were given in respect of Jaykumar Thacker. Sh mamad*

*Kumbhar was found to be in jail and Sh karsan Maheshwari could not be located.*

4.2 In view of the above observations, the Ld. Assessing Officer recorded statement of the partners of the assessee-firm and also Sh. Bhadresh Mehta, who was instrumental in routing the money through the accounts of the unsecured loan parties. The Ld. Assessing Officer after considering all the facts emerged during inquiries, issued a final show cause notice to the assessee. In response to this final show cause notice, the assessee provided entire flow of money from 'Ratnakar bank' to accounts of 'Bhadresh Trading Corporation Ltd.' (BTCL) and thereafter to the unsecured loan parties and then finally to the assessee and then again to BTCL. The relevant replies by the assessee are reproduced for ready reference:

**"Reply dated 21/03/2016 in para seven of the assessment order :**

*"Detailed note of source and utilization of loan proceeds in chronological order:*

- i. Sir. initially M/S Ratnakar Bank Ltd had disbursed a sum of R\$. 30 crores to a set of farmers (herein termed as set "A") (Refer Annexure 1) on a corporate guarantee given by one M/s Bharesh Trading Corporation Ltd. (BTCL). Copy of arrangement letter from M/S Ratnakar Bank Ltd. marked Annexure 2 is attached herewith.*
  - ii. on receipt of such loan from the bank, the set "A" farmers had advanced the entire amount to a second set of farmers (herein termed as set "B") (Refer Annexure 1).*
  - iii. Subsequently the "B" set of farmers had invested a sum of Rs. 25 crores out of the loan of 30 crores in the shares of BTCL. Copy of Form No. 2 filed by BTCL with ROC marked Annexure 3 is attached here.*
  - iv. M/s BTCL wanted to advance certain money for the procurement of cottonseeds M/S BTEL had followed the following modus operandi:*
- I. Through Mandali Account:**
- a) M/S BTCL had advanced a sum of Rs. 11 crores and 26 crores to it set of farmers (herein termed as set "C") (Refer Annexure 4) through a credit co-operative society namely "Abdasa Taluka Bachat and Dhirana Seva Sahakari Mandali Ltd."(herein after termed as "Mandali") who hold an account in the "Kutch District Central Co-operative Bank" (KDCC) on 19.03.2013 and 20.03.2013. Bank*

*statement of the Mandli with KDCC bank marked as Annexure 5 is attached herewith. Bank Statement of BTCL marked Annexure 6 is attached herewith. Also copy of request letter from BTCL instructing the Mandali to transfer the funds in favour of various members marked Annexure 7 is attached herewith.*

- b) The said Mandali is credit co-operative society registered with appropriate authorities and all the aforementioned farmers are its registered members. Copy of registration certificate of Mandali marked Annexure 8 is attached herewith.*
- c) As soon as the Mandali had received funds from BTCL, it had credited the respective member's account in its books of accounts. Copies of Member's Account in the books of mandali marked Annexure 9 is attached herewith.*
- d) The farmers on receipt of such credit entries of Rs. 37 crores in their account, had further requested the Mandali to transfer the funds amounting to Rs.6.74 crores lo another set of farmers (herein termed as set "D") (Refer Annexure 8 ). Copies of request letter from members to transfer funds to another members marked Annexure 10 is attached herewith. Copies of Member's Account in the books of Mandali highlighting the aforesaid transaction marked Annexure 11 is attached herewith.*
- e) The farmers on receipt of such credit entries amounting to R\$. 6.74 crores in their account had further requested the Mandali to transfer the said funds the assessee firm, Copies or request letters (rom members to transfer funds to assessee firm marked Annexure 12 is attached herewith. Copies of Member's Account in the books of Mandali highlighting the aforesaid transaction marked Annexure Thus attached herewith.*
- f) The Mandali had then requested KDCC bank to transfer funds to the assessee firm's bank account However since the said KDCC bank is a co-operative bank and cannot transfers its funds through RTGS as it does not have requisite core banking facilities, it had transferred the funds to is own account with State Bank Of India and from that account to assessee's account.*

## **II. Through Jethalal's Account**

- a) Also on 21.03.2013. 3 sum of Rs. 25.99 crores was advanced by BTCL to one Mr. Jethalal U. Thakkar for trade advances. The said advance was received in his bank account with KDCC. Copy of bank statement of Mr. Thakkar marked Annexure 13 is attached herewith. Bank statement of BTCL marked annexure 6 is attached herewith.*
- b) On receipt of such advances, Mr. Thakkar had further advanced a sum of R.5.26 crores to a set of farmers (set "D").*
- c) However, the above referred farmers had in turn instructed Mr. Thakkar, that instead of transferring funds to their personal*

*account, the said funds should be transferred to the Assessee's Bank account on their behalf. Copy of request letter instructing Mr. Thakkar to transfer funds to the assessee firm marked Annexure-14 is attached herewith. Copy of bank statements of Mr. Jethalal Thakkar highlighting the payment made marked Annexure 13 is attached herewith.*

***Thus in short ₹12 crores was advanced to the assessee's firm.***

- v. *The assessee firm had inturn advanced the said money to the Directors of BTCL.*
- vi. *Alter receiving the said loan amount from the assessee firm, the Directors of BTCL had further advanced the said money to M/S BTCL. Copy of bank statements of BTCL highlighting such receipt mark Annexure 15 is attached herewith."*

**Reply dated 28 /03/ 2016 in para 9 of the assessment order**

*With reference to our above mentioned client and in continuation with previous submission, we the authorized representative (AR) would like to submit the following particulars:*

*During the course of assessment proceedings your good self had raised a query regarding why the loans amounting to Rs12 cores should not be taxed us be as unexplained cash credit since the assessee firm failed to prove the entity credit worthiness of the creditors and genuineness of the transaction. In this regard we would first like to submit a detailed note on source and utilization of loan proceeds in chronological order:*

- (i) *Sir, initially a group of 119 farmers (herein termed as set "A") (Refer Annexure 1) approached M/s Ratnakar Bank Ltd. for agricultural loan amounting to ₹30 crores for cultivating mango plantations on their lands. All these farmers held various lands on which they were cultivating cotton seeds as well as mango trees. These farmers were introduced by M/s Bhadresh Trading Corporation Ltd. (BTCL) to Ratnakar Bank as they were associated with BTCL and BTCL regularly purchases cotton seeds from these farmers through its associated parties.*

*As soon as the loan application was received by M/s Ratnakar Bank, they had started their due process of identifying and assessing the credit worthiness of all 119 applicants. The Bank had verified their identity proofs, address proofs and details of land held by them. For your reference copy of list of details verified by the Bank for filing their KYC forms marked Annexure 2 is attached herewith. After finishing their due process, M/S Ratnakar Bank had agreed to disburse the said loan by mortgaging the agricultural lands of all the farmers as primary security. These primary security was backed by a collateral security in the form of corporate quarantee to be*

*given by M/S BTCL along with a "Term Deposit" of Rs. 50 Lakhs to the Ratnakar Bank. Copy of loan arrangement letter along with names of all M/s Ratnakar Bank had opened loan accounts of all the 119 farmers and disturbed the loan amount in 5 branches to the account of Abdasa Taluka Bachat and Dhirana Seva Sahakari Mandali Ltd. (Herein after termed as "Mandali") who has its account with "Kutch District Central Co-operative Bank (KDCC). Copies of Bank Loan statements of each and every 119 farmers marked Annexure 4 is attached herewith. Copy of Bank statement of Mandali highlighting the receipt of such loan amount marked Annexure 5 is attached herewith.*

*At this outset, we would like to state that the Mandali is a credit co-operative society which is duly registered under The Gujarat Co-operative Societies Act, 1962. This Mandal Carries Out banking transactions on behalf of its members who are all farmers. The said mandali also gives credit facility to its members. Copy of bye-laws of the Mandali along with a letter from the Mandali stating that it undertakes banking transactions on behalf of the members as well as registration certificate marked Annexure 6 is attached herewith. The Mandali operates in the following way:*

- a. The Mandali has its own account with a co-operative bank (in the instant case with KDCC Bank)*
  - b. Whenever the mandali receives any money on behalf of its member, it is usually accompanied by an instruction letter from the payee to credit the said amount in favour of the recipient member.*
  - c. The Mandali will then credit the respective members account.*
  - d. d) Thereafter any members who wants to transfer the said amount to any other member of the Mandali can do so by using an instrument like an instruction letter directing the Mandali to credit the other members account.*
  - e. On receipt of such instruction letter from the member, the Mandali debits the account of such payer member and credits the payee member.*
  - f. In case an amount has to be transferred to a non-member, then in that case, the payer member will instruct the mandali to transfer an amount to a non- member along with its bank account details.*
  - g. On receipt of such instructions, the Mandali will issue a cheque from its Own bank account with KDCC bank or will instruct KDCC bank to transfer funds through RTGS.*
  - h. Since the said KDCC bank is a co-operative bank and does not participate in clearing , it cannot transfers its funds through RTGS. Therefore, KDCC will transfer the funds to its own account with State Bank of India and from that account to any other account.*
- (ii) On receipt of such loan from the Ratnakar bank, the Mandali had credited the individual accounts of set "A" farmers held with the*



Mandali. Copy of the Members account marked Annexure 7 is attached herewith. Thereafter, the set "A" farmers had instructed the Mandali to transfer the funds received to a second set of farmers (herein termed as set "B") (Refer Annexure 1). Copy of said instruction letter marked as Annexure 8

- (iii) On receipt of such instruction, the Mandali had debited the accounts of "A" set of farmers and in turn credited the accounts of "B" set of Farmers. Copy of the Members account for "B" set marked Annexure 9 is attached herewith.
- (iv) Subsequently the "B" set of farmers had further instructed the Mandali to transfer a sum of Rs. 27 crores to BTCL as share application money. Copy of said instruction marked Annexure 10 is attached herewith. On receipt of such instruction, the Mandali had transferred the said amount through its account with KDCC bank to BTCL. Copy of Bank statement of Mandali highlighting such payments marked Annexure 5 is attached herewith.
- (v) On receipt of such amount by BTCL, BTCL had allotted shares to the "B" set of farmers. Copy of Form No. 2 filed by BTCL with ROC marked Annexure 11 is attached here.
- (vi) M/s BTCL wanted to advance certain money for the procurement of cotton seeds M/s BTCL had followed the following modus operandi:

### **III. Through Mandali Account:**

g) M/s BTCL had advanced a sum of Rs. 11 crores and 26 crores to a set of farmers (herein termed as set "C") (Refer Annexure 12) through "Mandali" on 19.03.2013 and 20.03.2013. Bank statement of the Mandi with KDCC bank marked as Annexure 5 is attached herewith. Bank Statement of BTCL marked Annexure 13 is attached herewith. Also copy of request letter from TCL instructing the Mandali to transfer the funds in favour of various members marked Annexure 14 is attached herewith.

h) As soon as the Mandali had received funds from BTCL, it had credited the respective member's account in its books of accounts. Copies of Member's Account in the books of mandali marked Annexure 15 is attached herewith.

i) The farmers on receipt of such credit entries of Rs. 37 crores in their account, had further requested the Mandali to transfer the funds amounting to Rs. 6.74 crores to another set of farmers (herein termed as set "D") (Refer Annexure 12). Copies of request letters from members to transfer funds to another members marked Annexure 16 is attached herewith. Copies of Member's Account in the books of Mandali highlighting the aforesaid transaction marked Annexure 17 is attached herewith.

j) The farmers on receipt of such credit entries amounting to Rs. 6.74 crores in their account had further requested the Mandali to transfer the said funds to the assessee firm. Copies of request letters from members to

*transfer funds to assessee firm marked Annexure 18 is attached herewith. Copies of Member's Account in the books of Mandali highlighting the aforesaid transaction marked Annexure 17 is attached herewith.*

*k) The Mandali had then requested KDCC bank to transfer funds to the assessee firm's bank account. However since the said KDCC bank is a co-operative bank and cannot transfers its funds through RTGS as it does not have requisite core banking facilities, it had transferred the funds to its own account with State Bank of India and from that account to assessee's account.*

#### **IV. Through Jethalal's Accounti**

*d) Also on 21.03.2013, a sum of Rs. 25,99 crores was advanced by BTCL to one Mr. Jethalal U. Thakkar Tor trade advances The said advance was received in his bank account with KDCC. Copy of bank statement of Mr Thakkar marked Annexure 19 is attached herewith, Bank Statement of BTCL marked Annexure 13 is attached herewith*

*e) On receipt of such advances. Mr. Thakkar had further advanced a sum of Rs. 5.26 crores to a set of farmers (set "D")*

*f) However, the above referred farmers had in turn instructed Mr. Thakkar, that instead of transients funds to their personal account. the said funds should be transferred to the Assessee's Bank Account on their behalf. Copy of request letter instructino Mr. Thakkar to transfer funds to the assessee firm marked Annexure20 is attached herewith. Copy of Bank Statements of Mr. Jethalal Thakkar highlighting the payment made marked Annexure 19 is attached herewith Thus in short Rs. 12 crores was advanced to the assessee's firm.*

*vii) The assessee firm had inturn advanced the said money to the Directors of BTCL*

*viii) Alter receiving the said loan amount from the assessee firm, the Directors of BTCL had further advanced the said money to M/S BTCL. Copy of bank statements of BEL highlighting such receipt mark Annexure 21 is attached herewith.*

*Thus from the above mentioned facts it is crystal clear regarding the source of the unsecured loans and dis subsequent utilization of the said funds.*

#### **Justification for discrepancy regarding the bank statements submitted in due course of assessment proceedings:**

*Sir, during the course of assessment procedinas, the assessee firm had submitted copies or bank statements of the loan creditors according to you is not genuine as the bank had stated that some of the loan creditors did not held any bank account with them and even if they had an account with*

*the bank, the aforementioned loan transaction was not reflected in the bank statement.*

*In this regard we would like to state that, the assessee firm had submitted the hand written account of the loan creditors with the Mandali and not with KDCC. The Mandali's account was with KDCC and was therefore using KDCC's cover for its member. However, the transactions appearing in those accounts submitted before you are correct as the same are reflected in the member's account with the Mandali. This fact can be proved by comparing the said bank statement submitted before you and with the member's statement of Abdasa Mandali. The only mistake of the assessee firm was that it had submitted those statement with the cover of the KDCC bank and not of that of the Mandali and that mistake is deeply regretted.*

**Justification regarding denial of one of the loan creditor Mrs Chandrika Bachani and Mr. Purshottam Bachani of advancing any loan to the assessee firm:**

*In this regard we would like to state that, the account of Mr Purshottam Bachani and Mrs. Chandrika Bachant are being handled by his, brother and son Mr. Jagdish Bachan respectively and the entire transaction of receipt and payment of loan took place before 3 years and that too in a course of 1-2 days. So when the aforementioned parties were confronted with the same, they could not recall the same and had denied of doing such transactions with the assessee-firm. However, the fact remains that they had undertaken such transactions, which can be corroborated by their account statement with the Mandali and the instruction letter issued by them to the Mandali for transferring such funds to the assessee firm. Hence her denial was due to ignorance of facts and hence no adverse view may please be taken.*

*From the above facts and justification it is crystal clear that the loan transactions were genuine and should not be taxed as unexplained cash credit."*

4.3 The Assessing Officer rejected the contention of the assessee explaining the network and flow of money, in absence of supporting evidences and made addition of ₹12 crores as unexplained cash credit under section 68 of the Act.

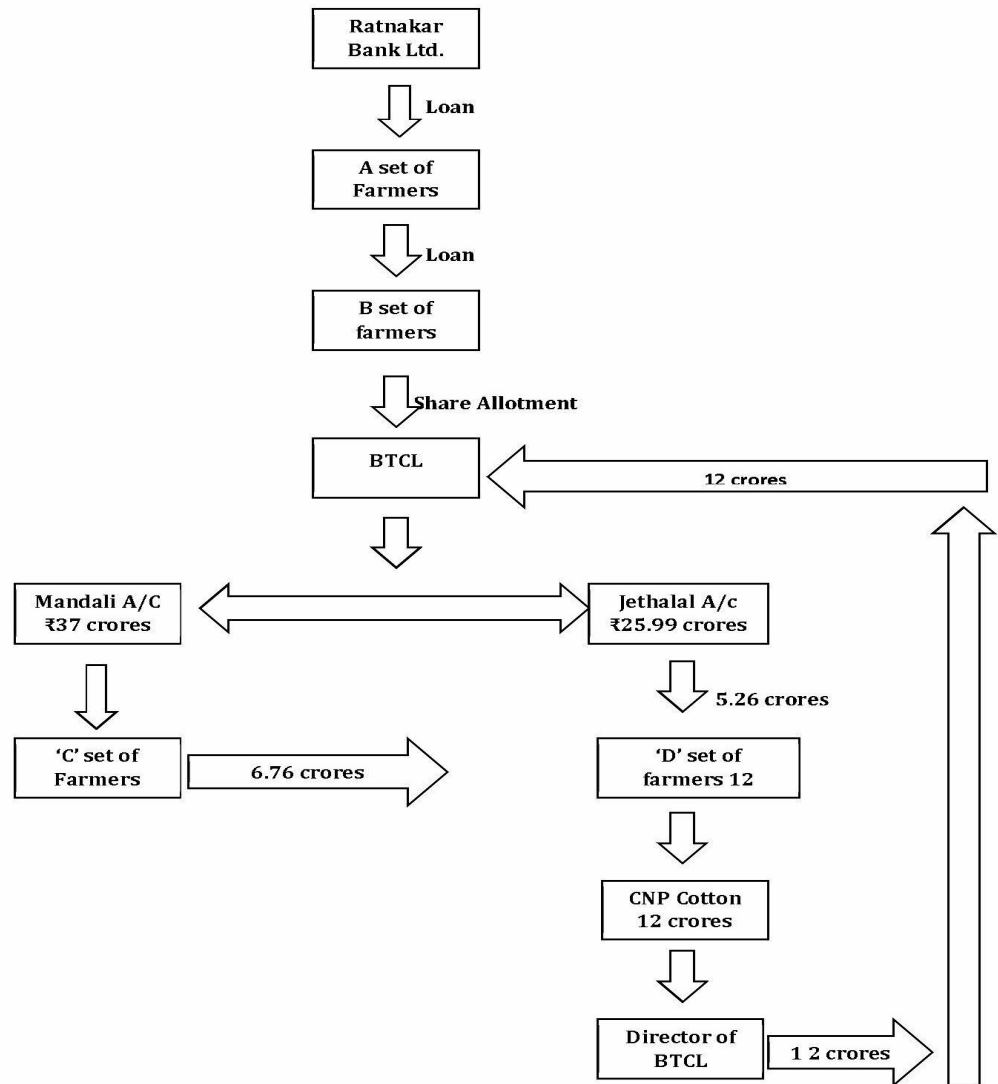
5. Before the Ld. CIT(A), the assessee file additional evidences, which have been reproduced in para 4.2 of Ld. CIT(A). The assessing officer objected for the admission of those additional evidences. The Ld. CIT(A), however rejected the objection of the Assessing Officer and admitted the additional evidence. After

considering the additional evidences, the Ld. CIT(A) deleted the addition of observing as under:

*"4.7 Hon'ble Supreme Court held that the expression "assessee offers no explanation means where the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. Emphasis is on the words proper, reasonable and acceptable". AO with a view to make addition may become biased or may form a preconceived opinion. To overcome this bias Hon'ble Supreme Court has put a rider condition on the AO. The opinion of the AO for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of the material and other attending circumstances available on record. The opinion of the AO is required to be formed objectively with reference to the material available on record and application of mind is necessary for forming the opinion. In this case after carefully going through the assessment order, I am of the considered opinion that, after reproducing the statements recorded from the partner of the firm Sh. Chandrakant N. Patel twice and recording the statement of Sh. Bhadrash Vasantrai Mehta, the Director of the company Bhadrash Trading Corporation Ltd (hereafter referred to as BTCL) which is the source of funds and also the ultimate destination of funds and after reproducing the explanations of the assessee firm dt.21.03.2016 and 28.03.2016, the AO has not taken a decision based on proper appreciation of material and other attending circumstances available on record. The opinion of the AO was not formed objectively with reference to material available on record, as the Hon'ble Supreme Court wanted the AO to take/ He simply rejected all the material before him, which he extracted in the order and quietly gone back to basics of application 68 to say that the onus was not discharged by proving genuineness of transaction. If this was the only conclusion to be drawn by the AO, the effort of reproducing the step by step movement of funds given by the assessee from 'Ratnakar Bank Ltd.(hereafter referred to as RBL) to the assessee firm through the groups of farmers, From assessee to the directors of BTCL and from directors back to the BTCL as unsecured loans, supporting evidence in the form of bank statements, instructions of farmers to the bank to transfer the funds etc. filed is not required to be reproduced.*

*4.8 AO further held that the investigation done by the department led to doubt regarding the genuineness of the transactions. This doubt regarding the transactions occurred in the beginning of enquiry when the hand written bank statements of the parties were filed and apparently the signatures were at variance as recorded by the AO in the order. However, after this doubt arose, the AO caused enquiries by giving commissions, recorded statements of Sh. Chandrakant Patel, the partner of the company and based on his statement, the statement of Bhadrash Mehta director of BTCL was recorded u/s 131 of IT. Act. After the Bhadrash Mehta explained the purpose of such layered transactions and the modus operandi of all the transactions by way of transfer of funds from*

*the bank accounts of groups of farmers, the AO issued a show cause notice to the assessee on 10.02.2016. Assessee explained the entire steps of routing of money which was taken as loan from Ratnakar Bank Ltd by some farmers, who invested in BTCL and the same was given to Mandali and consequential flow of money is as under in the form of a flow chart:*



4.10 The explanation filed in reply to show-cause notice appears to be confession statement, where the assessee has explained entire transaction going source to source. The ultimate source of funds is either the loan given by the Ratnakar Bank Ltd. or the share capital raised by BTCL. For every step/ layer, the assessee has provided a proof in the form of list of farmers, their bank statements, Mandali A/c, or instructions to Mandali for transfer of funds to members. It is not the case of the AO that in such layering for transfer of funds from one person to the other, one bank to the other any cash has been deposited in any account. The purpose of section 68 was to control the black money. Black money, in some cases deposited in cash into the bank accounts and introduced through some layers into the system as loan or share capital by cheque payment. In this context, in the case of Orissa Corporation Hon'ble Supreme Court held that

mere fact of receiving loan/credit through banking channel is not sacrosanct, to leave a scope to treat the money so introduced through layering wherein somewhere unaccounted cash is deposited. Introduction of cash is not an issue in the present case. To overcome the menace of black money in the form of bogus share capital or bogus unsecured loans, the 1.T. Act has been amended and the assessee now has to prove the 'source of source' of cash credit entry appearing in his books of accounts. This amendment is applicable from AY 2013-14. In this case, the assessee has explained the source of funds up to 5 levels and the ultimate source of money was RBL. In this case the identity of the farmers is not in doubt as necessary documents, bank accounts have been filed on record. All transactions starting from RBL bank till the funds reached the assessee are through the bank accounts transferred by cheque or electronic transfer. Source of source is brought on record up to five levels by the assessee. As already mentioned it is not the case of the A that unaccounted cash of the assessee was introduced as unsecured loans in the names of farmers. It is not the argument of the assessee in the submissions, that the persons who advanced loans were actually the owners of the money. It was the accounted money of the BTCL routed through the accounts of Mandali, farmers, the assessee and the directors in some series of steps back to the as investment by the directors. Ultimately the money belongs to BTCL which was taken as loan by farmers from RBL and introduced as share capital by fresh issue of shares (Rs.65 cr). This fact is also accepted by the AO in paras 10.3 de 10.4 as under:

"10.3 A close look at the alleged network which the assessee firm claim to have used to channelize the loan funds originating from Ratnakar Bank Ltd. to BICL, through various channels, clearly portrays a systematic misuse of Bank funds reserved for agricultural activities only.

10.4 As per the details of loan of Rs.30 Crores given by the Ratnakar Bank Ltd, the funds were disbursed as agricultural loans to 119 persons/farmers for the purpose of Mango Cultivation and related investment activities."

4.11 In view of the above facts admitted by the AO himself, based on verification of documents, if at all there is case against the assessee, the farmers or the BTCL, that may be for violation of Banking Rules or misuse of Bank funds reserved for agricultural activities given to farmers for the purpose of mango cultivation or related activities as mentioned by the AO, but there is no case for addition of the amount of loan appearing in the books of the assessee, as the assessee explained the immediate source of loan as 6 farmers viz Nayan M. Dudia, Mamad Sumar Kumbhar, Jaykumar M Thacker, Karshan S. Maheswari, Chandrika Vasudev Bachchani and Parshotam Vasudev Bachchani and the source for these farmers is also explained based on the records/ documents that it is another set of persons, who transferred the funds. Further, source for these farmers is also explained and so on. Therefore, the addition, in my considered opinion is not warranted.

4.12 During the appellate proceedings, the assessee filed application for admission of additional evidence on 14.09.2017 as mentioned above. The A caused enquiries and reported as under:

*"The additional evidence produced before the Ld..CIT(A), Mumbai was declaration of key person from whom assessee had taken loan. Declaration was in Gujarati, so certified translation of that declaration was asked from assessee.*

*On perusal of that declaration it was found that all the key persons had altered their earlier statements which were taken at the time of assessment. Keeping in mind this contradiction letter was sent to that key person named –*

1. Krishna Shamit Maheshwari
2. jay Mahesh Thakkar
3. Purusottam Vasudev Bachani
4. Nayan Mansukhlal Dudiya
5. Chandrika Vasudev Bachani
6. Kumbhar Mumad Sumar

*Response from the abovementioned persons received in this office. On perusal of responses received, it is found that they had reiterated their declaration which was furnished before the Ld. CIT(A), Mumbai."*

5.1 On Perusal of the above finding of the Ld. CIT(A), we find that Ld. CIT(A) has accepted the additional evidences. However after accepting those additional evidences, the Ld. CIT(A) has failed to provide reasonable opportunity to the Assessing Officer for examination of those evidences or

cross-examination of witnesses of the assessee as required under rule 46A(3) of the Income Tax Rules, 1962 (in sort the rules).

The evidences in support of entire chain of flow of money from “Ratnakar Bank” to BTCL and then to the assessee and again back to BTCL, were not forwarded to the Assessing Officer as accepted by the Ld. counsel of the assessee before us. A copy of such evidences justifying flow of money have not been filed before us also despite specific request to the Ld. counsel of the assessee. No justifiable explanation has been provided by the assessee for flow of money described in flow chart before us. For ready reference the Rule 46A(3) of Rules is reproduced as under:

**“Rule 46A(3) of income tax rules.**

*The [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the [Assessing Officer] has been allowed a reasonable opportunity*

*(a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or*

*(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.”*

5.2 We may like to point out that Hon’ble Delhi High Court in the case of **Manish Build Well Private Limited reported in 245 CTR 397 (Delhi)**, restored the issue back to the Ld. CIT(A) for complying the provisions of rule 46A(3) of Rules. The relevant finding of the Hon’ble High Court is reproduced as under:

*“24. In the present case, the CIT (A) has observed that the additional evidence should be admitted because the assessee was prevented by adducing them before the assessing officer. This observation takes care of clause (c) of sub-rule (1) of Rule 46A. The observation of the CIT (A) also takes care of sub-rule (2) under which he is required to record his reasons for admitting the additional evidence. Thus, the requirement of sub-rules (1) and (2) of Rule 46A have been complied with. However, sub-rule (3) which interdicts the CIT (A) from taking into account any evidence produced for the first time*



*before him unless the Assessing Officer has had a reasonable opportunity of examining the evidence and rebut the same, has not been complied with. There is nothing in the order of the CIT (A) to show that the Assessing Officer was confronted with the confirmation letters received by the assessee from the customers who paid the amounts by cheques and asked for comments. Thus, the end result has been that additional evidence was admitted and accepted as genuine without the Assessing Officer furnishing his comments and without verification. Since this is an indispensable requirement, we are of the view that the Tribunal ought to have restored the matter to the CIT (A) with the direction to him to comply with sub-rule (3) of Rule 46A. In our opinion and with respect, the error committed by the Tribunal is that it proceeded to mix up the powers of the CIT (A) under sub-section (4) of Section 250 with the powers vested in him under Rule 46A. The Tribunal seems to have overlooked sub-rule(4) of Rule 46A which itself takes note of the distinction between the powers conferred by the CIT (A) under the statute while disposing of the assessee's appeal and the powers conferred upon him under Rule 46A. The Tribunal erred in its interpretation of the provisions of Rule 46A vis-à-vis Section 250(4). Its view that since in any case the CIT (A), by virtue of his conterminous powers over the assessment order, was empowered to call for any document or make any further enquiry as he thinks fit, there was no violation of Rule 46A is erroneous. The Tribunal appears to have not appreciated the distinction between the two provisions. If the view of the Tribunal is accepted, it would make Rule 46A otiose and it would open up the possibility of the assessee's contending that any additional evidence sought to be introduced by them before the CIT (A) cannot be subjected to the conditions prescribed in Rule 46A because in any case the CIT (A) is vested with conterminous powers over the assessment orders or powers of independent enquiry under sub-section (4) of section 250. That is a consequence which cannot at all be countenanced."*

5.3 The Hon'ble Delhi High Court in the case of **Jansampark Advertising and Marketing Private Limited reported in 375 ITR 373 (Delhi)** has observed that CIT(A) is also required to carry out inquiries whenever required and not accept the submission of the assessee as such. The relevant finding of Hon'ble Delhi High Court (supra) is reproduced as under:

*"35. Assessment proceedings under the Income Tax Act are not a game of hide and seek. The inquiry in the wake of a notice under Section 148 is not an empty formality. It must be effective and with a sense of purpose. There is an elaborate procedure set out which requires scrupulous adherence and followed up on. In the hierarchy of the authorities, the AO is placed at the bottom rung. The two layers of appeals, before the matter engages the appellate jurisdiction of this court, are authorities vested with the jurisdiction, power and obligation to reach appropriate findings on facts. Noticeably, it is only the appeal to the High Court, under Section 260-A, which is restricted to consideration of "substantial question of law", if any arising. As would be seen from the*

*discussion that follows, the obligation to make proper inquiry and reach finding on facts does not end with the AO. This obligation moves upwards to CIT (Appeals), and also ITAT, should it come to their notice that there has been default in such respect on the part of the AO. In such event, it is they who are duty bound to either themselves properly inquire or cause such inquiry to be completed. If this were not to be done, the power under Section 148 would be rendered prone to abuse.*

*36. The authority to bring to tax unaccounted money by exercising the power given to the AO under Section 68 is of great importance. It is expected that the AO would resort to this provision with all requisite circumspection. Since the provision is generally invoked, as has been done in the case at hand, by recourse to the procedure of notice under Section 148 upon satisfaction under Section 147 that the income (purportedly represented by the unexplained sums found credited in the books of accounts), within the mischief of Section 68, it is inherent that the explanation of the assessee respecting such credit entries would be called for only with circumspection and solely upon some concrete material coming up to support the tentative impression about it being suspect.*

*37. Thus, when the AO sets about seeking explanation for the unaccounted credit entries in the books of accounts of the assessee in terms of Section 68, it is legitimately expected that the exercise would be taken to the logical end, in all fairness taking into account the material submitted by the assessee in support of his assertion that the person making the payment is real, and not non-existent, and that such other person was actually the source of the money forming the subject matter of the transaction as indeed that the transaction is real and genuine, same as it is represented to be. Having embarked upon such exercise, the AO is not expected to short-shrift the inquiry or ignore the material submitted by the assessee.*

*38. The provision of appeal, before the CIT (Appeals) and then before the ITAT, is made more as a check on the abuse of power and authority by the AO. Whilst it is true that it is the obligation of the AO to conduct proper scrutiny of the material, given the fact that the two appellate authorities above are also forums for fact-finding, in the event of AO failing to discharge his functions properly, the obligation to conduct proper inquiry on facts would naturally shift to the door of the said appellate authority. For such purposes, we only need to point out one step in the procedure in appeal as prescribed in Section 250 of the Income Tax Act wherein, besides it being obligatory for the right of hearing to be afforded not only to the assessee but also the AO, the first appellate authority is given the liberty to make, or cause to be made, "further inquiry", in terms of sub-section (4) which reads as under:-*

*—The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).||*

*39. The further inquiry envisaged under Section 250(4) quoted above is generally by calling what is known as "remand report". The purpose of this enabling clause is essentially to ensure that the matter of assessment reaches finality with all the requisite facts found. The assessment proceedings re- opened on the basis of preliminary*

*satisfaction that some part of the income has escaped assessment, particularly when some unexplained credit entries have come to the notice (as in Section 68), cannot conclude, save and except by reaching satisfaction on the touchstone of the three tests mentioned earlier; viz. the identity of the third party making the payment, its creditworthiness and genuineness of the transaction. Whilst it is true that the assessee cannot be called upon to adduce conclusive proof on all these three questions, it is nonetheless legitimate expectation of the process that he would bring in some proof so as to discharge the initial burden placed on him. Since Section 68 itself declares that the credited sum would have to be included in the income of the assessee in the absence of explanation, or in the event of explanation being not satisfactory, it naturally follows that the material submitted by the assessee with his explanation must itself be wholesome or not untrue. It is only when the explanation and the material offered by the assessee at this stage passes this muster that the initial onus placed on him would shift leaving it to the AO to start inquiring into the affairs of the third party.*

*40. The CIT (Appeals), as also the ITAT, in the case at hand, in our view, unjustifiably criticized the AO for not having confronted the assessee with the facts regarding return of some of the summons under Section 131 or not having given opportunity for the identity of all the share applicants to be properly established. The order sheet entries taken note of in the order of CIT (Appeals) seem to indicate otherwise. The order of CIT (Appeals), which was confirmed by ITAT in the second appeal, does not demonstrate as to on the basis of which material it had been concluded that the genuineness of the transactions had been duly established. There is virtually no discussion in the said orders on such score, except for vague description of the material submitted by the assessee at the appellate stage. Whilst it does appear that the time given to the assessee for proving the identity of the third party was too short, and further that it is probably not always possible for the assessee placed in such situation to be able to enforce the physical attendance of such third party (who, in the case of share applicants vis-à-vis a company, would be individuals at large and may not be even in direct or personal contact), the curtains on such exercise at verification may not be drawn and adverse inferences reached only on the basis of returning undelivered of the summonses under Section 131. Conversely, with doubts as to the genuineness of some of the parties persisting on account of non-*

*delivery of the processes, the initial burden on the assessee to adduce proof of identity cannot be treated as discharged.*

*41. We are inclined to agree with the CIT (Appeals), and consequently with ITAT, to the extent of their conclusion that the assessee herein had come up with some proof of identity of some of the entries in question. But, from this inference, or from the fact that the transactions were through banking channels, it does not necessarily follow that satisfaction as to the creditworthiness of the parties or the genuineness of the transactions in question would also have been established.*

*42. The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT (Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and*

*deleting the additions made. It was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried out, particularly in the face of the allegations of the Revenue that the account statements reveal a uniform pattern of cash deposits of equal amounts in the respective accounts preceding the transactions in question. This necessitated a detailed scrutiny of the material submitted by the assessee in response to the notice under Section 148 issued by the AO, as also the material submitted at the stage of appeals, if deemed proper by way of making or causing to be made a "further inquiry" in exercise of the power under Section 250(4). This approach not having been adopted, the impugned order of ITAT, and consequently that of CIT (Appeals), cannot be approved or upheld. "*

5.4 In the case before us also the Ld. CIT(A) has adjudicated the issue without opportunity to the Ld. Assessing Officer for examining evidences of chain of fund flow from Ratnakar Bank to the assessee and cross-examination of witness of the assessee. The Ld. CIT(A) himself has also not conducted inquiries for verification of entire chain of flow of money.

At least, we do not find from the impugned order that any such inquiry has bene carried out by the Ld. CIT(A). Thus, respectfully following the finding of the Hon'ble Delhi High Court in the case cited above, we feel it appropriate to set aside the finding of the Ld. CIT(A) on the issue in dispute and restore the matter back to the Ld. CIT(A) for complying provisions of rule 46A(3) of rules and carry out necessary inquiries if so required. It is also needless to mention that both, the assessee and the Assessing Officer shall be afforded adequate opportunity of being heard. The sole ground raised by the Revenue is accordingly allowed for statistical purposes.

6. In the result, the appeal of the Revenue is allowed for statistical purposes.

**Order pronounced in the open Court on 28/02/2022.**

**Sd/-**

**(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER**

**Sd/-**

**(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;

Dated: 28/02/2022

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**