

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

**BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, HON'BLE JUDICIAL MEMBER**

**ITA NO. 7426 & 7427/MUM/2019  
(A.Y: 2012-13 & 2013-14)**

M/s. Atlanta Limited 301, Shree Ambashanti Chambers Opp. Hotel Leela, Andheri (E) Mumbai – 400059  <b>PAN: AAACA8865E</b> PAN	v.	DCTI – Circle – 9(1)(2) Aayakar Bhavan, M.K. Road Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>Shri Vijay Mehta</b>
<b>Department by</b>	<b>:</b>	<b>Shri Mehul Jain</b>
<b>Date of Hearing</b>	<b>:</b>	<b>12.01.2022</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>08.04.2022</b>

**ORDER**

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

**1.** These appeals are filed by the assessee against different orders of the Learned Commissioner of Income Tax (Appeals)-16, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 30.09.2019 for the A.Ys. 2012-13 and 2013-14.

2. Since the issues raised in both the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeal in ITA.No. 7426/MUM/2019 for Assessment Year 2012-13 as a lead case.

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

**1. Reopening of Assessment u/s. 147**

a) *On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the reopening beyond a period of four years from the end of the relevant assessment year of original assessment that was passed u/s. 143(3) u/s. 147 of the Act that was passed after verifying the loans and purchases. In the absence of failure on part of the appellant to disclose fully or truly all material facts necessary for its assessment, the reopening of assessment is bad in law and needs to be quashed.*

b) *The learned CIT(A) erred in confirming the reopening of assessment u/s. 147 of the Act which was reopened merely on the basis of the information received from the Investigation Wing and without independent application of mind by the learned Assessing Officer.*

c) *The learned CIT(A) erred in confirming the reopening of assessment u/s. 147 of the Act without appreciating that the learned Assessing Officer had disposed off the objections in general and without properly meeting the objections raised.*

**d) Addition of Rs. 7250/- (being 12.5% of Rs. 58 000/)  
on account of bogus purchases**

a) *Without prejudice to the above and without admitting, on the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the addition on account of bogus purchases only on the ground that the parties were bogus since they were non-existent. Thus, addition made is bad in law and needs to be deleted.*

b) *On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the addition on account of bogus purchases by holding that the appellant has failed to discharge the*

*onus cast upon it without appreciating the fact that all the documentary evidences in relation to said purchases were submitted by the appellant.*

**e) Addition of Rs. 2,50,00,000/- u/s. 68 on account of unexplained cash credit**

*a) Without prejudice to the above and without admitting, on the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming addition of Rs. 2,00,00,000/- being loan taken from M/s. Jayshree Finvest Pvt. Ltd. ('JFPL') against pledge of promoters' shares and Rs. 50,00,000/- being loan taken from M/s. Consistent Vyapaar Pvt. Ltd. ('CVPL') u/s. 68 of the Act as unexplained cash credit merely on the basis of information received from the Investigation Wing and without due application of mind to the explanation and documentary evidences placed on record.*

*b) On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming addition of Rs. 2,00,00,000/- and Rs. 50,00,000/being loans taken from JFPL and CVPL respectively u/s. 68 as unexplained cash credit only on the basis of statements recorded of directors of the companies admitting of the company's involvement in providing accommodation entries without appreciating that both the companies had responded to notices u/s. 133(6) by submitting the required details which proved beyond doubt the identity and creditworthiness of the lender company as well as genuineness of the loan transactions.*

**f) Disallowance of Rs. 15 38 494/- u/s. 37 on account of interest paid on alleged bogus loans**

*a) Without prejudice to the above and without admitting, on the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming disallowance of interest of Rs. 15,38,494/- u/s. 37 paid on the alleged bogus loans treated as unexplained cash credit merely on the basis of information received from the Investigation Wing and without due application of mind to the explanation and documentary evidences placed on record.*

*b) On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming disallowance of interest of Rs. 15,38,494/- u/s. 37 paid on the alleged bogus loans treated as unexplained cash credit only on the basis of statements recorded of directors of the companies admitting of the company's involvement in providing accommodation entries without appreciating that both the companies had responded to notices u/s. 133(6) by submitting the required details which proved beyond doubt the identity and*

*creditworthiness of the lender company as well as genuineness of the loan transactions.*

*g) The appellant craves leave to add, to amend, alter/delete and/or modify the above grounds of appeal on or before the final hearing."*

**4.** At the time of hearing Ld. AR of the assessee submitted that, Ground No.1 (a) to (c) relating to reopening was not pressed and Ground No.1(d) is not pressed and the Ground No. (e) relating to unexplained cash credits alone is the issue pressed by the assessee. Ground No. 1(f) raised by the assessee is consequential in nature relating to Ground No. 1(e). Accordingly, except ground no. 1(e) and 1(f), other grounds are dismissed.

**5.** Brief facts of the case , relating to Ground No. 1(e) are, assessee is in the business of civil and road construction. During the previous year, relevant to the assessment year under consideration, the assessee had entered into loan transactions with two parties; (i) Receipt of loan of ₹.2,00,00,000/- from M/s Jayashree Finvest Pvt. Ltd (ii) Receipt of loan of ₹.50,00,000/- from M/s Consistent Vyapaar Private Limited. The Assessing Officer was of the view that the said companies are dummy companies and involved in providing accommodation entries as per the investigation conducted by the DIT(Inv)(Kol). The Assessing Officer sought details from

the assessee in respect of the above said transactions. The assessee filed a detailed reply along with all supporting documentary evidences to establish that the transactions with both the parties were genuine. The Assessing Officer ignored the evidences filed by the assessee and relied on the statements recorded u/s 131 of the Act of certain persons, stated to be directors of the lender companies. The assessee also filed its objections in respect of the statements of these persons relied upon by the Assessing Officer. However, the Assessing Officer did not consider the submissions of the assessee and added ₹.2,50,00,000/- u/s 68 of the Act. Aggrieved, the assessee preferred an appeal before Ld CIT(A) and made the similar submissions as made before the Assessing Officer. However, the Ld.CIT(A) did not agree with the same and upheld the order passed by the Assessing Officer. Against this order, assessee is in appeal before us.

**6.** At the time of hearing, Ld. AR submitted his written submissions which are reproduced below: -

*"4) It is submitted that the loans taken by assessee from M/s. Jayashree Finvest Pvt. Ltd of Rs. 2,00,00,000/- and M/s Consistent Vyapaar Private Limited of Rs. 50,00,000/- are genuine.*

*i) **M/s Jayashree Finvest Pvt. Ltd (Rs. 2,00,00,000/-)***

*5) **Submissions before the lower authorities***

- *The loan has been taken as a short term ICD on 12.11.2011.*
  - *The said loan was secured against pledge of equity shares of the assessee held by promoters vide loan agreement and agreement for pledge of shares dated 20.12.2011.*
  - *Loan was arranged by broker.*
  - *Interest was paid on the loan after deducting TDS.*
  - *Due to differences and dispute with respect to increase in security in the form of pledge of shares and delayed payment of interest, the lender invoked the pledge agreement dated 20.12.2011 and sold 6,60,000 equity shares of promoters through BSE and adjusted the sale proceeds against loan and interest.*
  - *FIR was lodged by assessee against this illegal action of lender at Andheri, MIDC Police station.*
  - *The said loan was repaid in A.Y. 2016-17.*
  - *M/s. Jayshree Finvest Pvt. Ltd. has replied to the notice issued u/s 133(6) of the Act by the Assessing Officer.*
- 6) *Evidences filed before lower authorities*
- *PAN number of lender.*
  - *Loan agreement between assessee and M/s. Jayshree Finvest Pvt. Ltd. dated 20.12.2011 Sanction letter*
  - *Personal guarantee of director dated 20.12.2011*
  - *Agreement for pledge of shares dated 20.12.2011*
  - *Intimation to SEBI for pledge of promoter shares*
  - *Irrevocable power of attorney of promoter pledger*
  - *Reply to notice issued u/s 133(6) of the Act by M/s. Jayshree Finvest Pvt. Ltd. containing copy of audited accounts from A.Y. 2011-12 to 2014-15, ledger confirmation and copy of bank statement reflecting the transaction*
  - *Brokerage Bill dated 20.12.2011*
  - *Ledger account of broker in the books of assessee for A.Y. 2012-13*

- *Board resolution of assessee*
- *Confirmation of assessee for acceptance of deposit*
- *ICD receipt dated 20.12.2011*
- *Demand promissory note in favour of lender dated 20.12.2011.*
- *Ledger account of party in books of assessee.*

*It is submitted that the Assessing Officer has not commented or found fault with any of the above evidences filed by the assessee. The above evidences are also filed before the Hon'ble Tribunal.*

7) *The Assessing Officer has merely relied on the statement of Shri Tanmay Ganguli recorded u/s 131 of the Act on 18.10.2014. It is submitted that the statement of Shri Tanmay Ganguli cannot be relied upon.*

- *Statement does not mention name of lender company as a company involved in providing accommodation entries. Statement contains an annexure which contains name of companies wherein Shri Tanmay Ganguli was a director wherein the name of M/s. Jayshree Finvest Pvt. Ltd. is appearing.*
- *As per the said annexure, Shri Tanmay Ganguli ceased to be a director in M/s. Jayshree Finvest Pvt. Ltd from 29.06.2009.*
- *Assessee has taken loan on 12.11.2011 when he was not a director.*

8) *It is further submitted that the assessee is a listed company. It is submitted that whenever a listed company pledges its shares, it has to inform the stock exchange about the same and in turn the said information is within public domain and in knowledge of all shareholders. It is submitted that no listed company would pledge its own shares for entering into a transaction which is not genuine.*

9) *The status of the company is 'active' on the ROC website (copy placed on record)*

10) *The Ld. DR has argued that M/s. Jayshree Finvest Pvt. Ltd. did not have enough reserves and surplus to grant loan to assessee and has in turn taken loan from other companies. Further, there was no specific address from which the said company was operating. In this regard, it is submitted that these issues were never raised by*

*any of the authorities below and therefore, cannot be raised for the first time before the Hon'ble Tribunal. These issues were never put by the Department to the lenders while entering in to communication with them u/s 133(6) of the Act. In any case, these are merely doubts raised and the same are not determinative of genuineness of the transactions under consideration. It is submitted that the complete details were filed and made available to the Assessing Officer. The Assessing Officer did not conduct any enquiry in this regard.*

*11) The Ld. DR also stated that the documents produced by the assessee has been signed by the assessee only and not by the lender company. In this regard it is submitted that the lender party has directly responded to the Assessing Officer and filed the reply under its signature. So far as the loan, guarantee and pledge documents are concerned, the same have been signed and delivered to the broker who in turn forward it to the lender party. This is the market practice and here again no doubt has been raised by any of the lower authorities. If there was any doubt in respect of loan/pledge documents - there should be none as due intimation thereof has been given to Stock Exchange and the information is in public domain - the department should have conducted timely inquiry rather than raising the issue for the first time before the Hon'ble Tribunal.*

*ii) **M/s Consistent Vyapaar Private Limited (Rs. 50,00,000/-)***

*12) **Submissions before the lower authorities***

- The loan has been taken as a short term ICD on 04.11.2011.*
- Loan was arranged by a broker*
- Rate of interest, amount of loan and security as per the terms of letter given to lender dated 04.11.2011*
- Interest was paid on the loan after deducting TDS*

*13) **Evidences filed before lower authorities***

- Ledger account of lender along with confirmation for F.Y. 2011-12 to 2012-13.*
- Ledger account of broker in the books of assessee for A.Y. 2012-13. Details of lender such as name, address, PAN.*
- Details of loan taken, repayment, interest on loan, details of broker who arranged loan and security offered.*

- *Term sheet! Sanction letter dated 04.11.2011.*
- *Demand promissory note dated 04.11.2011.*
- *Certified copy of appellant board resolution for taking inter corporate deposit, authorising person to sign the documents.*
- *Certified copy of board resolution certifying the borrowings are within the limits.*
- *Money Receipt dated 04.11.2011.*
- *Letter along with copy of post dated cheques.*
- *Reply to notice issued u/s 133(6) of the Act by M/s. Consistent Vyapaar Pvt. Ltd. containing ITR acknowledgements for A.Y. 2012-13 and 2013-14, balance sheet and profit and loss account for A.Y. 2012-13 and 2013-14 and ledger confirmation.*

*It is submitted that the Assessing Officer has not commented or found any fault on any of the above evidences filed by the assessee. The above evidences are also filed before the Hon'ble Tribunal.*

*14) The Assessing Officer has relied on the statement of Shri Arihant Jam recorded u/s 131 of the Act on 15.12.2017. It is submitted that the statement of Shri Arihant Jain cannot be relied upon as;*

- *He has ceased to be director on 09.12.2011. Statement was recorded much later after he ceased to be a director. In fact, the statement has been recorded after reopening the assessment.*
- *In response to Q No. 7 of the statement he has stated that he was a director in M/s. Consistent Vyapaar Pvt. Ltd during F.Y. 2011-12 and 2012-13. The said answer is factually incorrect since he ceased to be a director on 09.12.2011 hence, contents of statement cannot be relied upon.*
- *In next question he was asked to submit complete details of the transaction entered into with assessee. However, he has merely stated that the transaction with the assessee is not genuine without giving any details. The statement ends abruptly after the said question.*
- *In none of his earlier statements dated 05.03.2014 and 11.04.2014 (Annexed to the assessment order), the name of*

*the lender company is appearing in the list of companies providing accommodation entries.*

**15) The status of the company is 'active' on the ROC website (copy placed on record)**

*Hon'ble Tribunal's order in assessee's own case for A.Y. 2010-11 (ITA No. 7424/Mum/2019 dated 26.10.2021) (copy placed on record)*

*16) It is submitted that similar addition was made u/s 68 of the Act by the Assessing Officer in A.Y. 2010-11 on account of loan taken from M/s Gateway Leasing Pvt. Ltd which was upheld by the CIT(A). The Hon'ble Tribunal deleted the addition u/s 68 of the Act. One of the reasons given by the Hon'ble Tribunal for deleting the addition is that the assessee had filed complete details such as name, address, PAN, details of brokers, pledge agreement etc. in support of the genuineness of the transaction (Pg no. 7; para 6 of the order). It is submitted that, in the present case also, complete details have been filed in support of the genuineness of the transaction.*

*17) In view of the above, it is humbly prayed that the addition u/s 68 of the Act may kindly be deleted.*

*Ground No 1(f): Disallowance u/s 37 of the Act on account of interest paid on loans*

*18) As stated above, the assessee has paid interest on the above loans taken from M/s Jayshree Finvest Pvt. Ltd. and M/s Consistent Vyapaar Pvt. Ltd. The interest paid on the said loans were disallowed by the Assessing Officer since he held that the loans were not genuine. The same was upheld by the CIT(A).*

*19) It is submitted that the said ground is consequential to Ground No 1(e).*

**ITA No. 7427/Mum/2019 (A.Y. 2013-14)**

*Ground no 1 is not pressed*

*Ground No 2 is not pressed due to smallness of amount.*

*Ground No 3: Disallowance u/s 37 of the Act on account of interest paid on loans*

*20) The said ground is similar to Ground No 1(f) for A.Y. 2012-13."*

7. On the other hand, Ld. DR filed written submissions which is reproduced below: -

"2. During the course of hearing, the only effective issue in dispute was regarding additions of Rs. 2,00,00,000 and Rs. 50,00,000 being loans taken by the assessee company from M/s Jayshree Finvest Pvt. Ltd and M/s Consistent Vyapaar Pvt Ltd. u/s 68 of the Act as unexplained cash credit. At the conclusion of the hearing, the Hon'ble Bench directed to file a brief note on the arguments taken during the hearing by the undersigned.

3. On the issue of addition u/s 68 with reference to loan of Rs. 2,00,00,000 taken from M/s. Jayshree Finvest Pvt. Ltd., the following arguments, emerging from the material and facts available on record, were placed before the Hon'ble Bench:

i. Statement of Shri Tanma Ganguli:

Shri Tanmay Ganguli was one of the Director of the Company, M/s Jayshree Finvest Pvt. Ltd. His statement on oath recorded u/s 131 of the Act is part of PB 2 from Page 203 to 211. Perusal of the replies of Shri Tanmay Ganguli to Qs. 7 to Qs. 12 (from Page 204 to Page 206) clearly shows that he wasnt aware of the activity of the company and he stated that the said company was used for the purpose of providing bogus accommodation entry only.

ii. Analysis of the Financial Statements of the com-an M/s Ja shree Finvest Pvt. Ltd.:

a) The financial statement of the lender company has been submitted by assessee company from Page 42 to Page 86 of PB (As per Page 57 of PB), the Opening reserves & surplus (self generated accumulated profits) was Rs. 59,99,665 as on 1<sup>st</sup> April 2011 and closing balance was Rs. 71,03,547. As per Page 57 of PB 1, the Net Profit of the company is only Rs. 13,58,773 for year ending 31/03/2012. Thus, the company didnt possess sufficient own funds to advance loans of Rs. 2,00,00,000 to assessee company. Thus, the creditworthiness of the company to advance loan to the extent of Rs. 2,00,00,000 is not proved,

b) The lender company is merely an accommodation entry provider is also apparent from the fact that the lender company was functioning without any actual owned or rented office premise. Perusal of Fixed Assets Schedule of the company for AY 2012-13 on Page 58 of the PB | shows that the company was not owning any

*office premises. Perusal of the Administrative & other expenses of the company for AY 2012-13 on Page 59 of the PB | shows that the company has not incurred any rental expenses and electricity expenses. This sufficiently proves that the company was functioning without any office, which is not possible for a genuine company having legitimate business. The non-existence of the office has continued for the next year too i.e. FY 2012-13. The nonexistence of office of a private company casts serious doubts about the genuine existence of such company. This shows that identity and genuineness of the lender company isn't proved.*

*iii. Documentary evidences regarding the loan transactions:*

*a) From Page 90 to Page 151 of PB 1, all the documentary evidences to prove the genuineness of the transaction has been placed on record. A closer look on such documentation reveals that none of these documents bears proper signature and stamp/seal of the lender company.*

*b) The 2 Loan Agreements between lender company and assessee company has been submitted from Page 92 to Page 104 of PB 1. Perusal of Page 97/98 of PB 1 shows that the lender company has not signed the loan agreement dated 20/12/2011 and even, signature of one of the witness is missing. Similarly, perusal of Page 103/104 of PB 1 shows that the lender company has not signed even this loan agreement dated 01/06/2012 and even, signature of both the witness is missing. In the absence of signature of lender company, these loans agreements cant be treated as valid evidences.*

*c) Similarly, the 2 pledge agreements dated 20/12/2011 and 01/06/2012 between lender and pledger has been submitted from Page 125 to Page 135. Perusal of Page 130 & Page 134 of PB 1 shows that the lender company has not signed both these pledge agreements. In the absence of signature of lender company, these pledge agreements cant be treated as valid evidences.*

*d) Even the Sanction Letters at Page 109 & Page 110 of PB 1 bears only initial signature in short and no proper company stamp is present. All the other documentary evidences submitted by the assessee company from Page 111 to Page 151 of PB | doesn't bear any counter signature or acknowledgement by the lender company and therefore, these documents can't be treated as valid evidences to prove the genuineness of the loan transactions.*

*To conclude, seen in the background of the statement of one of the Directors of the company, Shri Tanmay Ganguli that the company is a paper company providing bogus accomodation entry, the fact that*

*the company doesn't have any own funds, it doesn't have any actual physical office and the documentary evidences aren't signed by lender company proves that the identity, genuineness and creditworthiness of the lender company, M/s Jayshree Finvest Pvt. Ltd. is not proved and thus, the additions of Rs. 2,00,00,000 u/s 68 of the Income Tax Act may be upheld.*

4. *On the issue of addition u/s 68 with reference to loan of Rs. 50,00,000 taken from M/s Consistent Vyapar Pvt. Ltd. the following arguments, emerging from the material and facts available on record, were placed before the Hon'ble Bench:*

iv. *Statement of Shri Arihant Jain:*

*Shri Arihant Jain was one of the Director of the Company, M/s Consistent Vyapar Pvt. Ltd. His statement on oath recorded u/s 131 of the Act is part of PB 2 from Page 212 to 218. Perusal of the reply of Shri Arihant Jain shows that he has accepted that M/s Consistent Vyapar Pvt Ltd has given bogus loan in form of accommodation entry to M/s Atlanta Ltd. Thus, there is specific admission by one of the director of the company that loan transaction of Rs. 50,00,000 was an accommodation entry in the form of bogus loan.*

v. *Analysis of the Financial Statements of the M/s. Commercial Vyyapar Pvt. Ltd.,*

a) *The financial statement of the lender company has been submitted by assessee company from Page 154 to Page 176 of PB 1. As per Page 158 of PB 1, the Opening reserves & surplus (self generated accumulated profits) was only Rs. 4634 as on 1<sup>st</sup> April 2011 and closing balance was only Rs. 1,87,459. As per Page 155 of PB 1, the Net Profit of the company is only Rs. 3,89,810 for year ending 31/03/2012. Thus, the lender company didn't possess sufficient own funds to advance loans of Rs. 50,00,000 to assessee company. Thus, the creditworthiness of the company to advance loan to the extent of Rs. 50,00,000 is not proved.*

b) *The lender company is merely an accommodation entry provider is also apparent from the fact that the lender company was functioning without any actual owned or rented office premise. Perusal of Page 157 of PB 1 which contains the Balance Sheet of the company shows that the company is not owning any fixed asset including any office. Perusal of the other expenses of the company for AY 2012-13 on Page 170 of the Paperbook 1 shows that the company has not incurred any rental expenses and electricity expenses. This sufficiently proves that the company was functioning without any office, which is not possible for a genuine company*

*having legitimate business. The nonexistence of the office has continued for the next year too i.e. AY 2013-14 too. The nonexistence of office of a private company casts serious doubts about the genuine existence of such company. This shows that identity and genuineness of the company isn't proved.*

*vi. Documentary evidences regarding the loan transactions:*

*a) From Page 179 to Page 189 of PB I, all the documentary evidences to prove the genuineness of the transaction has been placed on record. A closer look on such documentation reveals that none of these documents bears proper signature and stamp/seal of the lender company. In the absence of any acknowledgement by lender company or signature, these documents can't be treated as valid evidences to prove the genuineness of the loan transactions.*

*To conclude, seen in the background of the statement of one of the Directors of the company, Shri Arihant Jain that the company is a paper company providing bogus accommodation entry, the fact that the company doesn't have any own funds, it doesn't have any actual physical office and the documentary evidences aren't signed by lender company proves that the identity, genuineness and creditworthiness of the lender company, M/s Commercial Vyapar Pvt. Ltd. is not proved and thus, the additions of Rs. 50,00,000 u/s 68 of the Income Tax Act may be upheld.*

*5. The other ground relates to dis-allowances of interest expenses on such alleged accommodation entry of bogus loans, which is consequential in nature.*

*6 Thus, based on above arguments, it is humbly submitted that the additions made by the AO may be upheld. A copy of this brief note is being shared with the Ld. AR separately."*

**8.** Considered the rival submissions and material placed on record. We observe from the records that assessee has taken loan from Jayashree Finvest and Consistent Vyapaar. We observe that assessee has submitted all the relevant documents and revenue has not raised any doubt on genuineness of the documents submitted before them. The main issue

involved are, in the case of Jayashree Finvest, the assessee has taken loan by pledging the promoter shares and relevant transaction was intimated to the SEBI as well. The genuineness is proved when the loan taken with proper documentation and followed the due process of law particularly when the transactions are carried out by intimating the transaction to the SEBI and no one, much less a listed company like assessee company, will plan any transaction by pledging the shares for the purpose of accommodation entry. Further, due to dispute, the lender invoked the pledge agreement to sell portion of the share in the market through BSE. The assessee has also filed the FIR against the lender for wrongfully disposing of the pledged shares. It is also important to note that the above said loan was repaid in the AY 2016-17.

**9.** We observe that the addition was made merely on the basis of statement of the third party and AO/Ld DR raised doubt on the financial capacity of the lender to finance in the absence of the self generated funds. The reliance placed by the Assessing Officer on the statements of third parties are not sustainable in light of the detailed arguments contained in the assessee's written submissions noted herein above. We observe that the financial capacity is just restricted to self generation, it

includes availability of the funds in the business and its capacity to generate by arranging from their known source. It can also be for the earning interest income. The other issues raised by the Ld DR are not the findings of the AO and can be considered as improvising the findings of AO. With the above observation, we do not see any reason to sustain the addition.

**10.** With regard to loan from Consistent Vyapaar, even here assessee has submitted relevant documents to prove the genuineness of the transaction and here also, revenue relied on the statement of the Director of lender company, their status as director is questionable. Even here revenue has raised similar doubt on the availability of self generated funds. We further observe that similar issue was raised in the previous A.Y 2010-11, in assessee's own case and the coordinate bench has decided the similar issue in favour the assessee. Therefore, we do not see any reason to sustain the addition.

**11.** Coming to the disallowance of relevant interest payment on the above said loans, we observe that the interest payments were made after deducting proper TDS and we have already adjudicated the genuineness

of the transaction in the previous paras. Therefore, we direct Assessing Officer to allow the interest claimed by the assessee.

**12.** Coming to the appeal relating to A.Y. 2013-14, the ground regarding reopening and addition on account of bogus purchases are not pressed on behalf of the assessee and hence ground no. 1 and 2 are dismissed as not pressed. Ground no. 3 is in respect of disallowance of interest on loans, which were held to be not genuine in A.Y. 2012-13. Since facts in this case are mutatis mutandis and the issue being consequential, therefore the decision taken in A.Y. 2012-13 is applicable to this assessment year also. Accordingly, this ground is allowed in favour of the assessee.

**13.** In the result, both the appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 08.04.2022.

Sd/-  
**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 08.04.2022  
Giridhar, Sr.PS

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

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

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