

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

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

**ITA NOs. 3596 & 3597/MUM/2019
(A.Ys: 2009-10 & 2013-14)**

DCIT – 14(3)(1) Room No. 455, 4th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	M/s. Rupa Properties and Securities Pvt. Ltd., 401, Rupa Plaza, Above IDBI Bank Jawahar Road, Ghatkopar(E) Mumbai – 400077 PAN: AAACR7176F
(Appellant)		(Respondent)

Assessee by	:	Shri Shankarlal Jain
Department by	:	Shri T. Shankar
Date of Hearing	:	30.03.2022
Date of Pronouncement	:	27.04.2022

ORDER

PER S. RIFAUH RAHMAN (AM)

1. These appeals are filed by the revenue against different orders of the Learned Commissioner of Income Tax (Appeals)-22, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 28.02.2019 for the A.Ys. 2009-10 and 2013-14.

2. Since the issues raised in both these 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. 3596/MUM/2019 for Assessment Year 2009-10 as a lead case.

3. Brief facts of the case are, assessee filed its return of income on 25.09.2009 declaring total loss of ₹.1,27,61,187/- the same was processed u/s. 143(1) of Income-tax Act, 1961 (in short "Act"). Subsequently, the case was selected for scrutiny and assessment u/s.143(3) of the Act was completed and loss was assessed at ₹.13,67,107/-. Subsequently based on the information received from Investigation wing of the department it was gathered that assessee has taken accommodation entries by way of bogus loans from entities belonging to Shri Pravin Kumar Jain (PKJ) who has been found to be provider of accommodation entry by the investigation of the department. Accordingly, assessment was reopened u/s. 147 of the Act. A satisfaction note was duly prepared in writing, recorded the reasons for issue of notice u/s. 147/148 of the Act and the reasons recorded were supplied to the assessee. The notice u/s. 148 of the Act was duly issued and served on the assessee.

4. Assessee is engaged in the business of construction of property. Subsequently assessee raised various objections in respect of the reassessment proceedings and the Assessing Officer disposed off the objections raised by the assessee and the Assessing Officer after rejecting the submissions of the assessee proceeded to make the addition u/s. 68 of the Act to the extent of loan taken by the assessee from the three parties during this assessment year.

5. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and before the Ld.CIT(A) assessee filed various grounds objecting the reopening of the assessment and also on merit objecting the addition u/s.68 of the Act. Ld.CIT(A) dismissed the ground raised by the assessee with regard to reopening of the assessment. However, on merit of the case he considered the detailed submissions submitted before him, for the sake of clarity the submissions made by the assessee are reproduced below: -

"4.2 Appellant's Submission:

"In Ground No.3 to 6 the appellant has challenged addition made u/s 68 towards loan received and subsequently repaid Rs 2,00,00,000. The appellant vide letter dt. 30.12.2015 (Page 10-31) submitted the requisite proof for genuineness of loans, following documents:

(a) Copy of loan confirmation of parties from whom loan has been received.

(b) Copy of bank statement of the assessee company, duly highlighting the amount of loan received.

(c) Copy of bank statement and return of income of concerned 3 parties. It may be seen from the bank statement of the parties that the name of the company is duly reflected in the transaction particulars, with the amount of withdrawal.

(d) Loan confirmation for the period ended 31.3.2010, where the loan received by the company has been repaid.

(e) Copy of bank statement of the assessee company, duly highlighting the amount of loan repaid and name of the parties in the particulars of the bank statement, in withdrawals.

The evidences submitted, it is clear that appellant has received loan from these parties, which has been repaid in subsequent year. The loans were received by cheque, which is duly reflected in the bank statement of the company and the lender parties. The said loans were repaid by cheques by the company. It is most respectfully submitted that all the transactions are through banking channel, lenders are assessed to tax, confirmed the loan transaction in original assessment proceedings as well as present proceedings. There is nothing to doubt genuineness of the transactions. The appellant had submitted complete source of funds in its hands and no addition can be made on the basis of source of source as held by HIGH COURT OF BOMBAY in case of Commissioner of Income-tax, Central-III V. Nirav Modi 71 taxmann.com 272 " It was next submitted that no enquiry was done by the Assessing Officer to find out whether the donor had received money from one 'C' as claimed. Nor any inquiry was done to find out whether the sister had in fact earned amounts on account of foreign exchange transactions as claimed by her. The enquiry of a source of source is not the requirement of law."

The appellant also vide letter dt. 03.03.2016 (Page 34-40) submitted affidavit of all parties duly confirming the transactions. There is an affidavit of Shri Pankaj Jain sworn on March 1st 2016 as a director of M/s. Easy Mercantile Pvt. Ltd, confirming advancing of loan of Rs. 1,00,0,000/, he has also referred to retraction dtd 15/5/2014 of Shri Praveen Jain (Pg. 35-36). The affidavits of other two lenders, being proprietors of their respective concerns, were submitted. These affidavits also refers to retraction of Shri Pravin Jain (Pg 37-40). These affidavits contains their current addresses. The Ld. Assessing

Officer only took a ground that notices as issued u/s 131, on registered addresses could not be served. A reference to the statement of Shri Pravin Jain show that nowhere a reference is made to the appellant, hence it is a general statement having no evidential value as judicially held.

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4.1.1 Shaf Broadcast Pvt. Ltd vs. ACIT ITAT No. 1819/Mum/2012 dtd 17.4.13(mum) also held that

4.1.2. the Hon'ble Supreme Court in the case of ITo vs. Lakhmani Meval Das 103 ITR 437 (SC) had an occasion to consider.....

4.1.3 In the case of P.S. Veerappa Vs. CIT 127 ITR 247 (Mad) also held that

4.1.4 S.P Agarwalla V. Income Tax Officer 140 ITR 1010 (Cal.) the court held.....

4.2 No evidence to be rejected without verification

4.2.1 CIT v. Genesis Commet (P.) Ltd., 163 Taxman 0482 (Delhi), the court held:

4.2.2 CIT vs. Gangeshwari Metal Pvt. Ltd 361 ITR 0010 (Delhi) held:

4.2.3 Oriental international co ltd 401 Itr 83(Del).....

4.3. Shri Pravin Jain made a statement during the course of search proceeding in October, 2013 stating that certain transactions carried out by him are of accommodation nature, thereafter he made an affidavit retracting his earlier statement .During the course of appellant's assessment proceedings, transactions are confirmed as genuine under the affidavits filed. They have also filed confirmations, bank statements, showing transactions through banking channel, no cash being deposited in bank accounts as reflected in bank statements as well as copies of acknowledgement of returns of income. Thus the stand taken by Shri Pravin Jain is of a shifting witness and evidence of shifting witness is not a valid evidence.

4.3.1. *In the case of CIT vs. Eastern Commercial Enterprises 210 ITR 103 the court stated*

4.3.2. *APEEJAY EDUCATION SOCIETY 182 TTJ 552 (ASR) statement retracted shifting witness. assessee entitled to cross examine at Jalander where assessed as against at Pune.*

4.4. *Evidence recorded of Shri Pravin Jain during the course of search proceedings is only an oral evidence, not backed by any supporting evidence, such oral evidence cannot override the documentary evidence as submitted by appellant during the course of assessment proceedings. In SHARAD U MISRA 467/JP/2011 dtd. 25-11-16, The seller under statement STATED TO HAVE SOLED AT HIGHER PRICE. ORAL EVIDENCE CANNOT OVER RIDE DOCUMENTORY EVIDENCE.*

4.5 *Appellant during the course of assessment proceedings had filed 3 affidavits of the loan creditors confirming the genuineness of the transactions. The Ld. Assessing Officer has just ignored such affidavits, once the transactions are confirmed under affidavit, same cannot be disregarded.*

4.5.1 *In the case of Mehta Parikh & Co. vs. CIT — 30 ITR 181 (SC),*

4.5.2 *High Court of Bombay in the case of Dilipkumar Roy s. CIT 94 ITR 1 (Mumbai).*

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4.6 *The Ld. Assessing Officer has just relied upon the statement of Shri Pravin Jain U/s.132(4) without providing a copy of the statement and even not evaluating the statement and its retraction during assessment proceeding. No cross examination is allowed. It is well recognized that no statement can be used against the appellant without giving an opportunity of cross-examination. High Court of Delhi in case of C/T vs. Sunil Aggarwal 237 Taxman 512 (Delhi) deleted the addition made of Rs, 1.38 crore based on statement of Mr. S who furnished various details which were incriminating to the assessee. The court held it was incumbent on the Assessing Officer, in those circumstances, to afford the assessee an opportunity of cross-examination of 'S'. Similarly, the Mumbai ITAT in case of*

4.6.1 *Yamuna Estate P. Ltd vs. ITO 45 ITR (Trib) 517 (Mumbai) held:*

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4.6.2 Your honour's further attention is drawn to the decision of Supreme Court in the case of *Andaman Timber Industries vs. Commissioner of Central Excise 281 CTR (SC) 241*. The Court held:

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4.6.3 Similarly, the Lordship of Supreme Court rejected the department SLP in the case of *CIT vs. J.M.D. Computers and Communications Pvt. Ltd - 320 JTR (St) 17 (S.C.)* as purchases were taken as inflated based on the statement of witness which were relied upon without allowing cross examination. ITAT, Delhi deleted the addition. The High Court of Delhi held in view of denial of cross examination no substantiate question of law arose from the order of the Tribunal. SLP as filed by the department is being rejected.

4.6.4 High Court of Karnataka in the case of *P S Aftab Alam 209 ITR 821 (Karnataka)* as well as decision of High Court of MP in case of *Prakash Natsha 301 ITR 134 MP* and of High Court of Madras in case of *M Chinna Swamy 350 ITR 694 (Madras)* is relied upon.

4.6.5 High Court of Bombay in case of *H. R. Mehta vs. ACIT, Appeal No.58 of 2001 dtd. 30106116*. The Hon'ble High Court held in para 16, the court observed: "...."

In para 17, the court concluded:

4.6.6 The High Court of Gujarat in case of *CIT vs. Ramanbhai B. Patel, Tax Appeal No. 207 of 2008 dtd.20107116* also considered a similar issue. In that case assessee made a confessional statement during the course of search u/s.131 offering additional income. The said

4.7 The Ld. Assessing Officer stated that summons were issued u/s.131 on the registered address of the loan creditors, however, the same could not be served with a remark "not found" / unattended as concerned parties are not subsisting at address. The Ld. Assessing Officer stated that assessee was requested to make available the loan creditors for verification and in view of non-service of notice u/s.131, the onus is shifted to the appellant. In the present case, a search was conducted on Shri Pravin Jain and his group concerns on 01/10/13. Shri Pravin Jain retracted his statement under an affidavit filed thereafter dtd.15/05/14. During assessment proceedings, affidavit of the loan creditors has been filed which reflects address.

In the case of M/s. Easy Mercantile Pvt. Ltd, Director Shri Pankaj Kumar Jain, 504, Pawan Indraprasth Complex, Satyanagar, Sal Baba Mandir Road, Borivali (West), Mumbai-400 092, In case of Seven Star Gems, proprietor Shri Mukesh Kumar Gadhiya, filed an affidavit giving its residential address at A302, Rajlaxmi CHS Ltd, Padma Nagar, Bldg No.8, Chikuwadi, Borivali (West), Mumbai-400 092. Similarly M/s. Ryan International, Proprietor Shri Pankaj Kumar Dani gave his residential address at 1105-Bm Upvan Tower, Upper Govind Nagar, Mated (East), Mumbai-400 097. Thus all the addresses were available, acknowledgement of income tax returns as filed in case of 3 creditors along with their PAN as well as their bank statements were submitted. Hence it cannot be said that parties are not available for verification. The Hon'ble Supreme Court in the case of Orissa Corporation 159 1TR 78 (SC) held that merely issuing summon u/s.131 and not perusing, it further is not a proper compliance of legal provision. The Assessing Officer could have made due enquiries from Income Tax records and bank authorities for effecting proper service of notice on the parties. These are search cases where orders should have been passed under provisions of sec 153A and related sections and it can not be just presumed that parties are not available for verification. All the details of companies is available on company law site, particulars of companies identification nos were furnished in affidavits. The High Court of Delhi in the case of Kamadhenu Steel & Alloys Ltd 361 ITR 220 (Delhi), held that merely a notice u/s.131 does not prove non-existence, it is to be conclusively established that no company is in existence after making proper enquiries with Income Tax Returns as available and bank authorities, without making any enquiry it cannot be said that parties are not available, so merely on the belief that party is not available, it cannot be held that loan creditors are not genuine. Mr Praveen Jain in reply to Q No. 126 stated that office at Panchratna, opera House was vacated three month before(pg 144). The Id AO send notices at Panchratna address in two cases, hence are no notice. Hence, it can not be gain said that parties are non existing. High court of Delhi in case of DWARKADHIS INVESTMENT(DEL)(5.1.7) held that department has all power to enforce presence of loan creditor.

5. Foundation of addition u/s 68, is finding OF INVESTIGATION WING in case of Shri Pravin Kumar Jain, as extensively quoted in order. Appellant supported genuineness and creditworthiness of three creditors by producing all the requisite evidences as enumerated in para 4 above. The creditors further confirmed loan by filling sworn affidavits, all transactions are through banks duly

reflected in bank statements. Finding of investigation wing can not be treated as conclusive proof ,not requiring any verification in assessment proceeding by LD AO. Wing is an arm of department and its findings can not be equated with an evidence. A note summering finding of wing based on which reasons were recorded and assessment is being made is made available to the appelland and is placed at (Pg 62-66).

5.1 A copy of statement of Shri Pravin Kumar jain is at (Pg 78-148), as recorded u/s 132(4) on 1st Oct,2013 to 8th Oct 2013, it nowhere refers name of appelland, any of its associate or, its directors. There is no allegation that any cash is passed over by appelland to any of the loan creditors. A copy of affidavit retracting his earlier statement dt15th may 2014 was submitted (Pg. 41-45),he stated that he is in business of diamond trade and finance, entire business activity is genuine(Pg.43). In statement there is no reference to appelland, hence it is a general statement ,of no evidential value, there is a retraction on record, in view of Ld Assessing Officer, the same is rebutted by wing, haw ever there is no evidence brought on record for such rebuttal, in assessment proceeding confirming affidavits are filled (Pg. 35-40). Ld. Assessing Officer has not brought any evidence on record to show any wrong doing on appelland pad. Section 68 casts the initial burden of proof on the assessee to show prima facie and to explain the nature and source of credit found in its books. When the statute places the burden of proof in income tax cases on the tax payer, it is understood to be only the initial burden. When the tax payer explains the credit by providing evidence of identity, confirmation and credit worthiness, the burden shifts on the revenue to show that the explanation is not satisfactory or incorrect.

An addition can not be made only for the fact of search. The appelland has discharged its initial onus to prove genuineness of loan transactions as transactions are through banking channel, loan creditors are assessed to tax ,proof of returns being filled submitted ,proving identity and genuineness of loan credits. Thus, appelland duly discharged its initial burden.

5.1.1 ADDITIONAL COMMISSIONER OF INCOME TAX vs. BAHRI BROTHERS (P) LTD. HIGH COURT OF PATNA 154 ITR 0244

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5.1.2 DEPUTY COMMISSIONER OF INCOME TAX vs. ROHINI BUILDERS HIGH COURT OF GUJARAT 256 ITR 0360

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5.1.3 ACIT v. Sanjay M. Jhaveri (2015) 168 TTJ 751(Mum.)(Trib.)

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5.1.4 VITRAG METALS P LTD 46 ITR(TRIB)(MUM)201

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5.1.5 MOD CREATIONS (P) LTD 354 ITR 0282 (Delhi). The court held:

5.1.6 Similarly in the case of CIT VS. GANGESHWARI METAL PVT. LTD - 361 JTR 10 (Delhi) — The court held.'

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5.1.7 DWARKADHISH INVESTMENT (P) LTD. 330 ITR 0298(Del)

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5.1.8 In the case of COMMISSIONER OF INCOME TAX vs. P. MOHANAKALA & ORS. Hon' SUPREME COURT OF INDIA observed

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5.1.9 It is submitted that appellant discharged its burden of proof. in case Ld AO disputes the same, otherwise is to be proved by department. Your honours' kind attention is drawn to NEMI CHAND KOTHARI vs. COMMISSIONER OF INCOME TAX & ANR. HIGH COURT OF GAUHATI 264 ITR 0254

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5.2 The courts, at occasions, considered the applicability of statements recorded under search proceedings on a third party, courts has held that if an assessee disputes correctness of such third party statement the same be not used as evidence unless supplemented by other evidences and subjected to cross examination. The following authorities may be referred:

5.2.1 ITO vs. Superline Construction P. Ltd (ITAT Mumbai)

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5.2.2 FAIR FIN VEST LTD 357 ITR 0146 (Delhi)

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5.2.3 BABA SAI FILMS vs. INCOME TAX OFFICER ITAT, BOMBAY TRIBUNAL (D) (2016) 47 CCH 0536 Mum Trib Held:

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5.2.4 Oriental International Co. P. Ltd 401 ITR 83 (Delhi).

5.2.5 M/s. Reliance Corporation ITA No.1069 to 1071/Mum/2017 'D' Bench, Mumbai dtd.12/04/17,

6. Hon'ble Appellate Tribunal, Bombay has considered loan /share premium taken from certain entities belonging to Shri Pravin Kumar Jain. It will be apt to refer to decision arrived at in those cases:-

6.1.1 Anil Chhaganlal Jain ITA No.369/Mum/2017 'A' Bench, Mumbai dtd.13/04/17.(Pg.149-174)

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6.1.2 M/s. Shreedham Construction Pvt. Ltd ITA No. 3754/Mum/2017 A. Y. 2008- 09 'E' Bench, Mumbai dt.14/11/2017.(pg175-214)

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7. The Ld. Assessing Officer in the present case has made an addition based on the allegation as made in search report that the loan creditors have taken accommodation entries without bringing anything on record to show that in compensating payment is being made by appellant. It is well recognized that merely an allegation of cash payment is not sufficient for making the addition, cash payment is to be proved by the Ld. Assessing Officer by bringing a definite evidence on record, which is lacking. A reliance is placed on the decision of MOD Creations (P) Ltd, (Delhi) (5.1.5) as well as Gangeshwari Metal Pvt. Ltd (Delhi) (5.1.6). It is also submitted that non-service of notice u/s.131 should not be a ground for rejection of the appellant's claim, as no further enquiries has been made by Ld. Assessing Officer after return of the notice u/s.131, necessary facts and circumstances under which the notices were received back are submitted in para 4.7 above. Appellant's claim is that it has proved genuineness of the transactions, identity as well as creditworthiness

of the loan creditors by submitting all the requisite details as mentioned in para 5 hereinabove and claim of the appellant can not be rejected, merely based on unverified statement by Shri Pravin Kumar Jain, who is not directly connected with any of the lenders and the statement stands retracted thereafter. It will be appreciated that issue is directly covered in favor of the appellant under the above referred decision of MUMBAI Appellate Tribunal as referred in para 6 hereinabove and M/s. Reliance Corporation (para 5.2.5.). It is submitted that addition made be deleted."

6. After considering the detailed submissions, Ld.CIT(A) deleted the addition made by the Assessing Officer with the following observations: -

"I have considered the facts of the case and submission made by the AR.

2. In ground No.3 to 6 the appellant has challenged addition made u/s.68 of Rs.2,00,00,000/-. A 0 states that appellant obtained accommodation entries by way of borrowing from following concern & controlled and managed by Praveen Jain.

<i>Sr.No</i>	<i>Name</i>	<i>PAN</i>	<i>Amount</i>
<i>1.</i>	<i>Easy Mercantile Co. Pvt.Ltd.,</i>	<i>AAAC07955M</i>	<i>1,00,00,000/-</i>
<i>2.</i>	<i>Ryan International</i>	<i>AAAPD5172G</i>	<i>50,00,000/-</i>
<i>3.</i>	<i>Seven Star Gems</i>	<i>AAACPJ5854B</i>	<i>50,00,000/-</i>
	<i>Total</i>		<i>2,00,00,000/-</i>

The assessing officer stated that summons were issued u/s.131 which remained. unserved with the remark. "Not found/unattended" and appellant was called. upon to produce the lenders for verification as burden to prove genuineness, credit worthiness and identity of the party in on the appellant. The finding of search party in the case of Pravin Kumar Jain is summarized in para 12.1 of the order stating that there was a search on Pravin Kumar Jain on 01/10/2013 wherein he has confirmed in statement recorded u/s 132(4) that he is engaged in providing accommodation entries through web of companies/concerns of loans, share capital, purchases. Book of account of the concerns were not found at registered office but at a place at Thane. Certain parallel books of accounts were found to have been kept on a pen drive, statement of certain brokers were recorded who were involved in the business of accommodation as provided in his Pravin Jain Group. The Assessing Officer referred to

the loans received by the appellant stated that three lenders were not operating from the address as reflected in the their respective returns of income and were not physically located at their registered address. On going through the bank statement provide by the lender companies it is observed that before making the payment of loans, similar amount is deposited in the bank account of the lender company through unknown source a few days earlier. Company has disclosed a minimum income. The various brokers engaged in providing accommodation entries from bogus concerns have confirmed on oath to be so engaged in accommodation entries. The Assessing Officer concluded that three lenders were the companies belonging to Pravin Kumar Jain were engaged in providing accommodation entries stating so made an addition of 2 Crs. to the income of the appellant.

2.1 The appellant during course of assessment proceeding submitted following evidences and claimed that it has discharged its onus fully to prove identity, creditworthiness and genuineness of transactions.

"(a) Copy of loan confirmation of parties from whom loan has been received.

(b) Copy of bank statement of the assessee company, duly highlighting the amount of loan received.

(c) Copy of bank statement and return of income of concerned 3 parties. It may be seen from the bank statement of the parties, that the name of the company is duly reflected in the transaction particulars, with the amount of withdrawal.

(d) Loan confirmation for the period ended 31.03.2010, where the loan received by the company has been repaid.

(e) Copy of bank statement of the assessee company, duly highlighting the amount of loan repaid and name of the parties in the particulars of the bank statement, in withdrawals."

The AR has drawn my attention towards the loan confirmation of M/s. Easy Mercantile Co. Pvt. Ltd, appellant has received loan Of Rs.50,00,000/- on 13/03/09, Rs.40,00,000/- on 18/03/09 and Rs.10,00,000/- on 21/03/09. Interest of Rs.54,000/- is being credited on which TDS of Rs.11,124/- was deducted. Appellant's bank account with Andhra Bank are being submitted which reflects receipt

of all three cheques as borrowed from the said company. An acknowledgement of return of income of the company reflect PAN:AABCE7519A bank statement of the lender company with Development Co-op. Bank are submitted which reflect that all three cheques were issued to the appellant. The loan was repaid on 03/08/09 as per confirmation filed along with interest repayment duly reflected in the bank statement of the appellant with Andhra Bank. In the case of Ryan International loans of Rs.5000,000/- was borrowed by cheque on 04/03/09 on which interest is being credited of Rs.46,667/- TDS deducted of Rs.4,807/-. The amount of loan, received was duly reflected in the bank statement of the appellant with Andhra Bank. It is a proprietor concern of Shri Pankaj Kumar Dhani PAN: AAAPD5172G Bank statement of the lender with Development Credit Bank reflect the lending of loan for Rs.50,00,000/-, loan was repaid on 03/08/09 along with interest as reflected in the bank account of the appellant with Andhra Bank. In the case M/s.Seven Star Gems loan of Rs.50,00,000/- received on 10/03/09 on which interest credited Rs.36,6671- TDS deducted Rs.3,777/- the amount borne was duly reflected as received in the bank statement of the appellant with Andhra Bank. Seven Star Gems is a proprietary concern of Shri Mukesh Kumar Ghadiya and acknowledgement of return is submitted. The PAN: AMNPG6653N is transaction duly reflected in the bank statement of the said lender party. The amount was repaid on 03/08/09 along with interest has duly reflected in the bank statement of the appellant. The appellant made a request for providing copies of all the, statements, report and affidavits as relied upon for recording of reasons as well as for making the assessment under its letter dated 12/02/2016. However appellant claims same not being provided. It was also submitted that all the parties are income tax assesses having bank account hence their presence should be enforced and parties should be made available for cross examination. The Affidavits of the lenders were submitted under submission dated 03/03/2016 wherein Shri Pankaj Kumar Jain director of M/s. Easy Mercantile Co(p).Ltd. provided his current address, identity, no. of the company, PAN, reference to retraction of Pravin Kumar Jain and confirmed the loan transactions under its Affidavit dated 01/03/16, Similarly Shri Mukesh Kumar Ghadiya of M/s. Seven Star Gems and Shri Pankaj Kumar Dhani of M/s. Ryan International confirmed the transactions of loan under their respective Affidavits. A copy of Retraction Affidavit of Shri Praveen Jain is also submitted. It is argued that statement of Praveen Jain being a general statement in which appellant is not named is of no evidential value and can not be a basis for making

addition. AR placed reliance on Lakhmani Melvadas 103 ITR 437 (SC), PS Vir Vradappa 127 ITR 247 (Madras) and others submitted that evidences produced cannot be disowned just by an oral statement, while confirmations and affidavits confirming genuineness of loan are subsequent to date of statement relied. The transactions are being confirmed by Affidavit and there was no reason to reject such Affidavits. The appellant request for cross examination which is not being granted. There is nothing to show that appellant paid any compensatory cash against cheques issued. Even in bank statement of two lenders does not reflect any cash deposit. Transactions being through banking channels, duly confirmed under the freshly filed confirmations and affidavits, there is no reason to reject evidences. Merely statement of having giving accommodation entries is not sufficient to make an addition, such statement remain uncorroborated by any independent evidence as to having carried any fictitious trade in diamond as claimed in statement. The AR submitted that the Hon'ble High Court of Delhi in spite of statement given by Mahendra Garg during the course of search having given accommodation entries accepted the genuineness of the transactions in view of documentary evidences Fair Finvest Ltd., 357 ITR 146 (Delhi), Oriental Ind. Co. Ltd., 401 ITR 83 (Delhi), Sanjay M. Jhaveri 168 TTJ 751 (Mumbai) (Tribunal), statement of Mukesh Chokasi, Vitrag Metal Pvt.Ltd., 46 ITR (Tribunal) (MUM) 201, Superline Construction Pvt.Ltd(Mumbai itat)., in the case of Baba Sai Films 47CCH 536 (Mumbai) statement of Surendra Khandhar who claimed to have floated various firms to given accommodation entries. AR also relied upon the following decisions in the Written Submission given in relation to confessional statement given by Bhawarlal Jain and Pravin Kumar Jain.

1) Reliance Corporation ITA 1069/MUM/.1071 `D' Bench, Mumbai dated 10th April

2017

2) Anil Chhaganlal Jain ITR 369/ MUM /2017 dated 13th April 2017

3) Shreedham Construction Pvt.Ltd., ITA 3754/Mum/2017 dated 14/11/2017

He has also relied upon certain decision during the course of personal hearing.

2.2 I have given my careful consideration to the fact as summarized by Assessing Officer in the assessment order, written submissions made as well as oral submission made by A R before me during the course of appellate proceedings. I have considered the evidences relied by appellant, there is no dispute that all the three borrowings are through cheques duly reflected in respective bank statements of lenders. All the three lenders are assessed to tax, acknowledgement of their respective returns of income are submitted. Loans are short period loan and were repaid through cheques, much earlier to search action. The AO has not brought on record any material to show any payment of compensatory payment by appellant. Loans are confirmed under duly sworn affidavits of three lenders which are nor rejected. Thus appellant has duly discharged its obligation to prove identity, genuineness as well as credit worthiness of parties. Assessing Officer made assessment rejecting three borrowings solely, relying upon the statement of Shri Pravin Kumar Jain. Statement of Pravin Kumar Jain is being retracted under his sworn affidavit dated 15/05/2014, a copy placed in compilation. I find that similar issue of sustaining addition based on confessional statement during search of providing accommodation entries is being considered by Hon'ble ITAT Mumbai in certain decisions, some of which are referred hereunder:

I. M/s. Reliance Corporation ITA No.1069 to 1071/Mum/2017 'D' Bench, Mumbai dtd.12/04/17. In this case, assessee raised loan from certain companies belonging to Shri Bhanwarlal Jain Group on whom the search was conducted and admitted to be providing accommodation entries. Appellant submitted before ITAT that identity, creditworthiness as well as genuineness is being proved by documentary evidences filed. It was stated that there is no proof of assessee having taken accommodation entries by providing money against the loan. Lender filed confirmation, creditor is on department's PAN, transactions are duly reflected in Balance Sheet. In para 8, the Hon'ble Appellate Tribunal held: "From all these details and facts on record, we find that the assessee has discharged its onus cast upon it by filing all the necessary details as called for by the AO to corroborate the transactions of borrowing the money and thereby satisfied all the three main ingredients i.e creditworthiness of the creditors, genuineness of the transactions and identity of the creditors by filing all the details as discussed above which proved that the identity of the creditors, genuineness of the transactions and creditworthiness of the creditors have been established by the assessee."

ITAT further held that:

"The oral statement of a third party recorded by Search authorities which was never paced to be confronted by assessee and no documentary evidence was supplied to assessee, could not be considered in making addition u/s.68 on account of alleged accommodation entries."

Stating so, the Hon'ble Bench allowed assessee's appeal."

ii. Sanghvi Reality Pvt.Ltd., 60 itr(Trib)0150 Mumbai In this case additions were made based on statement of Shri Bhanwarlal Jam. The Tribunal Held:

"Having heard the rival submissions and upon perusal of the record, tribunal notice that the assessee had discharged the initial burden of proof placed upon it by furnishing the required documents to prove the three main ingredients, viz., the identity of the creditor, the credit worthiness of the creditor and the genuineness of transactions. Tribunal also notice that the AC had summoned the creditor and the creditor also had appeared before the assessing officer and confirmed the loan transactions. Despite these facts, AO chose to place reliance on the general statement given by Shri Bhanwarlal Jain, meaning thereby, there was merit in the contentions of Ld A.R that the Assessing Officer had failed to discharge the burden shifted upon his shoulders. (Para 10)

Tribunal noticed that identical addition was made in the case of MIs Reliance Corporation (supra) and the assessee therein also furnished all the relevant details in order to discharge the burden of proof placed upon it u/s 68 of the Act. The creditor also appeared before the AO and confirmed the transactions. The AO, however, made the addition by placing reliance on the statement given by Shri Bhanwarlal Jam. When the matter reached the Tribunal, the division bench deleted the addition. (Para 11)

In AY 2010-11 and 2011-12, the AC had disallowed interest expenses. Since the addition made u/s 68 of the Act in AY 2007-08 did not survive and the addition made in AY 2008-09 had been deleted, the disallowance of interest expenses made in both the years was liable to be deleted. Accordingly tribunal set aside the order passed by Ld CIT(A) on the issue of disallowance of interest in AY 2010-11 and 2011-12 and direct the AC to delete the same in both the years."

iii. Keynote Fin. Organisation Ltd., ITR 1643/146 2018 dated

5/11/2018(mum)In this case based on statement of Shri Bhanwarlal Jam additions were made of Rs.12.20 Crs. The Bench observed after considering various decision as under:

"11. "We have perused the confirmation filed by the parties, copies of acknowledgement of return of income filed by the lenders for the year under consideration, copies of the bank statement of lenders, which establish that the payment towards loans were received during the year under consideration. Therefore the identity of the lenders was not in dispute. We have also considered all the documents placed on record by the assessee in the shape of statement of accounts and documents to show that the transactions were carried out through banking channels and the confirmations which were filed in the form of ledger accounts which reflect that the assessee had received the amount through RTGS, affidavits of the lenders. All those documents prove the genuineness of the transactions. Now as far as creditworthiness of the lenders are concerned, we have perused the audited accounts of the lenders which shows the creditworthiness of the lenders to grant loans and advances. Further, we also noticed from the record that the lenders have not only granted loans to the assessee but also to various other persons. We have also considered the affidavits of the lenders and from all those documents we find creditworthiness of the lenders to make payment of loans to the assessee.

13. As far as the facts of the present case, assessee has also repaid the loan which was taken to the lenders through banking channel and in such a situation the Hon'ble High Court in the case of Rahul Vineet Traders (supra) has held as under:-

"Section 68 of the Income-tax Act, 1961 — Cash credits [Loan] — Assessment year 2000-01 — Assessee-firm had taken loan from 14 firms out of which loan from four firms were, not found by Assessing Officer as genuine because those firms were, allegedly, related to one „G" involved in providing accommodation entries — Assessing Officer thus invoked section 68 and made addition to assessee"s income on account of unexplained cash credits — Commissioner noticed that lenders were regular income-tax assessee and their PANs were on record — It was also undisputed that amount had been advanced through account payee cheques and further before issuing cheques lenders had got sufficient balance in their account — Moreover, amount had also been repaid through account payee

cheques — In view of above, Commissioner (Appeals), taking a view that loan transactions were genuine, deleted addition made by Assessing Officer — Tribunal upheld order of Commissioner (Appeals) — Whether on facts, impugned addition made in hands of assessee was rightly deleted — Held, yes [Para 5] [In favour of assessee]."

In the case of Varinder Rawlley (supra) the Hon'ble High Court has held as under: -

"Section 68 of the Income-tax Act, 1961 — Cash credit (Sale of goods) — Assessment year 2002-23 — Whether where assessee received and returned amount in question by way of account payee cheques and transactions were reflected in bank accounts of assessee as well as creditor who was an income-tax assessee, assessee had sufficiently explained nature and source of credit entry and in such case entry could not be treated as assessee's income when department failed to prove to contrary — Held, yes [Paras 9 and 10] [In favour of assessee]."

In the case of Apex Therm Packaging (P) Ltd. (supra) the Hon'ble High Court has categorically held that when the assessee had placed on record full particulars, which are inclusive of confirmation with name, address and PAN, copy of income tax returns, balance sheet, etc. in respect of all creditors/lenders then Revenue is not justified in making additions. Similar view has also been taken by the Hon'ble Allahabad High Court in the case of Vijay Kumar Jain (supra) and the Hon'ble Rajasthan High Court in the case of Jai Kumar Bakliwal (supra).

14. In the present case the additions were made on the basis of statement recorded during the investigation carried out by the Investigation Wing. Since no opportunity of cross examination was given to the assessee in respect of the persons whose statements were relied upon by the Revenue, thus the same was considered as breach of principles of natural justice as held by the Hon'ble Bombay High Court in the case of R.W. Promotions (P.) Ltd. (supra). The learned A.R. also drawn our attention to the cases wherein under similar circumstances additions were made and the same were deleted by the Coordinate Bench of the Tribunal in the cases of ACIT vs. Sanjay M. Jhaveri 61 taxmann.com 28, Anil Chhaganlal Jain vs. ACIT ITA Nos. 369 & 370/Mum/2017, Shree Laxmi Estate Pvt. Ltd. vs. ITO ITA No. 5954/Mum/2016 & ITA No. 2562/Mum/ 2017, ACIT vs. Ramesh Ramswarupdas Jindal ITA Nos. 3091 to

20961Mum/2017, ITO vs. Khushboo Exports Pvt. Ltd. ITA No. 3647/Mum/2017 and Komal Agrotech P. Ltd. vs. ITO ITA No. 4371Hyd12016. We have also noticed that in Bhanwarlal Jain group cases also the Coordinate Bench of the Tribunal in the case of Reliance Corporation vs. ITO ITA Nos. 1069 to 1071/Mum/2017 for assessment years 2008-09 to 201 0-1 1 has deleted the addition. Similar addition was also deleted by the Coordinate Bench in the case of Jitendra M. Kitavat vs. ITO ITA Nos. 7049 & 7050/Mum/2016 and in the case of ITO vs. Vikram Muktilal Vorha ITA No. 842/Mum/2017 for A.Y. 2007-08. After having gone through the case law relied upon by the assessee and in the light of the facts of the present case we find that the Hon'ble High Court in the case of Gagandeep Infrastructure Pvt. Ltd. (supra) has categorically observed that proviso to section 68 has been inserted by Finance Act, 2012 w.e.f. 01.04.2013 and is applicable to A.Y. 2013-14. The court observed that the Parliament did not introduce proviso with retrospective effect not does the proviso introduced to state that it was introduced for removal of doubts. Therefore, it is not open to give retrospective effect. The assessee has also relied upon the decision of the Hon'ble Bombay High Court in the case of Archies Industries Pvt. Ltd. in ITA No. 1433 of 2014 wherein the Hon'ble High Court, after considering the relevant facts and also following the judgment in the case of Gagnadeep Infrastructure Pvt. Ltd. (supra), upheld the above said proposition. The assessee has also relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Lovely Exports (2008) 2016 CTR 195 wherein the Honble Supreme Court, while deleting the addition made under Section 68 of the ' Act, observed that if the share application money is received by the assessee company from alleged bogus shareholders whose names are given to the AO, then the department is free to proceed to reopen their individual assessments in accordance with law, but this amount of share application money cannot be recorded as undisclosed income under Section 68 of the Act. As far as the case law relied upon by the Revenue is concerned, we have considered those case law, but they are not applicable to the facts and circumstances of the present case as the pari material contained in those cases are different from the pari material contained in the present case.

15. From the records, we further noticed that the AO has not looked into all the records furnished by the assessee and even the CIT(A) has also upheld the additions on the basis of suspicion. It is a settled law that suspicion, howsoever strong, may be but it cannot take place of evidence. In the present case, no evidence was brought on

record by the AO to show that at any moment cash deposit was made in the bank account of the lenders before making payment to the assessee. The assessee has also placed on record all the documents pertaining to identity and creditworthiness of the lenders and genuineness of the transaction coupled with the document to show that whatever amount was taken by the assessee as loan, the same had already been returned back. Therefore, in view of the matter and the ratio of the decisions in the case law cited we are of the view that the assessee has discharged the onus of proving identity and creditworthiness of the parties and genuineness of the transactions. Therefore we see no reasons for the AO to make additions towards loan under Section 68 of the Act. Hence, we direct the AO to delete the addition made on the basis of loan. Hence the grounds of appeal. raised by assessee are allowed."

iv. Shri Vashnu Bhagnani ITA 5648/MUM/2016 dated 30/05/2018 in this case addition was made based on statement of Shri Bhanwarlal Jam. The assessment was reopened u/s.148 based on his statement and addition was made of Rs.50,00,000I-. The bench held:

"The search and seizure action conducted by the Department in Bhanwarlal Jam Group took place on 03.10.2013. The loans taken by the assessee from Daksh Diamonds in the year 2006 was refunded in the year 2010. One has to respect the transactions which occurred more than three years before the search and seizure action by the Department.

Thus the addition made by the AO without any documents is devoid of merit. Accordingly, we uphold the order of the Ld. CIT(A). As we have decided the case on facts, we are not advertent to the case-laws relied on by the Ld. counsel,"

v. Anil Chhaganlal Jain ITA No.369/Mum/2017 'A' Bench, Mumbai dtd.13/04/17 In this case a taken loan of Rs. 1.77 crore was taken from M/a. Eence Securities Pvt. Ltd. The lender confirmed the loan. The department made addition as an arranged transaction. It was claimed that lender got its capital on premium from certain companies of Mr Pravin Jain who was searched by investigation wing Mumbai The bench held " In the present appeal, we note that the assessee has duly proved the identity of the party from where loan was taken, therefore, identity is not in dispute, since, the loan was taken through banking channel, and therefore, its genuineness cannot be doubted. So far as, explanation is concerned, the assessee duly explained the same that the loan was received from M/s. Eence

Securities Pvt. Ltd. The totality of facts, clearly indicates that the assessee duly discharged the onus cast upon the assessee."

vi. M/s. Shreedham Construction Pvt. Ltd ITA No. 37541Mum/2017 A.Y. 2008-09 'E' Bench, Mumbai dt.14/11/2017 The addition was made of Rs.1.5 crore on account of share premium/share application money received from one of the concerns of Shri Pravin Kumar Jain termed as a leading entry provider operating in Mumbai. In assessment proceeding notice issued u/s.131 was not complied. The Ld. Assessing Officer made addition as the shareholder was belonging to Shri Pravin Kumar Jain group. The Assessing Officer held that Shri Pravin Kumar Jain is the witness of the assessee. The assessee argued that the Ld. Assessing Officer has failed to demonstrate any specific evidence that the assessee in reality obtained accommodation entries, there is no evidence of cash deposit linked to the investor or the assessee having given cash to the investor. Investor has filed its return of income, transactions are through banking channel (Para 21). In para 22, certain decisions has been referred relating to such confessional statement made by others in similar circumstances including Bharti Syntex Ltd IITA Nos. 172 & 173/Jp/2010 in which the confessional statement of Mr. Mukesh Choksi was dealt with. The findings of Ld. CIT(A) are referred in para 12 wherein after detailed discussion, the Ld. CIT(A) allowed the appeal of the assessee. The Ld. CIT(A) held that assessee has filed audited accounts of the investor, a letter of confirmation along with PAN, address and bank statement and acknowledgement of return of income were submitted. (Pg.198). Ld cit(A) held "It can be seen from the observation of the Assessing Officer that he has only referred to the information related to the outcome of search in the case of Shri Pravin Kumar Jain Group who were allegedly providing accommodation entries but the Ld. Assessing Officer has failed to demonstrate any such specific evidence that the appellant has in reality obtained any accommodation entries. There is no direct specific mention of the appellant by the director or key persons of the investor companies. There is no evidence of cash deposits linked to the investors. The Assessing Officer did not bring specific incriminating evidence linking the investor to the appellant. The only link is that the investors have invested in appellant company. That the appellant has given cash to the investors in lieu of entry is merely alleged but not demonstrated. Layering of transactions is alleged but not demonstrated. Opportunity for cross examination is not provided to the appellant. Papers/evidence found in the search action raises presumption but

the same is available in the case of person searched but not in the case of third parties unless proved and corroborated. Similarly, retraction may be rejected or as motivated, but the same can be considered only against the person who has retracted in his assessment. Such statement in the case of another person loses its sanctity unless opportunity of cross examination is granted and/or is corroborated with other evidences. When the investor company is filing regular return of income and there is a transaction through banking channel, no addition can be made without having any contrary or cogent evidences in possession. Over such issue there are plethora of judgments to support the appellant." Ld CIT(A) allowed the appeal. As per para 13 the Appellate Tribunal dismissed the Revenue's appeal.

vii. Shri Ganesh Developers ITR 177/MUM/2017 dated 20.11.2018 in this case addition was made of 1.75 Cr. based on statement of Shri Pravin Kumar Jain being loan from following concerns:

<i>Sr.No.</i>	<i>Name</i>	<i>PAN</i>	<i>Amount</i>
<i>1</i>	<i>Duke Business P.Ltd., (JPK Trading I. Pvt.Ltd)</i>	<i>AABCJ6245N</i>	<i>50,00,000/-</i>
<i>2</i>	<i>Duke Business P.Ltd., (JPK Trading I. Pvt. Ltd.)</i>	<i>AAB06245N</i>	<i>35,00,000/-</i>
<i>3</i>	<i>Casper Enterprises P. Ltd (Ostwal Trading I. P. Ltd.)</i>	<i>AAAC07955M</i>	<i>40,00,000/-</i>
<i>4</i>	<i>Sumukh Commercial Pvt. Ltd</i>	<i>AACCC400M</i>	<i>50,00,000/-</i>
		<i>Total</i>	<i>Rs.1,75,00,000/-</i>

The claim of the department was that Shri Pravin Kumar Jain alongwith associate engaged in fraudulent billing activities and giving accommodation entries.

In para 5.10 Bombay High Court decision, in this case of "Rakesh Ent. in Writ Petition No.167 of 2015 is referred: in that case the assessee took loan from 45 parties out of which 4 parties were belonging to Shri Bhawarla.Jain were considered as non genuine. The loans were taken through account payee cheques, tax was deducted at source department claimed it to be accommodation entries. The Court held that "we do not find anything in the said affidavit that establishes there is a reason to believe that income has escaped assessment." The Court also held that "they are unable to agree with the department since petitioner has clearly stated that all the payments were made by account payee cheques which were encashed in the bank account of the petitioner in regular course of

business. We find that the petitioner has also paid interest on these loans after deduction of tax at source and TDS returns are also accordingly filed. There is no dispute in regard to the above. We find nothing to support the said contention of revenue. The revenue's contention in affidavit in reply has no merit"

Further, in para5. 11, it referred decision in case of CIT vs. Smt. Sushiladevi Khadaria [2009] 319 ITR (Born) that when loans were taken by account payee cheques and the record indicated that there was no cash payment in the account of the borrower prior to the issuance of such cheques, the loans and interest paid on such loans were not includible in the total income of the assessee u/s. 68 of the Act. It was also held by the Hon'ble ITAT (Mumbai) in the case of ITO vs Anant Shelters (p) Ltd. [2012] 051 SOT 0234 that in matters regarding cash credit the onus of proof was not a static one. As per the provisions of the section 68, the initial burden of proof lies on assessee. Amount appearing in books of accounts of the assessee was considered a proof against him. He can prove the identity of the creditors by either furnishing their PANS or assessment orders. Similarly, genuineness of transaction could be proved by showing that money was received by an account payee cheque or by draft. Credit worthiness of the lender could be established by attending circumstances. The AO has not pointed out any defect in the above mentioned documentary evidences submitted during assessment proceedings. Without pointing out any lacuna in the evidences submitted by the appellant, the sources and the genuineness of transactions cannot be doubted. Once evidences related to a transaction is submitted before the A.O.; the onus shifts on him to prove these as non-genuine or bogus. The AO has not pointed out any defect in the above mentioned documentary evidences submitted during assessment proceedings. "Without pointing out any lacuna in the evidences submitted by the appellant, the sources and the genuineness of transactions cannot be doubted. Once evidences related to a transaction is submitted before the A.O., the onus shifts on him to prove these as non-genuine or bogus. The A.O. has not discharged the onus casted on him. In my opinion, merely based on the statement of a third person without any corroborative evidence will not make the loan transactions, in question, as accommodation entries. As such, in the absence of any contrary evidence placed on record, the transaction cannot be treated as accommodation entries."

The bench further observed:

"5.13 As far as the question of validity of the transaction done through M/s.Duke Business P.Ltd. (JPK Trading I Pvt.Ltd., Casper Enterprises P.Ltd. (Ostwal Trading P.Ltd. and Sumukh Commercial Pvt.Ltd. (Capstown Mer.P.Ltd. are concerned, even if some of the transactions entered into by Shri.Pravin kumar Jain Group are found to be not genuine, it does not lead to the conclusion that all the transactions entered into by these brokers were bogus or non-genuine including the transactions related to the appellant. There is no evidence brought in the assessment order to prove the above conclusion, by the AO. The outcome of investigation carried out in the case of Shri.Pravinkumar Jam, the conclusions drawn therein cannot be applied ipso facto to all other cases. Simply relying on the report and statement, the AO cannot conclude that all transactions are accommodation entries."

The bench further observed that case of the appellant is covered by the decision of ITAT, T Bench, Mumbai, in the case of Satish N. Doshi HUF Vs. ITO, Ward 21(2)(4), Mumbai in ITA IMo-2329/Mum/2009 and in the case of Shri Jafferali K Rattonsej 5068/rn um/209 mum held that mere statement of a person cannot be a deciding factor for rejecting the genuineness of a transaction.

"11. The statement made before the DDIT (Inv) was RETRACTED by the said Praveen-Kumar Jam. The reason given for the withdrawal was thus the statement was obtained under the coercion, pressure and threat and harassments from the DDIT (Inv)."

"AR referred to the point no 7 and onwards of the retraction Affidavit, to show that the statement given to the DDIT (Inv) was under coercion, pressure and threat from the ODIT (Inv). The statement was recorded under the extenuating circumstances and Pravin Kumar Jain was not even aware of the content that was recorded by the DDIT(inv). The Search operation continued for 9 days and Pravin Kumar Jain in his Retraction affidavit has said that he signed the statement to ensure that the 9 days long search action ends."

19 Considering the documentary evidence filed before the lower authorities, the CIT(A) has recorded categorical findings to the effect that the assessee has discharged the burden cast on him with regard to the identity of the loan creditors, genuineness of the transaction and creditworthiness of loan creditors. The detailed finding so recorded by CIT(A) are as per material on record which has not been

controverted by learned DR by bringing any positive material on record. Accordingly, we do not find any reason to interfere in the findings so recorded by CIT(A)."

I find that during the course of assessment proceeding appellant has filed requisite evidences to prove the identify in the form of acknowledgements of return of income and bank statements. The creditworthiness of the parties is proved by bank statements, transactions being through banking channel and no cash being found deposited in either of their bank account before the issue of cheques, genuineness also stand proved. The Assessing Officer has also not brought on record any proof of any compensatory payment being made by appellant or name of appellant found mentioned in any of the seized material to show any wrong doing on appellant part. Further, the loan was repaid subsequently. The ITAT Mumbai in the case of M/s.Ganesh Developer (Supra) considered similar transactions and allowed assessee's appeal. Hon'ble jurisdictional benches of ITAT having considered the cases on similar facts in favour of assessee, additions made based on similar facts have to be deleted. Therefore, addition made u/s 68 of Rs. 2,00,00,000/- is directed to be deleted. The assessee's ground no. 3 to 6 are allowed."

7. Aggrieved revenue is in appeal before us raising following grounds

in its appeal: -

"1. "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance/addition of Rs.2,00,00,000/- on account of bogus loans / unexplained cash credit u/s.68 of the I.T. Act, without appreciating the fact that Pravin Kumar Jain was proved as an entry provider, who provided the entry to the assessee and the same had been accepted by Pravin Kumar Jain."

2. "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance/addition of Rs.2,00,00,000/- on account of bogus loans / unexplained cash credit u/s.68 of the I.T. Act, without appreciating the fact that the assessee had failed to prove identity, creditworthiness and genuineness of the parties from whom it had claimed to have received the said loans."

3. *"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in failing to appreciate that documents furnished by the assessee have to be seen in the light of antecedent circumstances before concluding in respect of genuineness of a transaction.*

4. *The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.*

5. *The appellant prays that the order of CIT(A) on the above ground be set aside and that of the Assessing Officer be restored."*

8. At the time of hearing Ld.DR took us through the grounds of appeal and brought to our notice Para No. 11 and 13 of the Assessment Order and submitted that these transactions are transacted from the companies promoted by PKJ and Assessing Officer has verified the transactions and he came to the proper conclusion that the assessee company has availed bogus loan of ₹.2 crores from three entities during this assessment year. The assessee company has failed to offer a satisfactory and authentic explanation about the genuineness, identity and creditworthiness of such loan creditors. Accordingly, he supported the findings of the Assessing Officer. Further he brought to our notice Page No. 51 of the Ld.CIT(A) order and took us through the finding of the Ld.CIT(A) and conclusion reached by the Ld.CIT(A) in his order. He opposed the finding of the Ld.CIT(A) and submitted that assessee has not produced any loan agreement nor declared any security against the loan, he wondered how

assessee contacted the lenders and which source. He submitted that assessee not able to produce any parties before the Assessing Officer. Therefore, assessee failed to prove the genuineness of the transactions. He prayed that the finding of the Assessing Officer may be sustained. He submits that the other appeal filed by the revenue is also having similar facts and issues.

9. On the other hand, Ld.AR submitted that, no doubt PKJ accepted that he provided accommodation entries, however, later he retracted his statement. Therefore, the statement given by PKJ lost its credibility. He submitted that PKJ is not involved in the companies in which assessee has taken loan. He brought to our notice Page No. 1 and 2 of the Paper Book which is the submissions of the assessee before the Assessing Officer wherein assessee has submitted all the documents relating to the loan transactions which includes loan confirmations of party, bank statement of the assessee, bank statement and return of income of the three parties who has lent the loan to the assessee and loan confirmations. Since assessee has submitted all the relevant information before the Assessing Officer to prove the genuineness of the transactions and he submitted that assessee has no power to bring the parties before the tax authorities.

However, assessee filed all the details which is required to prove the genuineness of the transactions. He submitted that it is not the case of the revenue that assessee has deposited any cash or any of the parties who lend the loan to the assessee involved in any kind of cash transactions.

10. Further he submitted that the loans taken by the assessee were refunded, in this regard he brought to our notice Page No. 19 to 21 of the Paper Book. He took us through the various communications filed by the assessee before the Assessing Officer on 13.01.2016 and 12.02.2016 relating to loan transactions. Further he submitted that assessee also filed affidavits from all the parties to prove the genuineness of the transactions, therefore he relied on the finding of the Ld.CIT(A).

11. Considered the rival submissions and material placed on record, we observed that assessee has taken loan from three parties i.e. Easy Mercantile Company, Ryan International and Sevem Star Gems. It is fact on record that assessee has filed all the relevant documents, relevant for the loan transactions which includes bank statement, confirmations, financial records, return of income and also affidavits from the loan creditors to prove that these transactions are genuine. All these facts

were clearly submitted before the Ld.CIT(A) and Ld.CIT(A) considering the submissions and verifying each loan transactions in detail the loan confirmations, affidavits, etc., filed by these parties. Ld.CIT(A) after verification of the bank statements came to the conclusion that there is no cash deposits nowhere involved in any of the transactions entered into by the assessee as well as the lenders. He observed that merely statement of having given accommodation entries is not sufficient to make the addition, such statements remained uncorroborated by any independent evidences as to having carried any fictitious trade in diamond as claimed in the statement. By relying on various decisions of the ITAT in the similar cases of PKJ, Ld.CIT(A) deleted the additions made by the Assessing Officer. The relevant case law relied by the Ld.CIT(A) are part of appellate order. After duly verifying the details submitted before him he came to the conclusion that assessee has proved the identity, creditworthiness and genuineness of the transactions and in the similar cases the Coordinate Bench has also deleted the similar additions made in the cases involving PKJ. Therefore, after considering the overall facts on record and various material placed on record, we are in agreement with the Ld.CIT(A) that assessee has proved the genuineness, identity and creditworthiness in these transactions. It is relevant to note that the assessee has not only

taken the loan and also repaid the loan. Therefore, we do not find any reason to disturb the finding of the Ld.CIT(A). Accordingly, ground raised by the revenue is dismissed.

12. Coming to the appeal relating to A.Y. 2013-14, since facts in this appeal are mutatis mutandis, therefore the decision taken in A.Y. 2009-10 is applicable to this assessment year also. Accordingly, this appeal is dismissed.

13. In the result, appeals filed by the revenue are dismissed.

Order pronounced in the open court on 27.04.2022.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER
Mumbai / Dated 27.04.2022
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