

THE INCOME TAX APPELLATE TRIBUNAL
"H" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 733/Mum/2021 (A.Y. 2014-15)
I.T.A. No. 734/Mum/2021 (A.Y. 2015-16)
I.T.A. No. 736/Mum/2021 (A.Y. 2018-19)

DCIT, CC-2(4) Old CGO Building 8 th Floor M.K. Road Mumbai-400 020.	Vs.	M/s. H.K. Enterprises 74/80, 3 rd Floor Souri Building, Babu Genu Road, Kalbadevi Mumbai-400 002.
(Appellant)		(Respondent)

I.T.A. No. 269/Mum/2021 (A.Y. 2012-13)
I.T.A. No. 268/Mum/2021 (A.Y. 2013-14)
I.T.A. No. 316/Mum/2021 (A.Y. 2014-15)
I.T.A. No. 317/Mum/2021 (A.Y. 2015-16)
I.T.A. No. 267/Mum/2021 (A.Y. 2016-17)
I.T.A. No. 315/Mum/2021 (A.Y. 2017-18)
I.T.A. No. 314/Mum/2021 (A.Y. 2018-19)

M/s. H.K. Enterprises 74/80, 3 rd Floor Souri Building, Babu Genu Road, Kalbadevi Mumbai-400 002.	Vs.	DCIT, CC-2(4) Old CGO Building 8 th Floor M.K. Road Mumbai-400 020.
(Appellant)		(Respondent)

PAN : AAFH6076C

Assessee by	Shri Dharmesh Shah
Department by	Smt. Vatsala Jha
Date of Hearing	25.01.2022
Date of Pronouncement	05.04.2022

ORDER

Per Shamim Yahya (AM) :-

These are appeals by the assessee and Revenue arising out of respective orders of learned CIT(A).

2. Since the issues are common and connected and appeals are heard together, these are being disposed off by this common order.

Assessee's appeals

3. One common issue raised in assessee's appeals is that assessment under section 153A of the Act has been done without incriminating material.

4. Brief facts of the case in this regard from a reference to ITA No. 269/Mum/2021 for A.Y. 2012-13 are as under :-

The assessee company is said to be dealing in trading of bulk import of commodities comprising majorly coal (coking coal and non-coking coal), shredded scrap, heavy melting scrap for supplied to domestic manufacturers/users. The company is also in the business of procuring material comprising iron ore pellets, TMT bars and MS Billets from the local markets for supply to local manufactures. In this case, the assessee had filed original return of income on 16.09.2014 declaring total income at Rs. 29.48.060/-. The case was selected for scrutiny and in due consideration to the facts of the case, the assessment was completed u/s. 143(3) vide order dated 25.02.2015, accepting the returned income. Later the assessee filed an application u/s. 245D(1) of the Act before the Hon'ble Income Tax Settlement Commission, Additional bench Mumbai (ITSC) for the A.Y. 2012-13 to 2018-19 on 27.12.2019 disclosing the following incomes:-

A.Y.	Adhoc Disallowance of Business expenses	Further adhoc disallowance of expenses	Total Additional Income
2012-13	32,00,000	---	32,00,000
2013-14	32,00,000	50,000	32,50,000
2014-15	32,00,000	---	32,00,000
2015-16	32,00,000	50,000	32,50,000
2016-17	32,00,000	50,000	32,50,000
2017-18	32,00,000	50,000	32,50,000
2018-19	32,00,000	50,000	32,50,000
TOTAL	2,24,00,000	2,50,000	2,26,50,000

5. However, the said application was rejected by the Hon'ble Settlement Commissioner as the conditions prescribed under section 245C(1) were not fulfilled and the matter returned to the Assessing Officer. The assessee had also tried to withdraw the application before the Settlement Commission. But the Settlement Commission rejected the withdrawal application. It proceeded to reject the settlement application on its due reasoning.

6. A search & seizure action u/s. 132 was conducted on Hisaria Group on 16.11.2017. Assessee is one of the flagship concerns of this group. Shri Sandeep Kumar Hisaria (share - 50%) and Shri Sawarmal Hisaria (share - 50%) are partners of the assessee firm. Subsequent to search, a notice u/s.153A of the Act was issued and in response the assessee filed return of income U/S.153A of the Act on 14.02.2019 for AY 2012-13 declaring total income at Rs. 29,48,060/-. The AO completed assessment u/s. 153A r.w.s 143(3) on 06.03.2019 determining total income at Rs. 61,48,060/-. In the said order, the AO inter alia made an addition of Rs. 32,00,000/- being additional income offered before Hon'ble ITSC. The Assessing Officer also made addition for bogus unsecured loans.

7. Upon assessee's challenge to jurisdiction of assessment under section 153A, learned CIT(A) referred to catena of decision and several case laws and has finally concluded as under :-

“In view of the foregoing discussion, it is crystal clear that there was enough incriminating evidence against the assessee. Therefore the notice issued under section 153A is held to be valid. Consequently the assessment made under section 153A is also held to be valid. Therefore contention of the assessee that assessment completed under section 153A is bad in law is rejected.”

8. We note that the above decision does not reflect or brings on record as to what are the incriminating materials with reference to which the addition is being made. This finding is very crucial in this regard. We note that Hon'ble Jurisdictional High Court in the case of Gurinder Singh Bawa [2017] 79

taxmann.com 398 (Bombay), has examined the issue wherein the Hon'ble High Court, dealing with the issue of unabated assessment under section 153A of the Act, has ruled that;

“6. Mr. Kotangale, the learned Counsel for the revenue very fairly states that the decision of the Special Bench of the Tribunal in Al-Cargo Global Logistics Ltd. was a subject matter of challenge before this Court as a part of the group of appeals disposed of as CIT v. Continental Warehousing Corporation (Nhava Sheva) Ltd. [2015] 374 ITR 645/58 taxmann.com 78/232 Taxman 270 (Bom.) upholding the view of the Special Bench of the Tribunal in Al-Cargo Global Logistics Ltd. Consequently, once an assessment has attained finality for a particular year i.e. it is not pending then the same cannot be subject to tax in proceedings under Section 153A of the Act. This of course would not apply if incriminating materials are gathered in the course of search or during proceedings under Section 153A of the Act which are contrary to and/or not disclosed during regular assessment proceedings.”

5.13 In the case of the assessee, there is no doubt that the appellant has sufficient transactions with various entities which have been found to be predominantly engaged in providing accommodation entries. The AO/ Investigation Unit have conducted sufficient inquiries and there is substantial material available to demonstrate the above findings. These documents/statements and the overall findings of the search action are sufficient incriminating material to proceed u/s 153A of the Act in case of the assessee. The assessee is incorrect in trying to claim that there are no incriminating materials against the assessee for the assessment year under reference. Hence, the additional ground of appeal taken by the assessee is ruled against the assessee and is dismissed.”

Underline ours

9. Accordingly, we remit the issue to the file of the Assessing Officer. The Assessing Officer is directed to examine the issue pertaining to the incriminating material in this case with reference to Hon'ble Bombay High Court decision as referred above. A finding will also be needed as to whether the earlier assessment can be treated to have achieved finality. This is crucial for the treatment as to whether assessment proceedings are abated or non-abated. Moreover it is to be noted that as per section 245HA of the Act there is an abatement of proceedings in this case before the Settlement Commission. Thereafter the issue may be decided as per law after giving the assessee an opportunity of being heard.

10. One issue raised by the assessee is with regard to addition on account of additional income offered in application filed under section 245D(1) of the Act before Income Tax Settlement Commission.

11. Brief facts of the case are that the assessee filed an application in front of Settlement Commission u/s 245C on 27-12-2019. However, the assessee failed to fulfill the condition laid down u/s. 245C(l) of the Act. The assessee also sought to withdraw the application but the Settlement Commission rejected the withdrawal request. The Settlement Commission further rejected the application of the assessee u/s. 245D(1) of the Act. The order u/s. 245D(1) was received in AO's office on 15.1.2020, in which Settlement Commission had rejected application of assessee and also request of withdrawal of the settlement application. The AO based on the provisions of section 245HAC(3) of the Act which reads as; whenever an abated proceeding gets restored back, the AO is entitled to use all the material filed by the assessee to the Hon. Settlement Commission for determining the true income of assessee, completed the assessment. The assessee was accordingly, asked to submit all the material filed by it in front of Hon. Settlement Commission for determining its correct income. In response to this the assessee submitted the copies of the material with AO's office. Based on which assessee was show caused as to why the additional income offered by it in front of Hon. Settlement Commission should not be added to the final income, since' it was suo moto offered by assessee. In response to show cause notice, the assessee filed a reply on 2-3-2020. The gist of assessee's reply is as follows:-

“We have offered the additional income in front of settlement commission in order to buy peace of mind and to avoid ruinous litigation.

- No incriminating material has been found with respect to additional income offered.
- Hence, no addition with respect to additional income offered in front of settlement commission be made to the income of assessee.

The AO considered the same but did not accept the explanation because of the following reason:

- Since, assessee has admitted this additional income suo motu, there is no doubt that this additional income is assessee's concealed income.
- Section 245HA(3) clearly mentions that AO is entitled to use all the material filed by assessee in front of ITSC for the purpose of completing the assessment. Hence, even without the incriminating material addition to the income of assessee can be made.
- Assessee has offered the additional income in front of ITSC. In its reply to show cause, assessee has not brought anything on record which suggests why the income offered by assessee should not be considered for completing the assessment.
- Hence, in view of above, additional income offered by assessee in front of ITSC need to be added to the income of assessee for determining its true and final income.”

12. In view of the above, the AO treated the offered additional income for various years in front of the Hon. Settlement Commission as concealed income of the assessee. The assessee has offered additional income for various years in front of the Settlement commission. Based on this information, the AO added an amount of Rs.32,00,000/- to the total income of assessee for AY 2012-13.

13. Upon assessee's appeal learned CIT(A) held as under :

“I have considered the facts of the case and I find that, the AO has taken right decision on this issue. It may be mentioned that the assessee has voluntarily offered the additional income before the Hon'ble Settlement Commission and the AO has correctly used the information while proceeding for assessment. Section 245HA clearly empowers the AO to use all the material and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Hon. Settlement Commission in the course of the proceedings. Thus, the AO has done the same and rightly added the offered income before the settlement¹ commission. The provision of Section 245HA : Abatement of proceeding before the Hon. Settlement Commission is reproduced as under:

(3) For the purposes of sub-section (2), the Assessing Officer, or, as the case may be, other income-tax authority, shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence -recorded by the Settlement Commission in the course of the proceedings before it, as if such material, information, inquiry and evidence had been produced before the Assessing Officer or other income-tax authority or held or recorded by him in the course of the proceedings before him.”

8.5 In view of these specific facts, the additional income offered in Settlement application is liable to be taxed in the hands of the assessee. The assessee in this regard, has relied upon certain case laws. However, the ratio of the same is distinguishable in view of peculiar facts of the present case. Further, the assessee has also argued that he should be given set-off of this income against other additions made. Without conceding the issue, I would like to clarify that no other addition has been made by the AO during this year, against which any set-off could be granted so this contention of the assessee is also not acceptable.

8.6 In view of the above facts, the action of the AO in taxing the income offered before the Hon'ble Settlement Commission is upheld. This ground of appeal is therefore dismissed.”

14. Against the above order assessee is in appeal before us.

15. We have heard both the parties and perused the records. We find that the authorities below have taken correct view. The litigant cannot be allowed to approbate and reprobate i.e. to take contradictory stand before different authorities/courts. This view is duly approved by Hon'ble Supreme Court in the case of Suzuki Parasrampuriah Suitings Pvt. Ltd. Vs. The Official Liquidator of Mahendra Petrochemicals Ltd. (in Liquidation) & others (Civil Appeal No. 10322 of 2017 vide Judgment dated 8.10.2018. In this view of the matter we do not find any infirmity in the orders of the authorities below.

16. In the result, assessee's appeals are partly allowed.

Revenue's Appeal

17. The issue raised in Revenue's appeal is relating to relief by learned CIT(A) on account of unsecured loans added by the Assessing Officer as under:-

Assessment year	Amount
2014-15	7,75 crores
2015-16	1,91,35,000
2018-19	1,85 crores

18. On this issue the Assessing Officer has elaborately examined the issue and has concluded as under :-

“During the course of search proceedings, it has been found that there is huge transaction of unsecured loans received/repaid back and squared off in the entities of Hisaria Group from the following parties:-

- (i) Anjani Towers Pvt Ltd ,
- (ii) Narayani Vypar Pvt Ltd
- (iii) Satyatej Vypar Pvt Ltd
- (iv) Tulsi Trimpex Pvt Ltd.

10.2 Background for Loan received and Repaid Back:-

To understand the rationale behind such huge loan taken and repayment, one illustration can be explained as under:

A T Trade overseas Pvt Ltd gives money to Anjani Towers Pvt Ltd. Using this fund received from A T Trade, Anjani Towers Pvt Ltd again gives loan to H K Enterprises (another group company of Hisaria). Now H K Enterprises creates a fixed deposit against the loan received from Anjani Tower Pvt Ltd. H K Enterprises further avails line of credit from the banks against this fixed deposit. Once the Line of credit is availed the fixed deposit is broken and money is returned back to Anjani Towers which in turn returns it to A T Trade. There have been hundreds of such transactions done over the span of 7 years to avail bank LCs and hence huge number of unsecured loans are received and returned back by the Hisaria group from Anjani Towers Pvt Ltd.

It need to be emphasized that if one group concern of Hisaria group advances unsecured loan to other sister concern and creates FD against it, bank would not give LC credit against this FD, since the FD is created with the borrowed money from group concern. Hence, Hisaria group has used Anjani Towers Pvt Ltd to route its funds to group concerns in order to avail LCs. Promoter of Hisaria group Sandeep Hisaria and Director of Anjani Towers Pvt Ltd., Arvind Sanghai have mentioned the same thing in their statements recorded at the time of search proceedings.

10.3 In the case of Anjani Towers Pvt Ltd statement of its director Shri. Arvind Sanghai has been recorded on oath u/s 131 of the Act in which he explained the above mentioned methodology.

10.4 Further, for other 3 parties, the registered address of the M/s Narayani Vypar Pvt Ltd and M/s Tulsi Trimpex Pvt Ltd is at Metcalfe Street, Ground Floor, Kolkata. However, M/s Narayani Vypar Pvt Ltd does not exist at the registered office. Non execution report of Survey authorization u/s 133A of the IT Act has been submitted by the authorized officer. Similarly, the registered address of M/s Satyatej Vypar Pvt Ltd is at Aloka House, 1st Floor, 6B, Bentinck Street, Kolkata-01. However, M/s Satyatej Vypar Pvt Ltd does not exist at the registered office.”

19. Assessing Officer after elaborate examination concluded as under :-

“From the above discussion it is clear that assessee group has taken huge amount of loans from Anjani Towers Pvt Ltd in order to avail the Line of

Credit from Banks. However, after the verification it was found out that source of funds is not Anjani Towers Pvt Ltd hut other 3K entities. Hence, independent verification of all these entities was done during the assessment proceedings. At the end of investigation the identity, genuineness and creditworthiness of five such entities was not established. Hence, amount given by these 5 entities to Anjani Towers which was further transferred to Hisaria group is considered as unexplained and added to the income of assessee as unexplained cash credit.

Search party conducted verification of registered address of Narayani, Satyatej and Tulsi Trimex. These entities are not in existence. During the course of assessment proceedings assessee could not bring any new material on the record, which suggest these parties are genuine. Hence, the loan amount advanced by these three parties to assessee group is treated as unexplained cash credit.”

20. Upon assessee’s appeal learned CIT(A) found that assessee has submitted all the document before him. He has deputed his own inspector and has even taken on record the inspector’s view on the creditworthiness of the parties with total disregard to the Assessing Officer remand report. This is a very peculiar appellate order wherein the learned CIT(A) is relying upon the income tax inspector deputed by him to gather finding on the creditworthiness of the parties in contravention to the Assessing Officer’s view in this regard. The Assessing Officer, when learned CIT(A) asked him to respond to ITI report in favour of assessee, responded in the negative. The Assessing Officer’s response noted by learned CIT(A) are as under :

“The Assessing Officer in his report vide letter dated 02.02.2021, has mainly argued that the creditor companies Jailed to furnish relevant details during the course of assessment proceedings. Further, the AO has also argued that these companies namely Bellary Investment and trading Pvt. Ltd. and Yashasvi Vyapar and Vitt Pvt. Ltd. did not respond to the notices issued u/s. 133(6) of the Act., and the other three companies were found to be non-existent at their registered office, during the course of survey action u/s. 133A of the Act. Further, the AO has also mentioned these companies did not have sufficient positive income and some of them were incurring losses and therefore their financial capacity to given loan is not established. The AO further reiterated his stand in respect of three other companies that the same were not found to be existent till the time of survey u/s. 133A at their premises. For clarity, the report of the AO is reproduced as under:-

“With reference to above, the report called for with respect to Remand in the above mentioned cases with regard to Unsecured Loans from M/s Anjani Towers Pvt Ltd. is as below -

I. Brief on the Remand:

The Hon'ble CIT(A)-4S vide his Remand Letter dated 22.12.2020 has given a brief overview on the issues involved and additions made for various AYs with regard to the above mentioned Four Assesseees in during the Assessment Proceedings. The main issue on which additions have been made is that the above mentioned assesseees have received Unsecured Loans from one M/s Anjani Towers Pvt Ltd which in turn has taken the Unsecured Loans from 31 other entities. However, the Assessee could not prove identity, genuineness and credit worthiness of five of such entities (viz. Bellary Investment and Trading /M Ltd, Yashasvi Vyapar and Vitt Pvt Ltd, Narayni Vyapar Pvt. Ltd, Satyatej Vyapar Pvt Ltd and Tulsi Trimpex Pvt Ltd during the Assessment Proceedings. During the Assessment stage, these parties could not reply to the Notices u/s 133(6) issued by the AO further, these parties were not available in their registered address. Now during the Appellate proceedings before the Hon'ble CIT(A)-48, the assessee has provided the addresses of the above mentioned five entities. In view of the above, in exercise of the powers conferred u/s 46A of the Income Tax Rules, the DCIT-CC2(4) was authorized to carry out inquiries with regard to these five parties in respect to loans made by Anjani Towers Pvt Ltd and genuineness thereof. Also, vide Letter dated 11.01.2021, the. Ld. CIT(A)-48 has forwarded the replies by Bellary Investment and Trading Pvt Ltd and Yashasvi Vyapar and Vitt Pvt Ltd. Further, vide letter dated 22.01.2021, the Hon'ble CIT(A)-48 has forwarded the III report on the on field inspection in cases of Bellary Investment and Trading Pvt Ltd and Yashasvi Vyapar and Vitt Pvt Ltd in which the ITI has verified dial the companies are in fuel operating from the addresses given and maintain their books of accounts. In view of the above discussion, it may be noted that the Remand asked for is primarily limited to conduct inquiries on the genuineness of the Unsecured Loans advanced by Bellary Investment and Trading Pvt Ltd, Yashasvi Vyapar and Vitt Pvt Ltd, Narayani Vyapar Pvt. Ltd, Sutyatej Vyapur Pvt Ltd and Tulsi Trimpex Pvt Ltd to M/s Anjani Towers Pvt. Ltd.

II. Background on the Assessment Proceedings:

As per investigations carried out during the Search, Post search and Assessment Proceedings, source of funds of a major chunk of Unsecured Loans advanced by M/s Anjani Towers Pvt Ltd has been traced to 31 other parties. M/s Anjani Towers Ltd during the assessment proceedings submitted the PAN details of such source entities. Subsequently Notices u/s 133(6) were issued to all these parties which included two of the above mentioned five entities which are Bellary Investment and Trading Pvt Ltd and Yashasvi Vyapar and Vitt Pvt Ltd. However, no replies could he received to such notices u/s.133(6) within the stipulated time In addition to this, in cases of remaining three entities viz. Narayani Vyapar Pvt. Ltd, Satyatej Vyapar Pvt Ltd and Tulsi Trimpex Pvt Lid, the Survey Proceedings u/s 133A could not be executed since no business as such was running in the registered addresses. Moreover, during the Assessment proceedings as well, no replies from these parties were received and even the Assessee who was provided with an opportunity to bring to record the identity and genuineness of these parties could not do so.

III. Verification on the Remand during the Appellate Proceedings:

I. Consequent to the Remand Report being called for, Notices u/s 133(6) dated 13.01.2021 were issued to the above mentioned five entities through ITBA. The responses/Confirmations to all the Notices u/s 133(6) have been received through Emails/ITBA. Further, the responses have been received from the Admin office/Regd. Office Addresses as per the Address details submitted before the Hon'ble CIT(A) forwarded to the undersigned. From the perusal of details, it is also seen that Narayani Vyapar Pvt Ltd, Satyaiej Vyapar Pvt Ltd have not advanced any Loans lo M/s Anjani Towers Pvt Ltd during AY 201314 to 2018-19.

2. With regard to the Bellary Investment and Trading Pvt Ltd and Yashasvi Vyapar and Vitt Pvt. Ltd, the reply to Notices u/s 133(0) have not been received during the Assessment Proceedings and if was claimed by the Assessee that it got delayed due to the ongoing Corona Pandemic. The same has now been received both at the O/o CIT(A)-48 which was subsequently forwarded to the undersigned and also during the Remand Proceedings u/R 46A in response to Notices u/s 133(6). A detailed tabular representation of the reply received is as below:

Sr. No.	Name	AY	Unsecured Loan to Anjani Towers Pvt Ltd	Return Income	Gross Revenue	Balance Sheet Loans advances as on 31 st March	Bank State ment	Ledger Confir mation
1	Bellary Investment and Trading Pvt Ltd	2014-15	93,370,000	(1,780,715)	NA	19,450,835	Yes	yes
		2015-16	0	(1, 503,110)	28,00,000	NA	Yes	Yes
		2016-17	49,725,000	308,130	36,85,037	303,187,205	Yes	yes
		2017-18	187,926,000	905,450	38,70,964	245,212,505	Yes	Yes
		2018-19	19,900,000	(358,240)	14,94,491	12,791,226	Yes	yes
2	Yashashvi Vyaapar Vitt Pvt Ltd	2013-14	126,000,000	439,680	698,831,577	4,274,866	Yes	Yes
		2014-15	750,500,000	0	753,701,912	334,300,000	Yes	Yes
		2015-16	201,800,000	0	162,36,47,191	112,654,693	yes	yes
		2016-17	294,880,000	(262,937,803)	98,83,76,103	35,295,069	Yes	yes
		2017-18	42,550,000	(27,715,339)	78.82,04,788	25,420,787	yes	yes
		2018-19	0	(32,667,898)	54,11,05,062	20,917,176	yes	Yes
3	Tulsi Trimpex Pvt Ltd	2014-15	2,10,00,000	0	374	47,014,363	Yes	Yes

3. From the above table and submissions made, it can be seen that Ms. Shilpi Sanghai and Ms. Naina Sanghai are common directors of Bellary

Investments and Trading Pvt Ltd. and Yashasvi Vyapar and Vitt Pvt Ltd, which are involved in share trading plus trading in Textiles, commodities etc. as well as Investments through Loans. The Balance Sheets and P&L accounts of both the companies over the Assessment years reveal that they are mainly receiving funds from clients and investing such funds for trading in Shares. However, the Net Income of both the Companies is not sufficient to extend such huge amount of Unsecured Loans to M/s Anjani Towers Pvt Ltd. Moreover, Yashasvi Vyapar and Vitt Pvt Ltd has incurred huge business Losses over these years and hence no business sense can be derived on advancing of such huge amounts of Loans. Similarly, the Balance Sheet of Tulsi Trimpex Pvt Ltd reveal that it is mainly receiving funds from clients and investing such funds for trading in unquoted Shares and advancing of Loans as well. However, the Net income of the company is negligible in comparison to the huge Unsecured Loan it has extended to M/s Anjani Towers Pvt. Ltd.

In light of the above facts and submissions, it may be construed that the companies Bellary Investment and Trading Pvt Ltd, M/s Yashashvi Vyapaar and Vitt Pvt Ltd and Tulsi Trimpex Pvt Ltd do not generate sufficient business income on their own which would fund them to extend such huge unsecured loans/advances. Moreover, it needs to be factored in that neither the entities complied with the Notices u/s 133(6) sent in ITBA system during the Assessment proceedings nor the Assessee could discharge its onus to bring forth their identity by providing correct and updated addresses of such entities. Moreover, there is no such fact on record that the office addresses of such entities provided by the Assessee have not been updated either with Income Tax Department or the MCA. In view of the above, the conclusion drawn by the Assessing Officer in his order is based on sound logic and considering the facts and financials of the concerned entities, I would agree with the decision of the Assessing Officer."

21. Learned CIT(A) thereafter proceeded to examine the issue himself. He noted that the notices were issued to the parties again who showed cooperation to learned CIT(A) in contradiction to the Assessing Officer. Learned CIT(A) proceeded to refer to various clarifications given by the assessee against the comments of the Assessing Officer. Learned CIT(A) did not refer as to whether these clarifications were given to the Assessing Officer to respond. Learned CIT(A) also did not comment upon the adverse observations of the Assessing Officer regarding the large balances of unsecured loans, common directors etc. noted in the bogus entry operator's balance-sheet.

22. We note that in this case the parties from whom the said loans have been received have been found by the Income Tax Department Investigation Wing to be bogus entry operator from Kolkata. Assessing Officer also has given

the same finding. An examination of the balance-sheet of the assessee unequivocally shows that it is engaged in circuititious routing of money. The assessee's financial reveals huge loan and advances, debtor as well as creditor without any detail.

23. These need examination in proper perspective. The cooperation shown by the assessee to learned CIT(A) and the inspector deputed by him as against the cooperation shown to the Assessing Officer is also not understood. Moreover learned CIT(A) has not addressed the adverse observation of the Assessing Officer cogently. He has referred to various clarifications given by assessee which were admittedly not before the Assessing Officer. We note that we have already remitted the issue of validity of assessment under section 153A to the file of the Assessing Officer to give necessary finding. Hence, in the interest of justice we remit the issue on merits also to the file of the Assessing Officer. The Assessing Officer is directed to examine the issue afresh in light of the submissions made before learned CIT(A) and our observation hereinabove.

24. In the result, these appeals are allowed for statistical purposes.

Order pronounced in the open court on 05.04.2022.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 05/04/2022

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//

PS

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai