

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

**BEFORE SHRI SANJAY GARG (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 1277/MUM/2021
Assessment Year: 2011-12
&
ITA No. 1278/MUM/2021
Assessment Year: 2011-12**

DCIT Central Circle-2(3),
Room No. 803, 8th floor, Prathishtha
Bhavan, M.K. Road, Churchgate,
Mumbai-400020.

Appellant

Vipul Dilipbhai Shah,
401, Deepak Bldg. 3rd floor, S.V.
Road, Vile Parle-W,
Mumbai-400056.
PAN No. AAHPS 5253 J
Respondent

**C.O. No. 12/MUM/2022
(ITA No. 1278/MUM/2021)
Assessment Year: 2011-12**

Vipul Dilipbhai Shah,
401, Deepak Bldg. 3rd floor, S.V. Road,
Vile Parle-W,
Mumbai-400056.

PAN No. AAHPS 5253 J
Appellant

DCIT Central Circle-2(3),
Room No. 803, 8th floor,
Prathishtha Bhavan, M.K. Road,
Churchgate,
Mumbai-400020.

Respondent

Assessee by : Mr. Rajan Vora, AR
Revenue by : Mr. Achal Sharma, CIT-DR

Date of Hearing : 19/05/2022
Date of pronouncement : 07/06/2022

ORDER

PER BENCH

The above appeals are preferred by the Revenue against the orders, both dated 19.03.2021 passed by the Ld. Commissioner of Income Tax (Appeals)-48, Mumbai [in short 'the Ld. CIT(A)'], in quantum proceedings for assessment year 2011-12 and penalty levied u/s 271D of the Income Tax Act, 1961 (in short 'the Act') for alleged taken cash loan. The assessee is before the Tribunal by way of cross objection in the appeal of the Revenue in quantum proceedings in ITA No. 1278/Mum/2021. The issue-in-dispute involved in these appeals and cross-objection being connected, same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts. First, we take up the appeal of the Revenue in quantum proceedings in ITA No. 1278/Mum/2021. The grounds raised by the Revenue are reproduced as under:

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A), erred in deleting the addition of Rs.3,92,00,000/- made in the hand of Mr. Vipul D. Shah u/s 69A of the Income Tax Act, 1961 without appreciating the fact that assessee did not discharge its duty to explain the fact that Rs.3,92,00,000/- were duly accounted and offered for tax.*

2. We find that in this case, in view of the information received by the Assessing Officer from the Investigation Wing of the Income Tax Department, Mumbai that during the course of search action at the premises of Bharani Group and M/s Evergreen Enterprises, it was found that two concerns of 'Parinee Group' namely 'Green Bird P. Ltd.' and 'P.D. Construction' received cash loan to the tune of Rs.3.92 crores and in the said documents seized, name of the assessee was recorded as contact person and his mobile number was also available in connected seized documents. During the course of search of the premises of 'Bharani' Group, statement of partner of M/s Evergreen Enterprises namely Shri Nilesh Bharani was recorded u/s 132(4) of the Act on oath wherein he stated that M/s Evergreen Enterprises had entered into cash loan transaction with P.D. Construction. On receipt of this information, the Assessing

Officer reopened the assessment u/s 147 of the Act by way of issuing notice u/s 148 on 28.03.2018. The Assessing Officer completed the assessment u/s 147 r.w.s. 143(3) of the Act, after making addition of Rs.3.92 crores as unexplained loan in terms of section 69A of the Act. On further appeal, the Ld. CIT(A) deleted the additions.

3. Aggrieved, the Revenue is in appeal before the Tribunal raising the grounds as reproduced above.

4. We have heard rival submissions of the parties on the issue-in-dispute and perused the relevant material on record. As far as facts mentioned by the Ld. CIT(A) in the impugned order, have not been disputed by the Ld. DR. The Ld. CIT(A) after details finding has deleted the additions observing as under :

"6.3 APPELLATE DECISION:-

I have considered the facts of the case, submissions and contentions of the assessee as also the order of the AO. Since the assessee had raised various objections, during the course of appellate proceedings, in respect of additions of Rs.3.92 crs. made as unexplained cash loans, the

AO was requested to clarify his position vide this office letter dated 10.02.2021, as to why the additions were made in the case of Shri Vipul Shah, when relevant cash loans taken by M/s. Green Bird Enterprises and M/s. P.D, Construction. The AO was also asked to explain that the discrepancy in the loan amount as per Annexure A-2 (at Rs.2.23 cr.) and the information received from Investigation Wing (at Rs. 3.92 cr.). The AO was also asked to furnish copier of the relevant seized documents on the basis of which additions were made in the hands of the assessee, along with relevant statements, recorded at the time of search. For clarity the relevant portion of letter dated 10.02.2021 is reproduced as under:

"2. In the above mentioned case, addition of Rs. 3.92 crore was made on the basis of evidence found during the course of search action on M/s. Evergreen Enterprises group cases, contracted and a managed by Shri Nilesh Bharani. During the course of search action, diary was seized as per Annexure A-2 containing name of the borrowers and amount of loan in coded form. It appears from the statement of Shri Nilesh Bharani recorded on oath wherein he mentioned how figures are mentioned in coded form and were to be multiplied by 1000 to get real figures. He also mentioned the name of contact person connected to the entities in the said Annexure A-2 at the time of recording of his statement and amount of Rs. 2.23 Crores was shown against the name of M/s. Greenbird and contact person was Shri Vipul Bhai or Vipul Shah.

3. It is however, not understandable as to how the addition was made in the name of Shri Vipul Shah when the borrower was M/s. Greenbird. It appears that, assessee repeatedly requested you to furnish the copies of relevant seized documents but you failed to provide the same to the assessee.

4. Accordingly, You are requested to send me copies of relevant seized record on the basis of which the addition of Rs. 3.92 crores was made as against the evidence of Rs. 2.23 crores found during the search action, along with your comments about making addition in the hands of Shri Vipul Shah.

5. A report in the matter may please be submitted by 16.02.2021.

6.4 The Id. AO vide letter dated 16.02.2021 submitted his report along with copies of letters received from Investigation Wing and statement of Shri Nilesh Bharani. However, the A failed to furnish copies of any seized records, in this regard. The AO also did not furnish any comments, as to why the action was taken in the hands of Vipul Shah and not in the hands of recipient entities. The relevant portion of the AO's report is reproduced here for the sake clarity.

"2. In this case an information shared by the DDIT(In.) Unit-5(4), Mumbai in the case of Shri Vipul Dilipbhai Shah having PAN AAHIPS52531 vide letter dated 23.03.2018. (copy of the both letter is enclosed for your goodself ready reference.)

3. During the course of search action u/s. 132 of the Act, and statement recorded on oath u/s. 132(4) of the Act, of Mr. Nilesh Bharani, one of the partner of M/s. Evergreen Enterprises, where Shri Nilesh Bharani admitted that he had raised loan in cash to several individuals and business concerns.

4. One information have below mention details pertain to Vipul D Shah as under:

Sr. No	Code	Name	Coded amount as per ledger (In'000)	Actual amount (in Rs.)	Contact Person	Contact No.	F.Y.
1	Green Bird	Green Bird	5000	5000000	Vipulbhai	9821126548	2010-11

Hence, it is seen that Shri Vipul D Shah has borrowed cash loan of Rs. 50.00.000/- in the F.Y. 2010-11.

5. *Second information have the below mention details pertain to Vipul D. Shah as under:-*

Sr. No	Code	Name	Coded amount as per ledger (In'000)	Actual amount (in Rs.)	Contact Person	Contact No.	F.Y.
1	P.D. Constructi ons	P.D. Constructi ons	34200	3,42,00,000	Vipulbhai	9821126548	2010-11

Hence, it is seen that Shri Vipul D Shah has borrowed cash loan of Rs.3,42,00,000/- in the F.Y. 2010-11.

6. *Therefore, the addition of Rs. 3,92,00,000/- (Rs. 50,00,000/- + Rs. 3,42,00,000/-) was made on the basis of two information shared by the office of DDIT Unit-5(4), Mumbai vide dated 23.03.2018. (copy of both information is annexed for your good self ready reference).*

7. *In response to point 4 of your good self letter dated 10.02.2021 this office have not received any seized material pertain to M/s. Evergreen Enterprises. However, the statement of Mr. Nilesh Bharani recorded on 11.10.2017 by the Investigation Wing is available with this*

office and same is annexed with this letter for your good self ready reference.

8. *Further, copy of the cross examination statement u/s. 131(1) of the Act, 1961 held at this office on 26.12.2018 as requested by the assessee Vipul D Shah is also enclosed with this letter for your goodself ready reference"*

6.5 *A copy of the AO's report was made available to the assessee for further submissions/rejoinder. The assessee filed further submissions reiterating the earlier position that, there was no evidence against Vipul Shah for making the above additions. For clarity the relevant submission are reproduced as under:*

In respect of the above we humbly submit as follows:-

1) *The said report fully substantate the submissions made earlier by your appellant before your Honors which is reproduced as follows:*

a) *There is no basis for makins addition of Rs. 3,92,00,000 in the hands of "our appellant Mr. Vimul D. Shah for A.X. 2011-12 as the information pertains to N/s Greentird Constructions and M/s P.D. Constructions Farther there is no basis for these amounts as there is no seized materiai pertaining to M/s Evergreen Enterprises with the Learned A.O. The staid addition is made simply on the basis of letter received from DDIT Investigation) which is against the Law as held in the case of*

- Varshaben S Patel VITO (GUN) (HC) (2015)

Firalat Chumilat Jain v. ITO (TIAT Mumbai) (2016)

ITO v. Paresh Arvind Gandhi (TAT Mumbai) (2015)

Khandehwal Construction v. CIT 227 TR 900 (Gau.)

b) The learned Addl.CIT attached statement recorded at cross examination on 26/12/2018 in which he denied any such cash transactions. Further, Annexure A-2 and A-5 do not mention Rs.3,92,00,000/- or Rs.50.00.000/- or R\$ 3,42,00,000/- It mentioned 22300 against M/s Greenbird. There is no mention of Mr. Vipul Shah in Annexure A-2. Further, Annexure A-5 mentions name of P.D. Construction and Mr. Vipul Shah without amount.

c) The learned Addl.CIT attached the statement recorded U/s 131(1) of The Income Tax Act by the Learned A.O. on 26/12/2018 of Mr. Nilesh Bharani in which he has denied naming your appellant or any other party. He has mentioned that he has retracted his statement recorded on oath at the time of search on 11/10/2017 vide letter dated 14/10/2017 as the statement was given under pressure. He has stated that the answers were dictated by search team and these answers are not correct. He has stated that he has not done any cash transaction. Further, he has stated that many Annexures were prepared by search team and statement was not recorded in presence of witnesses. Further, the statement was signed at 5 am and he has signed without understanding as he was in very disturbed state of mind. He has stated that he has not received copy of all seized material

In view of the above, the statement given by Mr. Nilesh Bharani on 11/10/2017 cannot be relied upon to make addition of Rs.3,92,00,000/- in the hands of your appellant.

2.) In view of the above, your appellant submits that the Report dated 18/02/2021 of the Additional CIT, Central Range-2, Mumbai fully supports the submissions made earlier by your appellant before your Honors that there is no basis for making addition of R\$.3,92,00,000/- in hands of your appellant and it be deleted."

6.6 APPELLATE DECISION:-

I have considered the facts of the case and arguments of the assessee as also remand report of the AO. It appears that during the course of search and seizure action in the case of Shri Nilesh Bharani and M/s. Evergreen Enterprises certain details of unaccounted loan transactions with the Parinee group concerns (M/s. Green Bird and M/s. P.D. construction) were found and seized as per Annexure A-2. In the said Annexure, there was figures of 22,300/- written against the name of Green Bird at scrial no.127. Against this the name of contact person was written as Vipulbhai. His mobile no. was also mentioned in seized diary A-5. The figure of 22,300/- was interpreted in light of statement of Shri Nilesh Bharani by the Investigating Officer as Rs.2,23,00,000/. In this regard, a detailed statement of Shri Nilesh Bharani was recorded on oath as on 11.10.2017, wherein he had accepted that, he was engaged in giving cash loans to various persons as per Annexure A-2. Alongwith him, statements of his employees and associates Shri Ashwin Rathod, Shri Jagdish Ramani and Viva Rawate were also recorded, who had also stated that cash loans were being given by Bharani group to various persons, as mentioned in Annexure A-2. The relevant portion of the statement on oath of Shri Nilesh Bharani is reproduced as under for the sake of clarity:-

"Q.19 Please explain the nature of business of M/s. Evergreen Enterprise.

Ans: In Evergreen Enterprises we arrange private loans for several borrowers and get brokerage income. Usually, interest rate is 15% per annum of the principal amount but it varies from party to party. Brokerage is usually charged at 0.6% per annum of the principal amount. Brokerage is earned by Evergreen Enterprises only when

interest is paid by the borrower party to the lender party. Evergreen earns brokerage income only as the borrowing and

Q.71 I am showing you one red colour borrower ledger book found and seized from the premises, 12, Sharda shadan, 7 S.G. Road, Dadar (E), Mumbai- 400014, and marked as annexure-A-2 containing pages marked from 1 540, please confirm.

Ans. Sir, I confirm that said red colour borrower ledger book (Khata vahi) found and seized from the premises, 12, sharda shadan, 7S.G. Road, Dadar TE), Mumbai 400014 and marked as annexure-A-1 containing pages marked from 1 to 540.

Q.72 Please comment about the content of the said red colour borrower ledger book (Khata vahi) found and seized from this premises as mentioned in question 71. Sir, the said book is maintained as borrower ledger account which reflects the borrower-wise loan details given to various borrowers. Sir, on the top of each ledger the name of the borrower along with rate of interest and total amount (in thousands of rupees) lent to the borrower is written. Below this details of all lenders and the amount (in thousands of rupees) lent by lender, code of lender and the date till which interest is paid is maintained.

Q.73 Please tell me till when this borrower ledger book as mentioned above is updated till.

ANS. Sir the borrower ledger book is updated will 05.10.2017.

Q.74 Please stated the name of the persons/borrowers whose ledger accounts are maintained in this borrower ledger book which is found and seized as annexure-A-2 at this premises.

Ans. Sir, I am providing a list of names of borrower parties, along with their contact details which is maintained in the above mentioned borrower ledger as Annexure-2 to this statement."

6.7 However, later Shri Nilesh Bharani retracted his statement vide letter dated 14.10.2017 just 3 days after the search action addressed to CIT(Inv.)-2, Mumbai, wherein he stated that the statement as on 11.10.2017 was given under coercion and pressurised mental state of mind. These facts have been mentioned by the AO in para 5.3 of the assessment order.

6.8 During the course of assessment proceedings, the assessee requested for ass examination of Shri Nilesh Bharani. The assessee, also requested for the copies of relevant seized material on the basis of which action was being taken I his case along-with copies of relevant statements, on which the AO was placing reliance. Prior to that the assessee requested for copies of reasons recorded for issue of notice u/s.148 of the Act, which were provided by the AO and the same are reproduced as under for the sake of clarity:-

An information was received in this case from DDIT(n.) Unit-5(4), Mumbai vide letter No. DDIT(n.) Unit-5(4)Sharing of information/2017. Is dated 23.03.2018 stating that evidences gathered during the course of search action at the premise of M/. Evergreen Enterprises in the form of documents seized and statements recorded on oath u/S. 132(4) of the Income Tax Act, 1961 of Mr. Nilesh Bharani, one of the partner of M/S. Evergreen Enterprises and othèr key employees of the concern, revealed that Shri Vipul Dilip Shah has entered into cash or unaccounted transactions from/through Nilesh Bharani/Evergreen Enterprises. As per information received total amount of cash or unaccounted transactions executed during the year under consideration was of Rs. 3,92,00,000/-.

3. Therefore, the AO has a reason to believe that income of Rs.3,92,00,000/- chargeable to tax has escaped assessment for A.Y. 2011-12 within the meaning of clause (c) of Explanation-2 of section 147 of the Income Tax Act, 1961. The income chargeable to tax has escaped assessment on account of failure of the assessee to disclose full and true material facts necessary for assessment of its income for the assessment year under consideration

6.9 Thereafter the assessee filed his objections to the reasons provided by the A vide letter dated 04.07.2018. The assessee filed his objections against the reopening of assessment vide letter dated 06.07.2018. The same were disposed off by the AO vide order dated 27.10.2018 and subsequently he took up the assessment proceedings.

6.10 As the assessee was insisting for cross examination of Nilesa Bharani the A summoned Shri Nilesh Bharani during the assessment proceedings and recorded his statement on oath on 26.12.2018. In the said statement of Shri Nilesh Bharani denied of giving loans to the assessee group or to Vipulbhai and

also stated that statement as on 11.10.2017 was given under pressure and

contradicted statement as on 11.10.2017. The relevant portion of his statement

is reproduced as under:-

Q.3 Please confirm that this statement dated 11.10.2017 was recorded on oath and you were made aware of the consequence of giving false statement on the oath.

Yes, I confirm the same.

Q.4 Please comment on the contents of the statement.

Ans. Answer of the several questions were given in the pressure states of mind. If you allow me I can state those questions.

Q.5 Please go through the answer to the question no.2 of the statement recorded on 11.10.2017 which contradicts you answer to above question no.4.

Ans. I got distressed after the answer I was giving to the search team that was not acceptable to them. Till then I was in stable state of mind.

Q.6 Please go through the question no. 17 in which you have replied that you had done loan transaction in cash in individual capacity.

Ans. In fact I have not done any cash transaction but search team was satisfied with this answer and they pursued on this matter for very long period. Ultimately I was tired and succumbed to the pressure of search team and gave answer as dictated by search team.

Q.7 Please go through the answer of the question no. 34 to 44 of the statement dated 11.10.2017, in which you have explained the contents of page no. 263 to 265 of lender ledger which was seized as per annexure A-1. In answer to the above question you have described transactions with Jadhavji Company with specific discretion of the entries.

Ans. As I have stated in the answer no. 4 & 6 above, I would like to elaborate. Answers to you question no. 17, 18 and 20 to 90 and also 93 to 99 was not written as per my wish. Search team dictated these answers. So, please understand that answer to these question are not correct.

Q.8 Please confirm that the statement recorded on 11.10.2017 was recorded in front of witness 1 and witness 2 (who had also signed on content of every page of statement recorded on 11.10.2017).

Ans. When statement was recorded witness were not present in the room. After the statement and many annexure were prepared first I signed on the paper. Subsequently, witness have signed on it. I emphasize the statement was not recorded in the front of the witness. They have merely signed the papers.

Q.9 Please substantiate answer given by you to above question that statement was not recorded in presence of witness and you were not in a stable mind with any documentary evidence.

Ans. I have no documentary evidence of this matter. Later after the search operation was over I explained whole matter to my tax consultant. Tax consultant was not allowed to be present during the process of search at my home and at my office even after mv request to call them. On advise of my tax consultant I have sent retraction letter addressed to the Commissioner of Income Tax (Inv.)-2, Scindhia House, Ballard estate Mumbai On 14.10.2017. I am handing over the photo copy of the letter to you.

Q.10 Please confirm that I am giving this statement in stable state of mind without any pressure or coercion.

Ans. I confirm that I am giving this statement in stable state of mind without any pressure or coercion.

Q.11 Please confirm that you have stated in end of statement recorded on 11.10.2017 that whatever stated in the statement is true to the best of your knowledge and statement was recorded as per your says. You

understood the content of the statement and signed. You also stated that the statement was made in sound state of health and mind. No coercion threat inducement or undue influence brought to bear on you for making that statement recorded on 11.10.2017.

Ans. Sir, let me inform some fact. Search operation started at my home on 06.10.2017 and lasted till 11.10.2017. During this time search operation was also going on at my business premises. At home I was literally idle, whereas I am running the company who knows major work and process at my office was not taken to office until the afternoon of 11.10.2017. After reaching to office I came to know from my staff that they were not allowed to go home at first two night of search process. One of my staff person Jagdish Ramani who stays at Dombivali missed last train yet he was compelled to be present next morning at 9 a.m. Some stays at Dombivali missed last train yet he was compelled to be present next morning at 9 a.m. Some staff member were threatened by junior officers about dire consequences. My statement process started since 10 P.M As I have stated in the answer no. 7 of this statement was done at 5 A.M. As I have stated in the answer no. 7 of this statement I was in Very disturbed state of mind, I answered and sign all the papers without really understanding the contents it.

Q.12 Please provide/show any proof in support of answer to above question no.11

Ans. Although I have no proof in support of answer to question no. 11 whatever I have said is fact.

Q.13 As You are in sound state of mind and not under any pressure coercion please answer im respect of question no . 34 to 100 of the statement recorded on 11. 10. 2017.

Ans. Sir, please show me page no. 263 to 265 of the lender ledger of annexure-I as stated in the question no. 34

Q.14 Please confirm that you or any of your representative have received copy of all the seized material and statements.

Ans. I or any of my representative have not received copy of all the seized material.

Q.15. Have you appointed any representative in your search case.

Ans. I have appointed C.A Vinod Kumar Bindal & Co. as my representative in the search case.

Q.16 Please provide the address of the above representative as answered in Q. no. 15.

Ans. 503, Dalamal Chamber, 29, New Marine Lines, Mumbai-20.

Q.17 Please provide your appropriate date and time to inspect the seized material and explain the content related to Vipul D Shah considering that this case is limited by time which is going to get time barred on 31. 12. 2018.

Ans. Tomorrow I.e. on 27. 12. 2018, I am going out of town and returning on 03. 01.2019 so, please keep any date between 04. 01.2019 and 09.01. 2019 to explain the content related to Vipul D. shah. 0.18 It is found from Central Circle -4(1), Mumbai that you have received all the seized material so you are requested go through the content of seized material and provide answer to all the question asked in statement recorded on 11. 10.2017 and contents were name of Vipul D. Shah, P D Construction and Green Bird is mentioned in seized material. As you have stated that you are not in town before 03.01.2019 so you are requested to send answers in writing to queries mentioned above in this

question on or before 28.12.2018 directly to the office of the DCIT-CC-2(3), Mumbai or you can mail on email id MUMBAI.DCIT.CEN2.3@IINCOMETAX.GOV.IN. Please confirm.

Ans. Sir, right now my wife in hospital and tomorrow I am going out of town, it is really difficult to comply this matter within two days but I will try my level best to reply regarding the matter of Vipul D Shah and Group."

6.11 Subsequently, cross examination of Shri Milesh Bharani was done by Shri Vipul Shah , wherein loan given in cash by him to assessee group was confronted. However, Shri Nilesh Bharani denied of giving any loan to the present assessee or to his group concerns. Thereafter, specific transactions in the name of Greenbird of Rs.50 lacs and P.D. Constructions of Rs.3.42 crs were asked to him. However, once again Shri Nilesh Bharani denied of giving any loan to the present assessee or his group entities. For clarity, the relevant portion of cross examination is reproduced as under:

- Q.1. You have stated in the statement given on oath before the Income Tax Authorities that you are in the business of giving/arranging loans. Is it correct, please confirm?

(Asked by Vipul D. Shah)

Ans. Yes, I am finance broker.

Q.2 Have you given any loan in cash to me and/or to my group?

(Asked by Vipul D. Shah)

Ans. No. I have not given or taken any loan in cash to you and/or your group.

(by Nilesh Bharani)

Q.3

We have been informed by the Income Tax Department that you have given the following cash loans to me/entities of my group:

Sr · N o	Code	Name	Coded amoun t as per ledger (In'000)	Actual amount (in Rs.)	Contact Person	Contact No.	F.Y.
1	Green Bird	Green Bird	5000	5000000	Vipulbhai	9821126548	2010-11
2	P.D. Construction s	P.D. Construction s	34200	5000000	Vipulbhai	9821126548	2010-11

Is it correct?

(Asked by Vipul D. Shah)

Ams As staled in Answer 2 of the question 2, 1 have not given any cast loan ho you and or your group entites namely Green Bird/P.D. Constructions (by Nilesh Bharani)"

6.12 Therefore, Nilesh Bharani denied of giving any loan to Vipul Shah, the present assessee or to M/S. Greenbird or m/S. P.D. Construction. The cross examination of Nilesh Bharani ended at the above note.

6.13 I have considered the entire gämut of evidences and arguments made by the assessee as also by the AO and observations of the A and his Remand report. From the perusal of the letter dated 23.03.2018 of the DDIT Inv.)

Mumbai, it is quite clear that recipient of the loans were M/s. Greenbird (Rs.50 lacs) and M/s. P.D. Constructions (R\$.3.42 crs.) and not Shri Vipul Shah. Shri Vipul Shah's name was appearing only as contact person and for the simple reason that he was to be a partner/director of the said concerns and both Greenbird and P.D. Constructions were his group entities. Therefore, it is not understandable as to why the Id. AO chose to re-open the assessment and to make additions in the case of Vipul Shah and not in the case of M/s. Greenbird Pvt. Ltd. (PAN- AABCG5483D) and P.D. Constructions Pvt.Ltd. (PAN- AAACP5447M). It is gathered that, both these entities are being assessed to tax with the same AO and therefore, there is no reason as to why the AO could not have initiated relevant proceedings in the hands of these entities. However, as far as the case of Vipul Shah is concerned, in my considered view he could not be held liable for unsecured loan transactions done by his group entities. In fact neither the Investigating Officer nor the AO recorded the statement of Vipul Shah in this regard, to ascertain his version of things. It appears that Sri Nilesh Bharani had nowhere stated in his statement on oath that he had given loan to Shri Vipul Shah. In fact, the seized record of Annexure A-1 and A-2 indicate that loan was taken by M/s. Greenbird Pvt. Ltd. and Shri Vipulbhai was only mentioned as contact person and not as recipient. It appears that some further information of similar nature was gathered in the case of M/s. P.D.

Construction Pvt. Ltd. another entity of the assessee group. Needless, to say that both M/s. Greenbird Pvt. Ltd. and M/s. P.D. Construction Pvt. Ltd. are assessed with the same AO. So, it is not clear as to why the AO chose to proceed against the present assessee and not against the recipient entities. In fact even whatever Nilesh Bharani stated at the time of search, as is reproduced in the foregoing paras was retracted by him three days later and further during the assessment proceedings also

he had denied of giving any loan to Vipul Shah or his group entities, when his statement was recorded.

6.14 It is further relevant to mention over here that seized records in this case are not readily available either with the present AO or the AO of Shri Nilesh Bharani/Evergreen, where these evidence were said to have been seized. In fact the AO has communicated in his Remand report that he had not received any seized material pertaining to M/s. Evergreen Enterprises, on the basis of which these additions were proposed. It is relevant to mention over here that the assessee time and again kept requesting the AO for copies of relevant seized material, but he failed to do so and in fact directed the assessee to appear before the AO of Shri Nilesh Bharani/Evergreen Enterprise assessed in Central Range-4, Mumbai. However, from there also, the assessee failed to get copies of the relevant seized material. Under these circumstances, the present AO of Shri Nilesh Bharani, in Central Range-4, DCIT-4(1) Mumbai, was telephonically requested to send across the copies of relevant evidence, but he failed to do so and therefore, it is not possible for me to verify as to how exactly the relevant entries were appearing in the seized records. Since, Shri Vipul Shah's name is appearing only as a contact person and not as recipient person, even as per letter of DDIT(Inv.), in my considered view, no additions could have been made in his hands. The same is therefore, directed to be deleted.

16.14 However, the AO is advised to examine these transactions in the hands of M/s. P.D. Constructions and M/s. Greenbird Pvt. Ltd., in accordance with the law and take suitable action, after considering all relevant material.”

4.1 We find that the Ld. CIT(A) has deleted the addition mainly in view of the following reasons :

(i) The Assessing Officer himself has recorded in the reasons to belief that cash loan was received by the two firms M/s Green Bird Pvt. Ltd. and P.D. Construction and name of the assessee was appearing in which contact person. Evidently if the loan has been received by the partnership firm/company wherein the assessee is a partner or director, the said loan cannot be added in the hands of the assessee. The Ld. CIT(A) has rightly advised the Assessing Officer to consider examination of the transactions in the hands of M/s P.D. Construction and M/s Green Bird Pvt. Ltd for any suitable action.

(ii) The original statement of Shri Nilesh Bharani were never provided to the assessee despite repeated request for inspection of the original statement, wherein he stated of provided cash loan to two concerns namely P.D. Construction and M/d Green Bird Pvt. Ltd.

(iii) Shri Nilesh Bharani even retracted his statement made u/s 132(4) of providing cash loan to two concerns.

(iv) During the cross-examination by the assessee Shri Nilesh Bharani denied of giving any cash loan to the assessee or his concerns.

(v) When the issue-in-dispute is in respect of the receipt of loan and source of which is already available on record, it is not understandable how the same become undisclosed income in the hands of the assessee, as source of the same, is already within the knowledge of the Income Tax Department.

4.2 In view of the above discussion, we do not find any error in the order of the Ld. CIT(A) on the issue-in-dispute and accordingly, we uphold the same. The grounds raised by the Revenue are accordingly dismissed.

5. Now we take up the appeal of the Revenue in ITA No. 1277/Mum/2021. The grounds raised by the Revenue are reproduced as under:

- 1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A), erred in deleting the addition of Rs.3,92,00,000/- made in the hand of Mr. Vipul D. Shah u/s 271D of the Income Tax Act, 1961 without appreciating the fact that assessee did not discharge its duty to explain the fact that Rs.3,92,00,000/- were duly accounted and offered for tax.*

6. We find that the Assessing Officer has on the one hand added cash loan alleged to receipt by the assessee as unexplained cash credit of the assessee as its income and on the other hand, also levied penalty u/s 271D of the Act in contravention of provision of section 269SS of the Act i.e. receipt of the loan otherwise than by account payee cheque. The Ld. CIT(A) has deleted the penalty. In view of the fact that the addition u/s 69A for receipt of cash loan itself was deleted and therefore said penalty u/s 271D for receiving cash loan in violation of provision of section 269SS cannot be survive.

7. We concur with the finding of the Ld. CIT(A). As we have already upheld the order of the Ld. CIT(A) in deleting the addition in quantum proceedings and therefore, we do not find any error in the order of the Ld. CIT(A) on the issue-in-dispute and accordingly we uphold the same. The grounds of the appeal of the Revenue are accordingly dismissed.

8. As far as cross-objection of the assessee is concerned same are rendered academic in nature and therefore accordingly dismissed as infructuous.

9. In the result, the appeals of the Revenue as well as cross-objection of the assessee are dismissed.

Order pronounced in the open Court on 07/06/2022.

Sd/-

**(SANJAY GARG)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 07/06/2022

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.

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

//True Copy//

BY ORDER,
(Sr. Private Secretary)
ITAT, Mumbai