

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

ITA No.2227/Mum/2021

(A.Y. 2013-14)

DCIT,CC-3(4) Room No. 1915, Air India Building, Nariman Point, Mumbai – 400021	Vs.	Mr. Vijay Kumar Thakkar D-1214, Hillside Building Raheja Vihar, Andheri (E) Mumbai – 400 072
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACPT0654P		
Revenue	..	Assessee

Assessee by :	Harsh Bhuta & Pritama Pokhana
Revenue by :	Achal Sharma

Date of Hearing	27.04.2022
Date of Pronouncement	19.05.2022

आदेश / O R D E R

PER AMARJIT SINGH, AM:

The present appeal filed by the revenue is directed against the order passed by the ld. CIT(A)-51, Mumbai, which in turn arises from the order passed by the A.O. u/s 143(3) r.w.s 147 of the Income Tax Act, 1961, for A.Y. 2013-14. The revenue has assailed the impugned order on the following grounds before us:

- “1. On the facts and in the circumstances of the case and in law, the ld. CIT(A), erred in deleting the addition made after thorough investigation on account of unexplained investment u/s 698 of the I.T. Act amounting to Rs.3,61,00,000/-.

2. *On the facts and in the circumstances of the case and in law, the ld. CIT(A), erred in not applying test of human probabilities.*
3. *The appellant craves to leave, to add, to amend and/or to alter any of the ground of appeal, if need be.”*

2. The fact in brief is that assessee has filed return of income declaring total income of Rs.13,74,929/- on 30.07.2013. A search action u/s 132 of the Act was conducted in the case of Dev Land & Housing (DLH) Group on 10.12.2013 and residential premises of the assessee was also covered in search action. During the course of search what'sapp message were found in the mobile phone of the assessee regarding communication of investment made in cash. The statement of the assessee was recorded u/s 132(4) of the Act on 10.12.2013 wherein he stated that cash of Rs.3.61 crores had been given to him by Shri Vijay T. Thakkar chairman of DLH Group for investment. However, Shri Vijay T. Thakkar had denied of giving any cash amount to the assessee. On the basis of aforesaid information, the A.O recorded reason that income chargeable to tax to the amount of Rs.3.61 crores had escaped assessment in the hand of the assessee pertaining to the assessment year 2013-14. Accordingly, a notice u/s 148 of the Act on 20.12.2016 was issued to the assessee. During the course of reassessment proceedings the assessee had made submission that he had given loan of Rs.1,65,00,000/- and his wife Nirja Thakkar had given loan of Rs.50 lac, totaling to Rs.2,15,00,000/- to Karan/Shweta on interest @ 15% per month compounded monthly. It was further submitted by the assessee that on the date of search the total amount receivable was Rs.5,76,00,000/- including principle component of Rs.2,15,00,000/- lac and the balance amount was comprised of interest component. The assessee also submitted that FIR had been filed against the said party for cheating and failing to repay the amount borrowed. The assessee has

also referred the order of the Hon'ble Bombay High Court pertaining to the bail application of the parents of the absconded defaulters. The assessee explained that there was no escapement of income as an amount of Rs.2.5 crores invested by the assessee's family was also reflected in its books of account and the remaining part of 3.61 crores was pertained to the interest amount. The assessee has retracted his statement dated 11.12.2013 on 14.12.2013 by filing affidavit stating that his statement was wrong, untrue and he intended to convey that an amount of Rs.2.15 crores was invested by him with Karan/Shweta at a compounded interest at the rate of 15% per month and that he was to receive an amount of Rs.5.76 crores from Karan/Shweta along with interest up to April, 2013 which was referred in the what'sapp conversation. The A.O has not accepted the explanation of the assessee stating that compound interest rate of 15% per month was highly improbable, therefore, retraction affidavit filed by the assessee cannot be accepted. The A.O held that assessee has invested an amount of Rs.3.61 crores out of his undisclosed income and same was added in the total income of the assessee u/s 69B of the Act.

3. The assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee. The relevant part of the decision of ld .CIT(A) is reproduced as under:

"Decision

- 6.5 *I have carefully considered the facts of the case, oral contention, and written submission of the assessee, discussion of the A.O in the assessment order and material available on record.*
- 6.6 *Certain whatsapp messages were found to be there on the mobile of the assessee wherein a conversation in a whatsapp chat group. The conversation noted by the search party on the assessee's mobile is reproduced below.*

Need at least 60 lacs every month till 1.7.13 (starting with 30 to me 1.13) when you shall make a balloon payment.

It's not a joke and I'm very serious.

Hence stick to what you stated and confirmed without a change.

Be a man of words.

10:23PM, 3 Apr - V.K. Takkar : Being your biggest investor, I definitely expect huge priority in how you deal with me & my payments.

10:28PM, 3 Apr - V.K. Takkar: I have given you Amounts which you had not ever seen in your entire life from any other person.

What have you paid me in return ? ZERO !

10:36PM, 3 Apr - V.K. Takkar : Hence, make payments to us as already committed by you. No after thoughts permitted when you are sitting away.

10:53PM, 3 Apr - V.K. Takkar : Sandeep ji and Devnani ji May also like to express their views.

7:01AM, 4 Apr - Sandeep Srivastva Kandivali: I entirely agree with Vijayji. Karan has to honour his words. Work hard n remit the Ami as decided. There is no discussion on that anymore.

8:48AM, 4 Apr - Devnani Vaibhavji 112:1 entirely agree with Vijaykumar ji and Sandeep ji as we have been pushed into a mess by Karan for no fault of ours and has he sent the account details for verifications.

9:36AM, 4 Apr- V.K. Takkar: Karan

Why is sending your account statement is taking so much time when it is a one minute job and you reached Dubai on 2.4.13? Everybody is waiting.

9:39AM, 4 Apr - V.K. Takkar: Also reminding in advance (as I have always been doing) to deliver 30 to me at 8 pm on 7.4.2013 (Sunday) without any default or delay whatsoever.

10:56AM, 4 Apr - V.K. Takkar; Karan

All three of us shall like to together meet you each time you are in Mumbai.

Hence always inform your Mumbai visit programme to us and do not go away without meeting us together on each visit,

10:57AM, 4 Apr- V.K. Takkar: Karan

When are you getting your next millions of dollars investment which you assured us about on 31.3.2013?

2:09PM, 4 Apr - Karan Dodani dedicated Number : I have sent the statements.

2:10PM, 4 Apr - V.K. Takkar : Not yet received on my mail vktakkar@gmail.com

2:11PM, 4 Apr - Karan Dodani dedicated Number: I have sent on the SMS email Id. Fromaraceliafx@gmail.com .

2:12PM, 4 Apr - V. K. Takkar: Just received.

4:23PM, 4Apr - V.K. Takkar : My preliminary observations on the limited. Trading Account Statements sent by Karan from Aug 2012 to March 2013:-

Against my capital Investment to him of 5.76 Crores from July to Dec 2012, he has deposited only 3.95 Crores into Trading Account. In addition, he must have received additional monies also from other Investors like Sandeep ji, Devnani ji etc. during this period. Hence there is a huge shortfall in Karan making deposits into his Trading Account. It is clear that Investor's monies have been siphoned off into some other channels by Karan. Where is the balance money not deposited by Karan into Trading Account?

6.7 It is noted that the above conversation is about certain investments made by the assesses with Karan Dodani along with certain other investors. As per the conversation, there is a capital investment of Rs 5.76 crore and the assesses expects a return of Rs 30 lakh per month.

6.8 The assessee was asked about the above conversation while recording his statement u/s 132(4) of the Act. The reply given by the assessee in relation to his transactions with Karan Dodani is being reproduced below for clarity:

Q. 14 How do you know Mr. Karan Dodani and Mrs. Shweta ?

Ans. They were introduced to me by a common friend, Mr. Sandeep Srivastava, Ex- Indian Naval Officer who stays in kandivali.

Q. 15 Have you made any financial transaction with Karan Dodani? Where does he stay?

Ans. On Mr. Sandeep Srivastava's , Karan's and Shweta's joint insistence, persuasion and assurances of decent timely returns to me on my loan investments made with them, I got lured to lend monies to them. They paid the partial returns by cheque for some initial time. But thereafter, they stopped picking up our phone calls and became very difficult to contact. They even closed their office in Andheri (W), their last known address to me To the best of my knowledge, they are absconding from India. Karan's parent's house is in Bandra. To my last gathered knowledge, he should be in Dubai.

Q. 16 As you said that were lured by the attractive rate of interest offered by Karan Dodani, please state how much was the rate of interest promised by him and in which business he was indulged in?

Ans. Karan Dodani had promised to give 15% returns per month on my investment made with him plus other unspecified benefits like bonus,

incentives etc. He represented that he wanted monies for expanding his own business without any reference made to us. We were not at all concerned with his nature of business and we lent him monies all in good faith locally. My investment with him was merely a loan and was made locally in India with sole intention of earning higher rate of interest in India. Whatever partial interest that we have received from him has been duly shown as our earnings and accounted for in books of accounts and returns duly filed. In future also, if at all, any money is ever received from him (chances are extremely bleak) would be shown in our books of account and will be offered for taxation purpose. All my loan cheques issued to him were deposited by him into their local Indian accounts only. From the knowledge that I have gathered, Mr. Karan is having various other clients also who have made investments with him. His nature of business according to him, was to undertake commodities trading along with currency futures.

Q. 17 What was the amount of total investment made by you with Karan Dodani? What was the mode of payment?

Ans. The total amount of investment made by me with Karan Dodani as per my books is Rs. 1,56,00,000/- and the amount of investment made in the name of my wife Neerja Takkar with Karen's wife Shweta Grover is Rs. 50,00,000/- as per my books. The mode of payment was through cheque.

Q.18 Do you know whereabouts of Karan Dodani in Dubai? Any addresses, if any?

Ans. To the best of my knowledge, I do not have any of their addresses in Dubai unfortunately. They are indulged in fraudulent activities across the board. In fact, I am the victim of their wrongdoings.

Q. 19 Please confirm the name of karan's company.

Ans. The name of Karan Dodani's company is ARACELIA PVT LTD, This was incorporated in India only.

Q. 20 Please confirm your email address.

Ans. Myemailaddressisvktakkar@gmail.com

Q. 21 I am showing you a print out (ANNEXURE 1) of one of your emails dated 25.10.2012 wherein you have got an email from ARACELIA FOREX giving you the details of their address in Dubai. This email is from Shweta Grover. You have further forwarded this mail to jhallajhallajhallaa@gmail.com In Q. 18 above, you have stated that you do not have any of their addresses. Please confirm.

Ans. I could not recall this email. However, since you have showed this mail to me. I heartily accept that this mail was duly received by me. Whatever address -they have mentioned share with you that their latest

possible address may have been posted by them on a new website which they have created .alter fleeing to Dubai. .

jhallaajhalla@gmail.com is private email address of my Advocate, Mr. Nirmal Devnani, whom I keep posted from time to time with a view to launch criminal case against these cheaters without letting them (Karan and Shweta) know.

Q. 22 Do you keep receiving any kind of communication from Karan or Shweta (ARACELIA) in the form of account statement/usage of your funds/profit earned monthly?

Ans. No such communication has ever been received by me from them. They don't consider themselves accountable to us.

Q. 23 Have you ever opened any account with Karan's Company in Dubai against which any User ID was issued to you?

Ans. No account was ever opened with Karan's Company in Dubai and there was no issue of any User ID in the that case. I do not have any such User ID or accounts opened with him.

25 You had stated in the answer to your question 17 of this statement that you had invested a total sum of Rs. 2,15,00,000/- with Karan/Shweta as per your books. Now please refer to the following Whatsapp conversation (Annexure-2):

(4th April, 4.23 pm) VK Takkar: My preliminary observation on the limited trading account statements sent by Karan from August 2012 to March 2013:

Against my capital investment to him of Rs. 5.76 crores from July to December 2012, he has deposited only Rs. 3.95 crores into trading account in addition, he must have received additional monies a/so from other investor like Sandeepji, Devnaniji etc. during this period. Hence there is a huge shortfall in Karan making deposit into his trading account. It is clear that investor's monies have been siphoned off into some other channels by Karan. Why is the balance money not deposited by the Karan into trading account?

In the light of these statements made by you in Whatsapp conversation, Please specify where did this balance money come from as you had invested only Rs.2.15 crores through Cheque. Please give us clear bifurcation of the actual amount invested with Karan/Shweta with clear-cut cash and cheque component.

Ans. Whatever I had stated in the answer to the question No. 17 of this statement is true to the best of my knowledge and as per my books. To reveal the actual truth before the revenue authorities, I would like to confess and admit that the total investment made with Karan/Shweta

was Rs.5.76 Crores, as truly stated in the whatsapp conversation. This was all done on the insistence of Shri Vijay Thakkar of DLH, wherein I am employed as one of the independent directors. On his insistence only, I told him that I have the capacity to invest Rs. 2.15 crores as reflected in my books. However, the remaining amount of Rs. 3.61 crores was invested in cash, which belongs to Shri Vijay Thakkar of DLH. It was agreed upon between both of us that interest on Rs. 2.15 crores invested by me through cheque would belong to him. Whatever meagre interest I had earned, they have been shown in my books of accounts and have been offered for tax under the head "Income from other sources" I am giving you the ledgers of "loan interest account" of Karan Dodani (**ANNEXURE-3**) and Shweta Grover (**ANNEXURE-4**). I do not have any relation with the cash component of Rs. 3.61 crores and the interest earned there on whatsoever as this entire cash component belongs to Shri Vijay Thakkar of DLH. Hence, the amount of Capital investments of Rs. 5.76 crores mentioned by me in the whatsapp conversation do not wholly belongs to me. This is as per the bifurcation just explained by me.

Q.26 When was the money invested with Karan / Shweta?

Ans. As stated my whatsapp conversation, these entire transactions took place between july to December, 2012.

Q.27 What all do you know about Karan Dodani and Shweta Grover? Please furnish their PAN details, residence, office address and other whereabouts?

Ans. Karan's full name is Karan Mohan Dodani and his passport no. is G3668500 issued on 14.06.2007. In 2012, he was residing at 234/7, Gulmohur Building, 28th Road, Bandra (W), Mumbai-50. His PAN is AJCPD0527E.

Mrs. Shweta Ramesh Grover is his wife. Her passport no. is F7631643 issued on 21.04.2006. In 2012, she was residing with her parents at A-704, Vaibhav V Palace, New Link Road, Oshiwara, Jogeshwari (w), Mumbai.

They had promoted a company in India by the name Aracelia Forex Trading Pvt. Ltd. with its CIN no. U93030MH2011PTC219959 incorporated in India. After taking monies from 100 of investors, they have run away to Dubai and to the best of my information they are continuing a similar business of, soliciting others money under the name "Aracelia Limited", incorporated at Ras al khaima, Dubai, under the provisions of RAK investment Authority international business company regulation, 2006 and having registration no. A190/12/11/4134. They have a/so opened a website from Dubai either with the name of araceliafx.com or aracelia.com. To the best of my knowledge, they have bank account in Standard Chartered Bank (A/c No. 23810317537), Waterfield road, Bandra (w) , Mumbai 50 and ICICI bank (A/c No. 026301520397), Lokhandwala Branch, Mumbai. They also have account in HDFC Bank, details of which I am not aware. They have account in Standard Chartered Bank, Dubai

a/so. Their address in Dubai, which I am aware of is -2304, GoW Crest Views 1, Cluster V, Jumeirah Lake Tower, Opposite Damas, Dubai, UAE. Karan's latest Dubai's ceil no. is +971526661772 and her wife Shweta's cell no. is +971509507003. Shweta's mother, Mrs. Sangeeta Graver's no. is +919004820007 & +919920523434.

Q.28 Please furnish all the details of Karan/Shweta's investment schemes?

Ans. Their modus operandi was to run Ponzie Schemes luring and soliciting monies from various people by promising them extraordinarily high monthly returns with bonus, incentives etc by saying that they will generate monies for them by Karan doing trading in commodities and forex international markets and for this purpose, to my last knowledge, he had account no. U1054796 with INTERACTIVE BROKERS stationed in New York/ London. But i feel, it was impossible for them to actually generate so much return to give to their clients and that's why they have run away after collecting monies from clients in India and are not paying a single penny to any clients. They are in the habit of frequently changing their residence and country and I feel that all the monies collected by them from clients in India must have been transferred to their international bank account as well as M/s Interactive Brokers through hawala channel. They are also not registered with SEBI or RBI for carrying on evaders of Income Tax, Service Tax and FEMA Regulations as well. Although they appeared to give legitimate colour to their business while collecting money from their clients.

Opportunity to take rest was offered to the deponent which was accepted by him. The statement is hereby temporarily concluded at 10.30 PM on 11.12.2013.

6.9 Various aspects of the investment made by the assessee which come out of the statement given by the assessee is summarized below:

- i. *The assessee was a victim of a ponzi scheme wherein he was promised a very high rate of return by two individuals Karan Dodani and Shweta Grover Dodani by making investment in forex trade. The business was to be carried out in Dubai with additional investment to be sourced by these persons. The assessee has cited in the statement (Q No. 16) that he was promised a return of 15% per month.*
- ii. *The total investment at the time of whatsapp communication on 3.4 2013 was Rs 5.76 crore. The appellant had received certain amounts as return from these two persons and these amounts had been duly offered to tax in earlier years.*
- iii. *There is evidence of an investment of Rs 1.65 crore by the assessee and Rs 50 lakh by his wife in the above scheme. This is reflected in the books of the appellant and his wife. For the remaining amount, the appellant, in his statement, has claimed that the same were*

provided by Vijay Thakkar of DLH where the appellant was an independent director.

- iv. *The Dodanis, after they went to Dubai, refused to honour the arrangement and have not paid either any interest or return of capital and the entire money has been lost.*
- 6.10. *Subsequent to recording of the above statement, the assessee has tried to correct the explanation with respect to source of Rs 5.76 crore mentioned in his statement, specially the differential amount of Rs 3.61 crore which was claimed by him in his statement as belonging to Shri Vijay Thakkar. In his affidavit before the Revenue authorities after search action, it has been claimed that the amount of Rs 3.61 crore represents interest accrued on the principal sum of Rs 2.15 crore paid by cheque to the above person. The assessee has provided the basis of arriving at the above sum of Rs.5.76 crore as below:*

Particulars	Amount in INR	Amount in INR
Initial Capital Investment made by Appellant and Appellant's wife		2,15,00,000
Add: Total Interest calculated as receivable on the accumulated investment of INR 2,15,00,000 Compounded @ 15 percent per month calculated upto April 2013 when the WhatsApp Message of April 2013 was sent to Karan Dodani(INR 5,92,07,000 - INR 2,15,00,000)	3,77,07,000	
Less: Return by Borrower by Cheques to Appellant and Appellant's wife (income tax already paid thereon even before the time of IT search from 10 Dec 2013 to 13 Dec 2013)	(16,07,000)	3,61,00,000
Calculated total amount outstanding		5,76,00,000

- 6.11 *It has been claimed by the appellant that the amount mentioned in the whatsapp/message represented the above sum, being the amount outstanding with the I Dadanis. The assessee claims that even in his original statement, he had stated that a return of 15% per month had been promised to him and hence, claim was made from Dadanis for the total outstanding amount by including the interest due till that time. It is claimed that in the original statement, the source of this amount was mentioned as Vijay Thakkar on account of confused state of mind.*
- 6.12 *In order to support his claim, the appellant has also relied on the complaint made before Bombay Police/Economic Offences Wing as well as cases filed before Bombay High Court on the issue. The appellant has filed a copy of the decision of the Bombay Sessions Court refusing anticipatory bail to the parents of Shweta Grover Dodani and the order of the Bombay High Court with respect to appeal filed by the assessee against the order of the Sessions Court*

in connection with the fraud committed by the Dodanis against various investors.

6.13 *The following observations of the Sessions Court and Bombay High Court are relevant to the issue:*

Bombay High Court in their order dated 27th July 2015

“3..... By July 2012, complainant had invested about Rs. 1,65,00,000/- and his wife had invested Rs 50,00,000/-. During the period November 2012 to March 2013, Karan had deposited Rs.11,54,750/- In his account and Rs 4,52,500/- in the account of his wife Niraja. From January 2013, all the persons above mentioned were evading to meet the complainant. He made enquiries. He had contacted the present applicants also on various occasions, however, they evaded to give him proper answers. Complainant and other investors requested Karan and Shweta to return the amounts. There was negotiation and in the course of negotiation, complainant and others were informed that Karan and Shweta would pay Rs.20 crores by January, 2014 and till then complainant and others should not trouble them. They had given some cheques, which were dishonoured.

4. It is pertinent to note that on 19. 11.2013, complainant had received email from Karan informing him that he has deposited Rs 3 crore in Punjab National Bank from Standard Chartered Bank. Complainant had enquired with Punjab National Bank and had learnt that no amount was transferred in his name.....

6..... A farce is made that they would receive good returns. Returns are given in first few months and thereafter, investors are duped....

7. Upon perusal of papers of investigation, it was clear that applicants are instrumental in inducing people to invest amount and cheat them subsequently. ..

Observations of Sessions Court in their order dated 12.8.2015

“9. it appears from prosecution case that thereafter applicants and co-accused stopped to pay returns and even they did not repay the principle amount also despite several demands. Even cheques issued by the applicants and co-accused are dishonoured. Say of the prosecution shows that several persons are cheated in the same manner. What it shows that it is systematic plan to cheat persons by inducing them to invest the amount by giving assurance to pay handsome returns.....”

6.14 *It is noted that the AO has proceeded to make an addition of the difference between the amount mentioned in the whatsapp conversation (Rs 5.76 crore) and the amount shown in the books (Rs.2.15 crore) as being advanced to Karan/Shweta Dodani, by treating the same as unexplained investment made by the assessee with Dodanis. For this, reliance has been placed by the AO on the statement recorded during the*

course of search action wherein the assessee has explained that the balance amount of Rs 3.61 crore belonged to Shri Vijay Thakkar of Dev Land Housing and was paid to the Dodanis in cash by him. Since Vijay Thakkar has denied having parted with any cash for this transaction, the AO held that the entire cash amount should have been sourced by the appellant from his own sources. Before the AO, the assessee submitted that there was an error with respect to the source of the amount of Rs 3.61 crore and that this amount represented interest accrued on the basic amount of Rs 2.15 crore which had been invested with Dodanis in cheque. It was the appellant's claim that since the Dodanis had promised a return of 15% per month to be paid to the appellant every month but had not paid the amount to him, this amount was added to the outstanding capital. The assessee has provided a computation to demonstrate that on computing the interest at 15% compounded monthly, the figure exactly matches with the amount of Rs 5.76 crore. The AO refused to accept the fresh explanation filed by the assessee before him by holding that the explanation appeared to be an after-though after Vijay Thakkar had disowned the transaction. It was also been pointed out by the AO that a return of 15% per month is not available in the market and cannot be believed to be true. He accordingly relied on the original, statement of the assessee to treat the balance amount as unexplained.

6.15 The moot point to be decided here is whether the original statement of the assessee needs to be relied upon or the revised explanation filed through an affidavit needs to be relied upon in order to arrive at a decision on this issue. In my view, it is important to examine the whatsapp message critically as this forms the basis of both, the statement as well as the affidavit. Also, if the AO accepts the findings of the statement recorded during the search action, it is incumbent on him to examine the entire statement and not merely pick up the favourable parts of the statement. Another fact which cannot be ignored is the fact that the assessee has been a victim of a ponzi scheme floated by unscrupulous operators (Karan and Shweta Dodani) as found by the Economic Offences Wing of Bombay Police as well as the Bombay High Court. In light of the various evidences mentioned above, following points are noted:

- As per the statement recorded on the day of search, the assessee was to receive a return of 15% per month on his investments made with Dodanis (Q No. 16)

As per the first message in the whatsapp message, the appellant has mentioned that he was to receive Rs 30 lakhs per month from Dodanis which has not been paid. It is noted that 15% of Rs 2.15 crore comes to Rs 32 lakhs per month. The inference would be that an amount of Rs 2.15 crore was originally invested with Dodanis by cheque by the assessee and his wife.

- As per whatsapp message, the arrangement was for payment of Rs.30 lakh per month to the assessee. If such amount had indeed been received by the assessee on a monthly basis, the actual amount outstanding with Dodanis would have been only Rs. 2.15 crore.

However, since the Dodanis did not pay the amount monthly, there was accumulation of interest which was to be capitalized for computing subsequent interest. The assessee, subsequently has quoted the total amount as outstanding amount with the debtor.

The amount received as return from Dodanis was offered to tax by the assessee.

6.16 It is, by now, an accepted proposition that an statement u/s 132(4) creates a rebuttable presumption against an assessee irrespective of the fact whether it has been retracted or not. The assessee is free to rebut the contents of the statement which he considers incorrect by producing convincing evidence before the Revenue with respect to the true facts. In the above case, it is noted that while the basic facts related to transaction were correctly provided by the assessee in his statement, the statement with respect to the source of Rs.3.61 crore was not correctly divulged. The AO has been swayed by the words used in the whatsapp message that the capital contribution of the assessee with Dodanis was Rs 5.67 crore. However, keeping in view that the rate of return on the original amount was also mentioned in the same statement and a monthly return of Rs.30 lakh was also mentioned in the whatsapp message which corresponds to a capital amount of Rs.2.15 crore, the claim of the appellant that the remaining amount represented accrued interest on original capital is found to be convincing. It is a normal practice to include the accrued interest while computing an outstanding amount with a debtor while trying to force a recovery which the assessee has also adopted.

6.17 It is also noted that there is sufficient evidence on record in form of the findings of the Hon'ble Bombay High Court and the Sessions Court of Bombay as well as findings of the EOW which are noted by the Court while deciding the anticipatory bail of the parents of Shweta Dodani that Karan/Shweta Dodani were running a ponzi scheme to defraud gullible investors and the assessee, in his greed, was a victim of such scheme. Such schemes operate on the basic premise of unrealistic returns and hence, the action of the AO in rejecting assessee's explanation by holding that that there are no such high return schemes in the market is not found to be correct. It is also noted that the issue of custodial interrogation of Shweta Dodani's parents has reached upto Supreme Court and ultimately, both Bombay High Court as well as Sessions Court have denied any anticipatory bail to these persons while Karan and Shweta Dodani are absconding in Dubai as brought out in the statement recorded from the assessee.

6.18 The appellant's submission that generally capital contribution is made in round figures while the amount mentioned in the whatsapp message is not so which also indicates that it represents a computed figure and not in the nature of a capital contribution is also noted. It is also noted that the appellant has not been able to recover either Rs.2.15 crore or the amount of Rs.3.61 crore from Karan and Shweta Dodani till date.

6.19 The various documents and evidences filed by the assessee before the AO amply demonstrate that the amount of Rs.5.76 crore mentioned in the whatsapp message comprised of Rs.2.15 crore being the investment made with Karan and Shweta Dodani while the remaining amount represented capitalized interest which had not been received by the assessee as promised by these persons. In L light of the above, the AO is not correct in presuming that the amount of Rs 3.61 crore represented unexplained investment of the assessee and hence was liable to be taxed under section 69B of the Act.”

4. During the course of appellate proceedings before us, the ld. D.R. contended that original statement of the assessee was very categorical and correctly explained the nature of transactions. He also submitted that claim of interest components in the whatsapp message was afterthought and incorrect.

On the other hand, the ld. A.R has supported the order o the ld. CIT(A) and referred various para of the order of the ld. CIT(A). He contended that assessee had duly explained that whatsapp message represent initial investment and calculated figure of notional interest amount. He also submitted that assessee was compelled to give wrong statement under tremendous pressure during long hours of search action. Therefore, the assessee had correctly retracted his statement immediately on 14.12.2013. The ld. A.R further submitted that assessee was cheated by the Karan/Shweta under the Ponzie scheme which is evident from the F.I.R. and proceedings in the Hon’ble Bombay High Court launched against the accused parties.

5. Heard both the sides and perused the material on record. The assessee was an independent director of a company namely M/s Dev Land And Holding Pvt. Ltd. the said company was subject to search action u/s 132 of the Act on 10.12.2013. The residential premises of the

assessee was also searched. During the course of search action the assessee was confronted with the following what'sapp conversation:

“Q25. You had stated in the answer to your question 17 of this statement that you had invested a total sum of Rs. 2,15,00,000/- with Koran / Shweta as per your books. Now please refer to the following Whatsapp conversation (Annexure-2) :

(4th April, 4.23 pm) VK Takkar : my preliminary observation on the limited trading account statements sent by Koran from August, 2012 to March 2013 :

Against my capital investment to him of Rs.5.76 crores from July to December, 2012, he has deposited only Rs.3.95 crores into trading account in addition, he must have received additional monies also from other investor like Sandeepji, Devnaniji etc. during this period. Hence there is a huge shortfall in Koran making deposit into his trading account. It is clear that investor's monies have been siphoned off into some other channels by Koran. Why is the balance money not deposited by the Koran into trading account?

In the light of these statements made by you in Whatsapp conversation, Please specify where did this balance money come from as you had invested only Rs.2.15 crores through Cheque. Please give us a clear bifurcation of the actual amount invested with Karan/Shweta with clear cut cash and cheque component.

Ans. Whatever I had stated in the answer to the question No. 17 of this statement is true to the best of my knowledge and as per by books. To reveal the actual truth before the revenue authorities, I would like to confess and admit that the total investment made with Karan /Sheweta was Rs. 5.76 crores as truly stated in the whatsapp conversation. This was all done on the insistence of Shri Vijay Thakkar of DLH wherein I am employed as one of the independent directors. On his insistence only, I told him that I have the capacity to invest 2.15 crores as reflected in my books. However, the remaining amount of Rs. 3.61 crores was invested in cash, which belongs to Shri Vijay Thakkar of DLH. It was agreed upon between both of us that interest of Rs. 2.15 crores invested by me through cheque would belong to me and likewise interest earned on the balance amount of Rs. 3.61 crores would belong to him. Whatever meager interest I Had earned, they have been shown in my books of accounts and have been offered for tax under the head “Income from other sources”. I am giving you the ledgers of 'loan interest account' of Karan Dodani (Annexure-3) and Shweta Graver (Annexure - 4). I do not have any relation with the cash component of Rs. 3.61 crores and the interest earned there on whatsoever as this entire cash component belongs to Shri Vijay Thakkar of DLH. Hence, the amount of capital investments of Rs. 5.76 crores mentioned by me in the whatsapp conversation do not wholly belongs to me. This is as per the bifurcation just explained by me.”

Immediately after the search action, the assessee had retracted his statement vide affidavit dated 14.12.2013 stating that he was not in proper frame of mind because of prolonged search proceeding from 7.00AM on 10.12.2013 to late midnight on 13.12.2013. The assessee has duly explained that the what'sapp message actually meant that break up of total sum of Rs.5.76 crores were recoverable/due from Karan/Shweta, the break-up of which was Rs.2.15 crores i.e the principal amount and Rs.3.61 crores i.e defaulted/defrauded interest @ 15% per month compounded monthly (on principal of Rs.2.15 crores). It was also explained that Karan/Shweta with whom the amount was deposited had committed fraud and fled to UAE after defrauding also a number of other investors. The interest component was added to the principal amount totaling to Rs.5.76 crores to build up pressure on the investee through the what'sapp message. The assessee had also explained before the lower authorities about the exact detail of amount mentioned in the what'sapp message which is reproduced as under:

Particulars	Amount in INR	Amount in INR
Initial Capital Investment (also duly reflected in Tally Books of Account even before the time of IT search from 10 Dec 2013 to 13 Dec 2013) made by Appellant and Appellant's wife		2,15,00,000
Add: Total Interest calculated as receivable on the accumulated investment of INR 2,15,00,000 Compound @ 15 percent per month calculated upto April 2013 when the WhatsApp Message of April 2013 was sent to Karan Dodani (INR 5,92,07,000) – INR 2,15,00,000	3,77,07,000	
Less: Return of Borrower by Cheque to Appellant and Appellant's wife (income tax already paid thereon even before the time of IT search from 10 Dec 2013 to 13 Dec 2013)	(16,07,000)	3,61,00,000
Calculated total amount outstanding		5,76,00,000

The assessee has corroborated with the aforesaid evidences that his statement was given during the disturbed mental condition under coercible interrogation for several hours and there was supporting

evidences to demonstrate that there was valid reason for retracting the said statement vide affidavit date 14.12.2013. It is noticed that without contrary disproving the material facts as discussed supra, the A.O had merely made the addition on the basis of retracted statement. The assessee has also explained that Karan/Shweta Dodani were running Ponzi scheme to defraud the investors by offering high rate of return on the investment and against them the complaint were filed before the Bombay police/economic offence wing and cases were also filed before the Hon'ble Bombay High Court. The assessee has also referred the order of Session Court holding that the accused/person were running a systematic plan to cheat investors by inducing them to invest the amount by giving assurance to pay handsome return. The aforesaid facts and relevant supporting evidences demonstrate that the assessee was trapped by the Ponzi Scheme launched by Karan/Shweta with modus operandi to cheat the investors. The assessee had further substantiated such material facts with detail of investment of Rs.2.15 crores made through banking channel which fetched cumulatively compounding interest equivalent to Rs.3.61 crores and till date even the principal investment made by the assessee were not returned. The A.O has neither disproved these material fact and supporting detail nor made any further investigation to prove contrary to the claim and submission of the assessee.

During the course of appellate proceedings before us the Id. D.R has palced reliance on the decision of Naygaon Patel Vs. ACIT(2012) 137 taxman.com 149 (Kerala). We have perused the above referred decision and find that the facts of the case of the assessee are distinguishable from the referred case. In that case the assessee had not substantiated his retraction of the statement with any evidence, however, in the case of

the assessee he has substantiated his retraction of statement with relevant supporting evidences i.e breakup of principal amount of Rs.2.15 crores, defaulted interest @ 15% compounded to Rs.3.61 crores, evidence of Ponzi Scheme run by Karan/Shweta, filing of FIR with the Bombay Police & Economic Office Wing, Hon'ble Bombay High Court order dated 27.07.2015, Session Court order dated 12.12.2015, reporting of investment made in books of account and return of income filed by the assessee, etc.

The aforesaid specific facts and evidences also distinguish the case of assessee from the case of Sumati Dayal Vs. CIT (1995) 214 ITR 801 applied by the A.O without disproving the specific supporting evidences existed in the case of the assessee.

The Hon'ble Madras High Court in the case of M. Narayan N. Boos. Vs. ACIT, Circle (339 ITR 192) held that addition made by the A.O merely on the basis of retracted statement u/s 132(4) could not be sustained in the absence of any evidence material or recovery of any movable or immovable assets at the time of search to corroborate the disclosure made by the assessee. The Hon'ble Supreme Court in Vinod Solanki Vs. Union of India (92 SCL 157 held that evidence brought as record by way of confession which stand retracted must be substantially corroborated by other independent and cogent evidences which would lead adequate assurance to the court that it may seek to rely thereupon.

A person making admission is at liberty to contradict them or show that they are untrue or mistaken, or made under misapprehension. Burden to prove that admission as incorrect is on the maker and in case there is failure on the part of maker to prove that earlier stated facts were wrong, his earlier statement was sufficient, if retraction is proved then A.O cannot conclude the case on the basis of such earlier

statement. Here in the case of assessee he has filed the retraction immediately after recording of his statement by filing an affidavit along with other supporting evidences as discussed supra, however, without contrary disproving the material facts and relevant supporting material as discussed supra, the A.O had merely made the addition on the basis of retracted statement. In the light of the above facts and circumstances we don't find any infirmity in the decision of Id. CIT(A), therefore, this ground of appeal of the revenue stand dismissed.

7. In the result, the appeal of the revenue stand dismissed.

Order pronounced in the open court on 19.05.2022

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 19.05.2022

PS: Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai