

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &  
MS.KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA Nos.1492 to 1497/Mum/2021  
(A.Ys. 2010-11, 2011-12 & 2013-14 to 2016-17)**

Nadiadwala Grandson Entertainment Pvt. Ltd. 1701, 17 <sup>th</sup> Floor, Lotus Grandeur, Off Veera Desai Road, Andheri West, Mumbai - 400053	Vs.	DCIT, CC-4(4), 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai - 400021
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No: AACCN0909J		
Appellant	..	Respondent

**ITA Nos.2221 to 2223, 2237 & 2238/Mum/2021  
(A.Ys. 2010-11, 2011-12 & 2013-14, 2015-16 & 2016-17)**

Asst. Commissioner of Income Tax, Central Circle- 4(4),Central Range-4 Pr.CIT(C)-2,R.No. 1922, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	Nadiadwala Grandson Entertainment Pvt. Ltd. Nadiadwala Villa, Ocean View, JP Road, Versova, Andheri (West), Mumbai - 400061
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No: AACCN0909J		
Appellant	..	Respondent

Appellant by :	Mani Jain & Prateek Jain
Respondent by :	Dr. Mahesh Akhade

Date of Hearing	24.03.2022
Date of Pronouncement	07.06.2022

## आदेश / O R D E R

### **PER BENCH:**

All these cross appeals comprising of assessee and the revenue against the different order of CIT(A) are based on similar facts and identical issue, therefore, for the sake of convenience all these appeals are adjudicated together by taking ITA No. 2221/Mum/2021 and ITA No.1492/Mum/2021 as a lead case wherever the grounds of appeals are similar. The finding of these two appeals will be applied mutatis mutandis to the other appeals based on similar facts and identical issue.

### **Grounds of Assessee (ITA No.1492/Mum/2021)**

- “1. On the facts and circumstances of the case and in law, Learned CIT(A) erred in confirming the action of Assessing Officer in making the various additions/disallowance in the absence of any incriminating material found during the course of search action, as per the grounds contained in the assessment order or otherwise.
2. On the facts and circumstances of the case and in law, Learned CIT(A) erred in confirming the action of Assessing Officer in holding that the expenses claimed on account of film production are inflated and bogus expenses, as per the grounds contained in the assessment order or otherwise.
3. On the facts and circumstances of the case and in law, Learned CIT(A) erred in confirming the action of Assessing Officer in disallowing sum to the extent of Rs.5,00,000/- being film production related expenses, as per the grounds contained in the assessment order or otherwise.
4. On the facts and circumstances of the case and in law, Learned CIT(A) erred in confirming the action of Assessing Officer in disallowing a sum of Rs.2,81,265/-treating the same as personal expenses, as per the grounds contained in the assessment order or otherwise.
5. The appellant craves leaves to alter, amend, withdraw or substitute any ground or grounds or to add any new ground or grounds of appeal on or before the hearing.”

### **Grounds of Revenue (ITA No.2221/Mum/2021)**

- “1. On the facts and in the circumstances of the case and in law, whether the ld. CIT(A) has erred in holding that the expenditure of Rs. 1 crore incurred towards post production was booked by Nadiadwala Grandson

*Entertainment (NGE) [Prop. Sajid Nadiadwala) and not Nadiadwala Grandson Entertainment Pvt. Ltd. (NGEPL) without appreciating the fact that this issue arose from the books of NGEPL and not from the books of NGE.*

2. *On the facts and in the circumstances of the case and in Law, whether the ld. CIT(A) has erred in deleting the additions of Rs. 8,50,00,000/- made by the AO u/s. 68 of the Act without appreciating the fact that the assessee has failed to satisfy all the three conditions viz. identity, creditworthiness and genuineness of the transaction in respect of the unsecured loan availed by the assessee.*
3. *On the facts and circumstances of the case and in law, whether the Ld. CIT(A) erred in deleting the addition of a sum of Rs.50,00,000/-on account of interest debited towards bogus unsecured loan entries in the books of the assessee.*
4. *On the facts and circumstances of the case and in law, whether the Ld. CIT(A) erred in deleting the addition on account of commission expenses amounting to Rs.1,12,500/- for arranging the entry of bogus unsecured loan.*
5. *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 a search and seizure action u/s 132(1) of the Act was carried out on 08.12.2015 at Nadiadwala Group covering group concerns and connected cases. The assessee company is a film production company and it was incorporated in the year 2005 with main business of the company being production of cinematographic movies. The main person of the assessee company was Mr. Sajid Suleman Nadiawala who himself has been involved in the industry as film director. The assessee has filed its original return of income on 30.09.2010 declaring a total income of Rs.10,96,21,749/-. Subsequently, the case was selected for scrutiny and assessment order u/s 143(3) of the Act was passed assessing total income at Rs.11,06,92,352/-. Consequent to search action a notice u/s 153A of the Act was issued on 22.12.2016 and assessee has filed its return of income for assessment year 2010-11 on 14.01.2017 declaring total income at Rs.11,06,92,352/-. During the course of the search action statement of some employees of the assessee

were recorded u/s 132(4) of the Act in which they stated that assessee had inflated the expenses of various movies with the motive to reduce the taxable profit. One employee Mr. Nushrat Javed Khan has identified some expenses in which bogus bill had been issued by some parties to the assessee. During the course of assessment the A.O stated that Mr. Nushrat J. Khan explained the modus operandi in detail and on the basis of statement of Mr. Nushrat J. Khan certain expenses totaling to Rs.8,60,50,160/- was identified in which bogus bills had been issued by the certain parties. Assessment u/s 143(3) r.w.s 153A of the Act was finalized on 29.12.2017 assessing the total income of the assessee at Rs.21,15,86,117/-. Further relevant facts pertaining to the grounds of appeal filed by the assessee are discussed while adjudicating these ground of appeal as under:

**(1) Ground No. 1: Absence of any incriminating material during the course of search:**

3. During the course of appellate proceedings before us at the outset the ld. counsel contended that no incriminating material was found during the course of search and A.O has made the disallowance only on the basis of statement recorded of the employees of the assessee. Therefore, the addition made by the A.O in the assessment order was without any basis. The ld. Counsel stated that Mr. Nushrat J. Khan has retracted his statement immediately after search vide affidavit dated 24.12.2015 stating that statement was given under duress or coercion after continuously grilled by the search parties for more than 4 days and he was pressurized to make the admission on various counts. The ld. Counsel has also submitted that other employee including Mr. Rakesh

Madhotra and Mr. Ravindar Khurdan Passi have also retracted their statements on the similar grounds.

On the other hand, the ld. D.R submitted that the employees have themselves admitted the fact of inflation of expenditure and supported the order of A.O.

4. Heard both the side and perused the material on record. The ld. CIT(A) has discussed in detail the factual and legal aspects in his findings at page no. 5 to 12 of his order on the issue of incriminating material found during the course of search. The ld. CIT(A) has referred purchase/work contract and purchase invoices along with the statement recorded u/s 132(4) of the Act holding that because of contrary statements of employees, nature of invoices constituent incriminating material and such facts were not existed at the time of original assessment made in the case of the assessee. After considering the facts and the detailed findings of the ld. CIT(A) discussed at page No. 5 to 12 of his order we don't find any reason to interfere in the decision of the ld. CIT(A), therefore, this ground of appeal of the assessee stand dismissed.

**(2) Ground Nos. 2 & 3 of Assessee: Confirming expenses claimed on account of film production as inflated and bogus. Disallowing Rs.5 lac being film production related expenses:**

5. During the course of assessment A.O stated that it was found during the course of search operation that the Nadiadwala Group was involved in inflating its expenses to increase the cost of production of the movie by claiming non-genuine bills from various parties, making payment to such parties by cheque/RTGS and receiving back such payment made in cash. The A.O has relied on the statement of Mr.

Nushrat J. Khan wherein he admitted that assessee company had booked certain expenses which were not genuine in nature for the purpose of reducing the taxable income of the assessee. In his answer to question no. 23 of his statements he provided the details of non-genuine entries from the books of account of the assessee reproduced at page 15 of the assessment order as under:

Movie	Nature of non-genuine expense booked	Amount (Rs.)	F.Y.	Name of the Party
Baaghi	Re-make rights of Telugu film 'Varsham'	3,00,00,000	2015-16	Viking Media & Entertainment Pvt.Ltd., Mumbai (Shri Sachin Joshi)
Phantom	Providing lights for shooting at site	25,36,537	2015-16	M/s Monalisa Enterprises (Shri Rahul Gupta)
Phantom	Providing lights for shooting at site	41,35,895	2015-16	Visual Lights Private Limited (Shri Rahul Gupta)
Heropanti	Visual effects	55,95,528	2014-15	Futureworks Media Limited
Kick	Visual effects	4,43,82,200	2014-15	Futureworks Media Limited
Total		8,66,50,160		

The assessing officer has also reproduced the relevant part of the statement of Mr. Nushrat J. Khan at Page No. 16 of the assessment order stating that no work had actually been carried out by the said parties but merely the bills were raised with a view to inflate the expenses. In the cases of Monalisa Enterprises & Viking Media & Entertainment Pvt. Ltd. he stated that amount was paid through RTGS & same was received back in cash from the party by Mr. Sajid Nadiawala. In the case of Future Work Media Ltd. he stated that the amount was paid by cheque and the same was received back in cash from the party by Mr. Nadiawala. The A.O called the following details from the said parties by issuing of notices u/s 133(6) of the Act:

**“(a). M/s Viking Media Entertainment Private Limited :-**

- (i) copy/ies of the agreement/s, MOU/s, Terms and Reference/s etc. entered into with assessee with respect to sale of Remake-rights of movies;

- (ii) details of articles in respect of sale of the aforementioned Re-make rights (such as CD/DVD of the original movie, Copy of Script, copy of the Original print of such movie) provided to assessee at the time/ before or after such sale of Re-make rights;
- (iii) copy/ies of correspondence undertaken with assessee such as email/s, letter/s, logbook, minutes of meetings held etc.;
- (iv) details of payments/part payments made by assessee against such re-make rights, i.e. the details including the mode of payment, Bank accounts' statements reflecting such payments by assessee, treatment of such receipts in books of accounts etc;
- (v) The ledger of assessee in your books of accounts for the relevant period. Reply from M/s Viking Media Entertainment Private Limited was received on 07.12.2017 and the same has been taken on records.

**(b). M/s Futureworks Media Private Limited:-**

- (i) copy/ies of the agreement/s, MOU/s, Terms and Reference/s etc. entered into with assessee with respect to visual effects been provided in the Films produced by assessee;
- (ii) Copy/ies of correspondence undertaken with assessee in this regard i.e. emails, letters, logbooks. Minutes of meetings held etc.;
- (iii) Details of the services provided in the films produced by assessee with separate movie wise illustration of the details in respect of the relevant period,
- (iv) Segmental breakup of such services provided i.e. VFX, Color, Digital Intermediate, DCP, Sound Mixing, Dubbing, Foley and Film Equipment services etc. (i.e. camera etc. on hire) with the fees charged for such services to assessee for the relevant period';
- (v) The units and rates of the services at which such services were provided to assessee;
- (vi) details of payments/part payments received from assessee against such services (Movie wise with respective year of release mentioned against the title); including the mode of payment, Bank accounts' statements reflecting such payments received from assessee, treatment of these receipts in books of accounts etc; alongwith ledger of assessee in books of accounts for 'the relevant period';

Reply from M/s Futureworks Media Private Limited was received on 13.11.2017 and the same has been taken on records.

**(c). M/s Monalisa Enterprises:-**

- (i) Copy/ies of the agreement/s, MOU/s, Terms and Reference/s etc. entered into with assessee with respect to services provided alongwith copy/ies of correspondence undertaken with assessee in this regard i.e. emails, letters, logbooks, Minutes of meetings held etc.;
- (ii) The details of the services provided to assessee in the films produced by it with separate movie wise illustration of the details in respect of 'the relevant period' included in 'the relevant period'.
- (iii) Segmental breakup of such services provided i.e. types/kinds of various lights, location wise with the fees charged for such services during 'the relevant period';
- (iv) The units and rates thereof at which such services were provided to assessee;
- (v) Details of payments/part payments made by assessee against such services (Movie wise with respective year of release mentioned against the title) including the mode of payment, Bank accounts' statements reflecting such payments by assessee, treatment of such receipts in books of accounts etc;
- (vi) The ledger of assessee in books of accounts for 'the relevant period'
- (vii) Whether, similar services have been provided to any other producer/production house/studio during 'the relevant period', if yes, then, details as asked for in respect of assessee above;

Reply from M/ s Monalisa Enterprises was received on 02.11.2017 and the same has been taken on records.

**(d) M/s Visual Lights Private Limited:-**

- (i) Copy/ies of the agreement/s, MOU/s, Terms and Reference/s etc. entered into with assessee with respect to services provided alongwith copy/ies of correspondence undertaken with assessee in this regard i.e. emails, letters, logbooks, Minutes of meetingsheld etc.;
- (ii) The details of the services provided to assessee in the films produced by it with separate movie wise illustration of the details in respect of 'the relevant period' included in 'the relevant period',
- (iii) Segmental breakup of such services provided i.e. types/kinds of various lights, location wise with the fees charged for such services during 'the relevant period';
- (iv) The units and rates thereof at which such services were provided to assessee;
- (v) Details of payments/part payments made by assessee against such services (Movie wise with respective year of release

mentioned against the title) including the mode of payment, Bank accounts' statements reflecting such payments by assessee, treatment of such receipts in books of accounts etc;

- (vi) The ledger of assessee in books of accounts for 'the relevant period'
- (vii) Whether, similar services have been provided to any other producer/productionhouse/studio during 'the relevant period', if yes, then, details as asked for in respect of assessee above;”

After receiving the above referred information the A.O asked the assessee vide notice dated 5.12.2017 to explain why the following amount shall not be considered as bogus expenses:

Name of the entity	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	01.04.2015 to 08.12.2015 (2016-17)	Total
Viking Media & Ent. Pvt. Ltd.							3,00,00,000	3,00,00,000
Monalisa				4,86,000	20,50,000	86,88,050	28,26,537	1,40,50,587
Visual Lights Pvt. Ltd.	5,00,000	9,79,211	0	18,80,548	3792063	1125000	4135895	1,24,12,717
Putureworks Media Ltd.		20147802	0	35937223	368316	49977728	572500	10,70,03,569
Prima Focus (London)						160000000		160000000
Total	500000	21127013	0	38303771	6210379	219790778	37534932	323466873

In response the assessee explained that the said expenses were stated to be bogus expenditure only on the basis of statement of Mr. Nushrat J. Khan and Mr. Rakesh Madhotra both employee of the assessee company. It is further stated that in spite of search action carried out for 5 days not even a single documentary evidences found which showed that assessee was engaged in the alleged bogus activities mentioned in the notice. During the course of assessment proceeding Mr. Sajid Nadiadwala CMD was asked to go through the contents of the statement of Mr. Nushrat J. Khan and offer his comments. In response Mr. Sajid Nadiadwala CMD of the assessee submitted that he has gone through the statement of the above employee in respect of the question elaborated at page no. 22 & 23 of the assessment order and totally denied as to what was referred in the statement of the above employee and submitted that

no bogus expenses were recorded in the books of account of the assessee. Mr. Sajid Nadiawala, CMD of the assessee company has further stated that all the expenses incurred by the assessee were genuine and did not agree with the statement of Mr. Nushrat J. Khan. Before the Assessing Officer as mentioned at page no. 23 of the assessment order, Mr. Sajid Nadiawala has also stated that no cross examination was provided of Mr. Nushrat J. Khan in spite of the fact that both of them were present during the course of search proceeding in the same premises. Mr. Sajid Nadiawal also stated that Mr. Nushrat J. Khan during the course of search had retracted his statement by filing of affidavit before the DDIT(Inv.), Unit No. 1(4), Mumbai, stating that his statement was recorded under pressure during the continuation of search for 4 & 5 days and he has signed the statement without understanding the meaning of question raised by the authorized officer. To prove the genuineness of the transactions during the course of assessment the assessee submitted copies of agreement made with the aforesaid parties along with their ledger in assessee's books of account, invoices and bank statement of the assessee showing payment made to the said parties. The assessee also submitted during the course of assessment that the expenditure incurred by the assessee also included VAT/service tax amount, which were not debited to the profit and loss account of the assessee company. The details of VAT/Service Tax included in such expenses was produced at page 25 of the assessment order. The total amount of Rs.131,21,338/- was pertained to VAT/Service Tax included in the gross expenses which was not debited to the P&L A/c. It was also explained that such expenses were debited to the P&L a/c in the assessment year in which the movies were released. The A.O had not agreed with the submission of the assessee. The A.O

was of the view that assessee was in practice of making payment to the parties providing bogus bills to the assessee as admitted by the employees of the assessee in their statement. The A.O had made party wise analysis of the bogus expenses claimed by the assessee as under:

(1) Monalisa Enterprise & Visual Lights:

6. The A.O referred folder containing performa invoices, statement of account and challan issued by M/s Monalisa Enterprises for film Kick for the period relevant to A.Y. 2015-16. In response to notice u/s 133(6) the M/s Monalisa Enterprises and M/s Visual Lights Private Limited, submitted that all its light equipments accessories, office records files and papers which were kept in its premises at Sawant Niwas 4 Block, Andheri (W), Mumbai, caught fire in the night of 31.12.2014 at 00.16 hours as a result there was major loss of lights equipments accessories and documents, therefore records were not available. Therefore, the A.O stated that claim of expenses of the assessee remained unverified and non cross checked. The expenses claimed by the assessee made to these two concerns i.e Monalisa Enterprises & Visual Lights were held as bogus in nature reproduced as under:

Sr. No.	Expenses booked in name of	A.Y. 2010-11	A.Y. 2011-12	A.Y. 2012-13	A.Y. 2013-14	A.Y.2014-15	A.Y. 2015-16	A.Y. 2016-17
1.	Monalisa	.	...	...	486000	2050000	8688050	2826537
2.	Visual Lights	500000	979211	..	1880548	3792063	1125000	4135895
	Total	500000	979211	00	2366548	5842063	9813050	6962432

Out of the above claim of expenses of Rs.5 lac was pertained to assessment year 2010-11 which was disallowed and added to the income of the assessee.

(2) Future Work Media Pvt. Ltd:

7. The A.O stated that during the course of search action it was noticed that M/s Future Work Media Pvt. Ltd. had provided bogus entries of VFX work to the assessee to the tune of Rs.4,99,77,728/-. The A.O stated that from the books of Future Work Media Pvt. Ltd. it was further revealed that assessee had also taken entries of Rs.7,06,41,884/- over and above the entries as stated by Mr. Nushrat J. Khan. The A.O also stated that during the course of survey action in the case of Future Work Media Pvt. Ltd. the concerned person Shri Gaurav Sushil Gupta, director of Future Work Media Pvt. Ltd was confronted with the statement of Javed Khan and Rakesh Madhotra. However, he denied the allegation made by Mr. Nushrat J. Khan, Rakesh Madhotra and stated that no cash had been given back to the assessee for the VFX work done for Heropanti & Kick. He also submitted that substantial VFX work has been done by Future Works Media Pvt. Ltd. for these films. The Future Work Media Pvt. Ltd. has also submitted copy of MOU made with the Nadiadwala. It was also explained that M/s Future Works have provided visual Effect Services like advance Autodesk smoke setup final cut pro machine, packaging and designing, 3D element/High end composing and pre-visualization etc. However, the A.O has not accepted the submission of the Future Work Media Pvt. Ltd. Stating that no log book/worksheet or work order have been maintained in respect of VFX services rendered to the assessee. The A.O has also stated that consideration received from the assessee was substantial as compared to the same to be received from other entities. In view of the aforesaid discussion the A.O has disallowed amount of Rs.1 crore paid to Future Work Media Pvt. Ltd pertaining to A.Y. 2010-11.

8. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has partly allowed the appeal of the assessee. The part of the decision of CIT(A) is reproduced as under:

*“B: Transaction of Rs 2,02,07,805 in AY 2011-12*

*6.57 The issue pertains to AY 2011-12 and has been dealt with while deciding the relevant grounds for AY 2011-12.*

*C: Transaction of Rs.3,78,04,856 in AY 2013-14*

*6.58 The transaction pertains to AY 2013-14 and has been decided while dealing with the ground in appeal for AY 2013-14*

*D: Transaction of Rs.3,68,316 in AY 2014-15*

*6.59 The transaction pertains to AY 2014-15 and has been decided while dealing with the ground in appeal for AY 2014-15.*

*E: Transaction of Rs.4,99,77,728/- in AY 201*

*6.60 The transaction pertains to A.Y. 2015-16 and has been decided while dealing with the ground in appeal for AY 2015-16.*

*6.61 In light of the above discussion the disallowance of an amount of Rs.5,00,000 made by the AO stands confirmed. The Disallowance of Rs.1,00,00,000/- stands deleted as such expenditure has never been claimed as expense in the books of the company. Ground No. 2 and 3 raised by the appellant are decided in accordance with the directions above and are treated as partly allowed.”*

9. During the course of appellate proceedings before us the ld. D.R contended that retraction of the statements by the employees of the assessee was an afterthought and the same should not be relied upon , affidavit was not supported with relevant document to substantiate the reason for retraction of the statement.

On the other hand, the Ld. A.R vehemently contended that all the employees of the assessee company have retracted their statements on the basis of which the additions were made. The reason for retraction was properly explained in the affidavit that it was because of continued search proceedings for almost 5 days and continuously recording of statement throughout the day till midnight for almost 4 & 5 days which

pressurized the employees to sign the statement without understanding the meaning of question raised by the authorized officer. The Id. Counsel has also contended there is no supporting evidence to corroborate the statement of employee which was already retracted. No opportunity of cross-examination was provided by the AO to assessee. He has further contended that the parties to whom notices u/s 133(6) were issued had made compliance and submitted the relevant supporting available detail. He further submitted that A.O could not substantiate with any incriminating material that there was inflation of expenditure and assessee has genuinely incurred these expenses which were mandatory for the production of the film.

10. Heard both the side and perused the material on record. During the course of search action, statements of employees were recorded u/s 132(4) of the Act and on the basis of their statements the A.O observed that the assessee had inflated the expenses to reduce the taxable profits.

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.

The CBDT vide circular No.F.No.286/2/2003-IT(Inv.), dated 10.03.2003 has categorically directed that authorities should focus on collection of

evidence of undisclosed income in search cases and abstain from laying undue emphasis on plan statements which are later on retracted. The relevant part of the circular is reproduced as under:-

*“Instances have come to the notice of the Board where assesseees have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assesseees while filing returns of income. In these circumstances, such confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income-tax Department. Similarly, while recording statement during the course of search & seizure and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely. Further, in respect of pending assessment proceedings also, Assessing Officers should rely upon the evidences materials gathered during the course of search survey operations or thereafter while framing the relevant assessment orders.”*

Here in the case of assessee retraction was filed 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. One employee Mr. Nushrat Javed Khan identified certain expenses totaling to Rs.8.66 crore for which bogus bills had been issued by certain parties. The assessee has submitted that it had incurred various expenses in the nature of Visual effects, lighting and other production services in order to produce the cinematographic film, the said expenses were integral part of the production activity and were essential to produce a fully featured film. The assessee has furnished the substantial evidences i.e MOU, invoices, bank payment detail etc. The assessee has claimed that statement of Mr. Nushrat J. Khan relied upon by the Assessing Officer was retracted immediately after the search

stating same was obtained under duress or coercion during continued search proceedings for almost 5 days and continuously recording of statement throughout the day till midnight for almost 4 & 5 days pressurized the employees to sign the statement without understanding the meaning of question raised by the authorized officer. add mere reasons for retraction. Mr. Sajid Nadiadwala in his statement u/s 132(4) when the statement of Mr. Nushrat J. Khan was confronted to him had denied the contents of the statement and stated that Mr. Nushrat J. Khan had rightly retracted his statement after explaining the situation in which the statement was given. It was also explained that no unaccounted cash was found in any of the premises which could substantiate that the assessee group was engaged in generation of unaccounted cash. Even Mr. Sajid Nadiadwala had denied the statement and stated that no opportunity of cross-examination was provided, in spite of the facts that both the persons were present in the premises. Mr. Rakesh Madhotra, CEO had also retracted his statement immediately after the search action stating that the same was recorded under pressure by continuously questioning of 5 days. It is undisputed fact that the statements of the employees were not supported with any documentary evidences and same were retracted immediately after the search action. At para 9.5 of the assessment order the A.O stated that loose paper folder containing performa invoices, statement of accounts and challan issued by Monalisa Enterprises for film Kick for relevant to A.Y. 2015-16 were seized but the A.O had failed to substantiate anywhere in his findings that contents of such material demonstrate that assessee had obtained bogus bills to inflate the production expenses. We observe that merely retracted statements of the employees without corroborating with any other evidences/materials cannot form a sole

basis of additions. To sustain the disallowance it is necessary to have supporting evidences and documents, in the case of the assessee, basis of additions were only retracted statement of the employees which had no strong evidential value. There was no positive material on record brought by the A.O to substantiate that in fact assessee had inflated its expenses by overbilling. The assessing officer has only relied on the retracted statement and there was no independent material /evidences to substantiate the same. Mr. Rahul Gupta proprietor of Monalisaand M/s Visual lights have not denied the transaction and submitted with supporting evidences that their premises Sawant Niwas located at Andheri (W) caught fire in the night of 31<sup>st</sup> Dec. 2014 at 00.16 ours and there was a major loss of equipment and documents. A copy of the fire report bearing No.2020 of 2014-15 was also filed. However, the A.O has not made further investigation to contrary prove the claim of occurrence of fire as claimed by the aforesaid party. We consider that the decision of ld. CIT(A) to sustain the addition of Rs.5 lac pertaining to the production expenses merely based on retracted statement was contrary to the surroundings facts and material and not justified, therefore, we direct the A.O to delete the addition of Rs.5 lac. Accordingly, ground no.2 & 3 of the appeal of the assessee are allowed.

**(2) Ground No. 4 of Assessee: Disallowance of Personal Expenses:**

11. During the course of assessment the A.O stated that Shri Ravindar Khurdan Passi financial controller of the assessee admitted in his statement recorded on 09.12.2015 that various household expenses/personal expenses of Nadiadwala Grandson Group have been debited in the account of the assessee company.

Shri Ravindar Khurdan Pasi stated in his statement that standard operating procedure was not followed in respect of the bills pertaining to the personal expenses and these bills were not approved by the production manager etc. When Mr. Sajid Nadiadwala was confronted with the statement of the said employee he stated that he needed time to verify the exact nature of these expenses accounted in the books of accounts and the amount of any personal expenses was subject to verification. Therefore, assessee was issued show cause notice dated 05.12.2017 to explain why the following expenses should not be disallowed.

Sr. No.	Particulars	2010-11	2015-16	2016-17	2017-18
1.	Kokilaben Hospital	...	...	3,60,000	...
2.	Vedanta Lifestyle Furniture	...	...	...	1,00,920
3.	Portugal Football Match Trip	...	...	72,000	....
4.	Amol Waghmare Security Body Gurad	...	...	49,500	...
5.	HSBC Credit Card Sketch Clinic	...	...	25,000	...
6.	Sunrise Luxury Sports Shoe	...	...	32,000	...
7.	Subhan Nadiadwala Visa Expenses	...	...	85,000	...
8.	Juhu Premises Expenses (approx.)	...	...	1,25,00,000	...
9.	Khanna Club Membership	...	1,16,118	...	...
10.	Asma Cook	...	...	9,000	...
11.	Jyoti Baai	...	...	8,000	...
12.	Doremon	...	...	10,000	...
13.	Iron Man	...	...	8,500	...
14.	Driver	...	...	6,000	...
15.	Porugese Air Football Match	...	...	85,000	...
16.	J.W. Marriot Hotel Membership	2,81,265	...	...	...
	Total	2,81,265	1,16,118	1,32,50,010	1,00,920
Grand Total					1,37,48,313

In response to the aforesaid notice Mr. Sajid Nadiadwala, CMD of the assessee company stated that Shri Ravindar Khurdan Pasi had retracted his statement and affidavit retracting the statement was filed by him immediately after the search before the DDIT(Investigation), stating that at the time of recording statement he was in physically drained and mentally disturbed state of mind as the authorized officer recorded his statement continuously throughout the day till midnight for almost 4 & 5 days and he had signed the statement without understanding the

meaning of question raised by the authorized officer. The assessee had also submitted the details of such expenses referred by Mr. Ravinder Khurdan Passi in his statement. It was submitted that out of Rs.1,37,48,313/- and amount of Rs.1,25,00,000/- was on account of furniture facility provided to the CMD of the assessee company. Depreciation claimed by the assessee company on the said expenses was duly considered as perquisite received by Mr. Sajid Nadiawala and same was considered as his income under the head salary for the year under consideration. Further, in respect of remaining expenses of Rs.12,48,313/- it was stated that amount of Rs.4,32,000/- was not debited in the books of account of the assessee. However, the ld. CIT(A) has restricted the addition to the amount of Rs.2,81,265/- being payment for JW Marriott Hotel Membership, stating that assessee has not given evidence for using the same for the business purposes.

12. Heard both the side and perused the material on record. During the course of search Shri Ravindar Khurdan Passi financial controller of the assessee company stated that some personal expenses have been debited to the account of the assessee company. He retracted his statement immediately after search stating that at the time of recording statement he was in physically drained and mentally disturbed state of mind as the authorized officer recorded his statement continuously throughout the day till midnight for almost 4 & 5 days and he had signed the statement without understanding the meaning of question raised by the authorized officer. However, during post search proceedings details of expenses were submitted. It was explained that expenses of Rs.125,00,000/- was on account of furniture facility provided to the CMD of the assessee company and depreciation claimed on such expenses was duly considered as perquisite in the hand of Mr. Sajid Nadiadwala under the

head salary and filed supporting evidences i.e. computation of income along with copy of return of income of Mr. Sajid Nadiadwala. It was undisputed fact that an amount of Rs.4,32,000/- was not debited in the books of account of the assessee company. The assessee explained that there was a duplicate entry for expenses of Rs.85,000/- and the remaining expenses of Rs,711,313/- were incurred for the purpose of the business.

However, the A.O has disallowed an amount of Rs.2,81,265/- pertaining to payment made for J.W. Mariot Hotel Membership. It was claimed that hotel was used for holding meetings with the parties related to production of the films.

We observe that the part of the hotel facility for personal use cannot be ruled out however, looking to the fact that the impugned addition was merely made on the basis of the retracted statement without fully linking with specific evidences, therefore we restrict such disallowance to 50% of Rs.2,81,265/-. Therefore, this ground of appeal of the assessee is partly allowed.

### **ITA No.2221/Mum/2021**

#### **Ground No. 1 of the Revenue: Deleting expenditure of Rs.1 crore towards production**

13. This amount was not claimed as deduction in the books of account of the assessee. The payment of Rs.1 crore has been debited in the books of M/s Nadiadwala Grandson Entertainment not in the books of the assessee as discussed in para 6.56 in the order of the Ld.CIT(A).The assessee has also produced ledger account and supporting documents before the assessing officer during the course of assessment proceedings

to substantiate these facts that the said amount was not claimed as deduction in the books of the assessee during the year consideration, however the assessing officer failed to prove contrary. The Revenue could not controvert the finding of the Id. CIT(A), therefore, this ground of appeal of the Revenue stand dismissed.

**(2) Ground 2,3&4 of Revenue: Bogus unsecured loans, Interest on loan& Commission expenses relating to deleting addition of Rs.8,50,00,000 made by the AO u/s68 of the act, deleting addition of Rs.50,00,000 on account of interest and commission expenses of Rs.1,12,500/**

The A.O stated that during search proceedings it was found that assessee had obtained bogus unsecured loan to the amount of Rs.11 crore from the entities controlled and managed by Sh. Bhanwarlal Jain . The A.O also noticed that assessee debited interest on the bogus unsecured loan taken in the form of accommodation entries.The detail of such loan as per page no. 43 of the assessment order is reproduced as under:

Sr. No.	Name of the Concerns	F.Y. 2009-10	F.Y. 2010-11	F.Y.2011-12	F.Y. 2012-13	F.Y. 2013-14	F.Y. 2014-15	F.Y.2015-16	Grand Total
1.	AASTHA IMPEX	5000000	0	0	0	0	0	0	5000000
2.	MAAN DIAMOND	10000000	0	0	0	0	0	0	10000000
3.	MAXIMUS GEMS	10000000	0	0	0	0	0	0	10000000
4.	ROYAL DIAMOND	10000000	0	0	0	0	0	0	10000000
5.	SUBHDIL GEMS	27000000	0	0	0	0	0	0	27000000
6.	SUMAN EXPORTS	5000000	0	0	0	0	0	0	5000000
7.	CHITAMANI EXPORTS	0	5000000	0	0	0	0	0	5000000
8.	GARIMA EXPORTS	0	5000000	0	0	0	0	0	5000000
9.	MEENAXI DIAMONDS PVT. LTD.	0	10000000	0	0	0	0	0	10000000
10.	VAISHALI GEMS	0	5000000	0	0	0	0	0	5000000
11.	RAJ ASSOCIATES/RAJ RAJPAL HUF	15000000	0	0	0	0	0	0	15000000
12.	SUNITA TRILOK MOTIANI	1500000	0	0	0	0	0	0	1500000
13.	MURLI MOTIANI	1500000	0	0	0	0	0	0	1500000
	Total	85000000	25000000	0	0	0	0	0	110000000

14. The AO further stated that Mr. Nushrat J. Khan in his statement admitted that these unsecured loan from were obtained from non-genuine entities through a broker Shri Pravin Talreja. Subsequently, the promoter director Shri Sajid Nadiadwala was confronted with the statement, he had not agreed with the statement and claimed that all these loans were genuine. Mr. Nusrat Javed Khan had retracted his statement immediately after search claiming that the statement had been given under extreme mental/pressure and disturbed state of mind due to continuously recording of statement throughout the day and till midnight for almost 4-5 days under pressure of officer during search. During the assessment proceedings, the A.O noticed that out of the 13 parties from whom the loan were obtained five entities were connected to the Bhanwarlal Jain i.e Astha Impex Maan Diamond, Maximus Gems, Suman Export & Meenaxi Diamond Pvt. Ltd. In response to notices u/s 133(6) the parties connected to Bhanwarlal Jain have provided details i.e (i) copy of PAN card (ii) Cop of account confirmation for F.Y. 2009-10 and F.Y. 2010-11 (iii) copy of ledger a/c for F.Y. 2009-10 and F.Y. 2010-11 (iv) copy of ITR acknowledgment for A.Y. 2010-11 to 2015-16 (v) copy of Bank statement (vi) copy of P&L and Balance Sheet.

However, the A.O observed that assessee has not provided current details pertaining to these five parties. In response to notice u/s 142(1) the assessee furnished copies of ledger of the lenders along with the bank statements reflecting payment received and repayment made to them. The assessee also explained that it had taken unsecured loan from such parties in assessment year 2010-11 which was duly repaid in A.Y. 2011-12. The assessee submitted confirmation letters obtained from the said parties and copy of ledger of account of Sh. Pravin Talreja in its books of

account along with copy of bank statement reflecting the payment made to him as brokerage.

The A.O has not agreed with the submission of the assessee stating that Sh. Bhanwarlal Jain admitted during the search action taken place in his case that they were engaged in providing accommodation entries and in fact assessee had obtained unsecured loan from the five entities relating to Bhanwerlal Jain Group. The A.O has discussed in the assessment order the facts gathered during the course of search in the case of Bhanwarlal Jain Group of cases. The A.O observed that lenders were having very low capital and negligible profit and opined after taking into consideration the statement of Mr. Nushrat J. Khan that the unsecured loan claimed by the assessee were mere accommodation entries obtained in exchange of cash from the concern of Sh. Bhanwerlal Jain. Therefore, the impugned loan amount to the extent of Rs.8,50,00,000/- was added to the total income of the assessee as bogus unsecured loan u/s 68 of the Act. The A.O has also disallowed the amount of interest expenses claimed on such loan and payment of commission to the broker .

15. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has deleted the addition made by the AO, the relevant part of the decision of ld. CIT(A) is as under:

**“Decision**

*7.29 The various facts related to this issue has been noted. With respect to five parties, the AO has held that these pertain to Bhanwarlal Jain Group wherein it has been found that the group, through various entities under their control, were engaged in providing various accommodation entries which included bogus purchase invoices, bogus share capital / premium and bogus loans etc. for a commission. He also noted that the other entities were also of similar profile and hence, their creditworthiness was not proved. He also held that the parties did not appear when summoned u/s 131 of the Act and the appellant, on being*

*asked, neither knew much about these entities nor could it produce these parties before the AO for confirmation.*

*7.30 The assessee has claimed that it had routine and natural loan transactions with these parties, undertaken through a finance broker whom commission has been paid through cheque. It is also claimed that the fact that these parties were engaged in providing bogus sale bills and other entries to many of the parties did not mean that the assessee's short term loan transactions were also of similar nature. It has been claimed that the identity of the creditors/lenders has been established on the basis of the PAN card, return of income and a genuineness of the transaction & bank statements filed before A.O where all the loans taken from above mentioned parties by account payee cheques are reflected. The creditworthiness of the creditor is established on the basis of balance sheet of above mentioned parties filed before AO. From surplus funds while carrying out their trading business activity & these funds have been advanced to the assessee. Purifier, in the affidavit given by the concerned partners/ proprietors of the above-mentioned parties, they have confirmed that they have provided loan to the appellant by a/c payee cheques which is correctly reflected in their books. With reference to the summons issued u/s 131 of the Act, the assessee claims that the transactions were arranged through a broker and the assessee had no occasion to directly interact with these entities and hence, it could not provide more details about these parties.*

*7.31 It has been claimed that the appellant was producing a movie 'Anjana Anjani' during the period 2009-10/2010-11 and these funds were necessary at the production stage as banks do not provide sufficient finance to film industry in light of the risks involved. He has stated that his own bank account will evidence that the funds received have been utilized during the course of film production and on release of the movie in FY 2010-11, the initial receipts from distributors have been utilized for discharging these loans. The appellant has also claimed that regular interest has been paid on these loans on which appropriate taxes have been deducted and the loans have been taken through brokers to whom due commission has been paid through cheque and the assessee does not have any contact with such lending entities.*

*7.32 The transactions under discussion here have been closely examined. The ledger accounts revealing these transactions are reproduced in the assessment order. It is noted that the assessee is into the business of film production where the fund requirements are considerable while the banks do not sufficiently finance as the risks involved are very high. It is also noted that there exist finance brokers who represent various lenders and can provide funds on a commission. In such an arrangement, the borrower only transacts through the broker and not directly with the lenders. Such arrangements depend on the creditworthiness of the borrower. It is noted that the entries comprise of lending, payment of interest on such lent amount and return of loans indicating that most of these loans are taken on short term basis when the need arose and were mostly repaid in the next year / same year along with interest immediately on release of the film. The nature of transactions undertaken by the lender concerns has been discussed by the AO in the behalf of certain unknown parties who want these items out of their own books. After import, while the diamonds are handed over to these parties and consideration is taken in cash, the assessee is left with stock in trade of*

diamonds in his books and unaccounted cash. There is a foreign exporters. The concerns are able to give bogus sale bills to needy parties receiving money through a/c payee cheques while these transactions are squared up in cash. Now, these concerns have money in their account which can be advanced to needy parties on a short term basis until the credit period in respect of the import is available. The money is paid for the foreign party within the credit period. Hence in respect of these same concerns, while the sales invoices issued by them are positively bogus as well as the share capital subscribe by them in other entities and long term loans are also bogus, the same cannot be said about all the loans advanced by these parties. Such loans have to be tested on the principles laid down by various Courts with respect to requirements of section 68 of the Act. In the case of these very same entities, instances of loans have been noted where there was no receipt of interest on these loans and there was no intention of the parties to square the loans even after many years. Such loans would clearly fall within the ambit of unexplained cash credits. However, in the present case, the facts are slightly different as these loans are short term, interest has been regularly paid and the loans have been immediately returned to the lenders along with interest much before the search action took place in the Jain Group.

7.33 The modus operandi of the lenders has been discussed above and it has been noted that the fund flow in their books was such that they could have surplus funds for short term lending. Hence, all the lending transactions appearing in their accounts couldnot be taken to be bogus prima facie and had to be examined based on other evidences. In this regard, the details of documents filed by the assesses before the Investigation Unit, survey party and the assessing officer have been examined. The assessee has rejected that the transaction related to its attempt at introducing unaccounted cash into its own books through loan entries. The assessee has filed various documents including the bank account extracts of the lender entities. It is the claim of the appellant that it was short of funds while making the movie 'Anjana Anjani' and these loans were taken to meet the financial requirements of this movie.

7.34 The statement given by Nusrat Javed Khan has already been reproduced earlier. The statement is a general statement which does not specify the source of generation of cash funds which were to be routed to the banks. Further, no details have been provided as to the person to whom the cash was delivered against the loans and again from whom was the cash collected when the loans were returned. Also, it is incorrect that all the above parties belong to the same group. While only five parties belong to the Bhanwarlal Jain group, based on which decision has been taken by the AO in respect of all the parties. It is also clear from the statement that Nusrat does not have specific details with respect to this transaction of loans which are generally handled by Sajid Nadiadwala.

7.35 The bank account of the appellant has been examined. The code name for movie Anjana Anjani was 'Prodn 5'. The Citibank account wherein these amounts has been credited has been examined. It is noted that on receipt these amounts have been immediately spent expenses related to the movie. The bank account for the subsequent year when these amounts have been returned back, is also examined. A selected summary of the movie have been immediately utilized to repay these loans.

Date	Particulars	Vch Type	Debit	Credit
01.06.2019	Cr. Opening Balance		1,86,20,569.20	
01.06.2010	Dr. Subhdil Gems	Payment		1,91,250
01.06.2010	Dr. Sunit Trilok Motiani	Payment		16,875
01.06.2010	Dr. Murli Motiani	Payment		16,875
01.06.2010	Dr.Pravin Telreja [Broker]-5	Payment		45,000
02.06.2010	Dr. Gen. Production Exp-5	Payment		12,000
03.06.2010	Dr. Eros International P. Ltd. Prodn. 6	Receipt	1,00,00,000.00	
03.06.2010	Dr. Satyam Electronics-5	Payment		22,500
04.06.2010	Dr. Akhta Ali (Furniture Decorator)-5	Payment		49,000
04.06.2010	Dr. Raj Associates/ Raj Rajpal H.U.F.	Payment		1,50,00,000
	.....			
	.....			
12.06.2010	Dr. Cash in Hand-5	Contract		50,000
12.06.2010	Cr. Eros Internation Films P.Ltd. - Prodn. 5	Receipt	2,00,00,000.00	
14.06.2010	Bombay Mercantile Co-op Bank Ltd. Prodn .5156	Payment		1,00,00,000
14.06.2010	Dr. Ranbir Kappor 5	Payment		90,00,000
14.06.2010	Dr. Priyanka Chopra 5	Receipt		18,00,000
14.06.2010	Cr. Eros Internation Films P.Ltd. Prodn. 5	Payment	8,50,00,000.00	
14.06.2010	Dr. Royal Diamond	Payment		1,00,00,000
14.06.2010	Dr. Maan Diamond	Payment		1,00,00,000
14.06.2010	Dr. Maximum Gems	Payment		1,00,00,000
14.06.2010	Dr. AStha Impex	Payment		50,00,000
14.06.2010	Dr. Cash in Hand-5	Contra		10,00,000
14.06.2010	Sr. Suman Exports	Payment		50,00,000
14.06.2010	Dr. Subhdil Gems	Payment		2,70,00,000
14.06.2010	Dr. Sunita Trilok Motiani	Payment		15,00,000
14.06.2010	Murli Motiani	Payment		15,00,000
14.06.2010	Dr. Yash Enterprise	Payment		1,50,00,000
14.06.2010	Dr. Cash in Hand-5	Contra		9,00,000
18.06.2010	Cr. Eros Internation Films P. Ltd. Prodn. 5	Receipt	1,00,00,000.00	

7.36 The contents of the bank account support the credibility of the appellant's submission that the loans had been taken for normal business purpose and that the appellant has approached a broker for raising genuine finance for his films under which these amounts have been borrowed. Further the return of these loans was after release of the film, when Eros, being appellant's distributor, provided the proceeds of release.

7.37 It is also noted that the above parties are not the only parties from whom the appellant has taken loans during the various years. Film production, admittedly, is a capital intensive activity wherein a huge amount of funds are deployed during production process which culminate into release of the film. The assessee has provided following details with respect to other loans taken in various years.

Name of the party	F.Y.	Opening Balance	Received	Paid	Interest	Closing Balance
Aastha Sarin	2010-11		12,60,000	12,60,000		
AKK Entertainment Pvt.Ltd.	2011-12		20,00,00,000			20,00,00,000
	2012-13	20,00,00,000		20,00,00,000		
Global Automobiles Pvt Ltd.	2010-11		50,00,000	52,25,000	2,25,000	
Paresh Murli Motiani	2010-11		20,00,000	1,80,000	1,80,000	20,00,000
	2011-12	20,00,000		20,90,000	90,000	
Yash Enterprise	2010-11		2,80,00,000	2,57,20,000	7,20,000	30,00,000
	2011-12	30,00,000	20,00,000	51,35,000	1,35,000	
Yogi Diam	2010-11		50,00,000	51,50,000	1,50,000	
G.G. Photo Limited HF 2	2011-12		9,00,00,000	5,59,00,000	59,00,000	4,00,00,000
	2012-13	4,00,00,000		4,00,00,000		
G.G. Photo Ltd.	2010-11		6,00,00,000	2,48,00,000	48,00,000	4,00,00,000

	2011-12	4,00,00,000		4,00,00,000		
Reliance Media Work Ltd.	2010-11		3,00,00,000	1,76,383	17,63,836	3,15,87,453
	2011-12	3,15,87,453		4,36,189	43,61,916	3,55,13,180
	2012-13	3,55,13,180			43,49,999	3,98,63,179
	2013-14	3,98,63,179			43,49,999	4,42,13,178
	2014-15	4,42,13,178		4,49,40,164	7,26,986	

The above table reveals that the appellant is in regular need of finance during production of the films which is generally sourced from private parties as banks are reluctant to finance such risky ventures. Such loans are returned after receiving sale proceeds. The above loans have been taken during the period for which search assessments have been completed and no doubts have been raised about the genuineness of these loans.

7.38 It is also noted that one of the main reasons cited by the AO for treating the credits as unexplained was failure of the appellant to provide current whereabouts of the lenders. It is noted that the loans were taken in 2009-10 /2010-11 while the assessment has been done in 2017. The assessee has submitted that it had no interaction with the lenders as the loans were arranged through a broker and that considerable time has elapsed since such loans were taken. The explanation is found tenable. It is a common practice for businesses to take held of such finance brokers who have regular contact with financiers. The brokers facilitate such loans based on credit worthiness of the borrowers and the lenders do not take active part in the process. The appellant is a well known name in film industry for him to interact with the lenders or to keep track of their whereabouts. In the case of **Vashu Bhagnani in ITA No. 5648/Mum/2016 having similar facts the addition on account of** loan taken by an assessee from m/s Daksh Diamonds (an entity controlled by Bhanwarlal Jain) was deleted by the ITAT in light of the fact the loan was taken by the assessee in 2006 and returned by him to M/s Daksh Diamonds in 2010 while the search took place on 03.10.2013 observing that one has to respect the transactions which occurred more than three years before the search and seizure action by the department and the addition was made without any supporting documents indicating that the loan entry was a bogus one.

7.39 The discussion above reveals that there is sufficient ground to infer that the borrowings taken by the appellant are not an arrangement to introduce his unaccounted cash in his books but to meet a genuine requirement of funds. It is also noted that such funds have been returned back immediately on generation of funds in form of theatre income received from distributors. Undisputedly, such transactions do not include merely lending but they also include receipt of interest and return of capital. There is no evidence that the accounts have been used merely as a conduit. On this issue, the decision in the case of *Mernich and Jain vs DCIT. Central Circle 1(3), Mumbai in ITA No. 2641/Mum/2018* is found relevant. It is noted that in this case also, the loans had been taken from the Jain Group wherein evidence was gathered that the group entities were engaged in providing accommodation entries, a survey had been conducted in the premises of the assessee u/s 133A and subsequently the case of the assessee had been reopened for reassessment. The facts of this case are detailed at para 5 of the order. The ITAT has described the facts of that case at para 5 of the order which is reproduced below:

5. We have heard the counsels of both parties and also perused the material placed on record as well as judgements cited by the receptive parties as well as the orders passed by the Revenue Authorities. The issue that came up for our consideration is the addition on account of unsecured loan of Rs. 75,00,000/- taken from companies controlled and operated by Shri Bhanwarlal Jain and his associates. The ld. AR for the assessee submitted that Ld. CIT(A) was erred in confirming additions made by the AO towards unsecured loan taken from companies belonging to Bhanwarlal Jain without appreciating the fact that the assessee has proved all ingredients provided under section 68 of the Act. The Ld. AR further submitted that the assessee has filed enormous documents in order to prove the identity, creditworthiness of the parties and genuineness of transaction. In fact, the AO never disputed identity of loan creditors. The A.O has categorically admitted that assessee has filed various documents including confirmation letter, PAN, ITR acknowledgment along with financial statement, bank statement of loan creditors and also affidavit from director/partner/proprietor of those companies/firms to prove the identity, genuineness of transactions and creditworthiness of the parties. The Ld. AR further submitted that the assessee also filed various details in order to prove genuineness of transactions in the backdrop of admission of Shri Bhanwarlal Jain in his statement recorded under Section 132(4) of the Act and submitted that Shri Bhanwarlal Jain has filed an affidavit before the income tax authorities along with a letter retracting his statement given under section 132(4) of the Act. Therefore, when the person who gave the statement with an affidavit then the statement recorded during the course of search does not have any evidentially value, therefore the same cannot be considered as sacrosanct to come to the conclusion that the transactions were bogus in nature. The ld. A.R further submitted that the sole basis for the AO to make additions towards unsecured loans is a statement of Shri Bhanwarlal Jain, which was subsequently retracted by him. Further, inspite of specific request, the AO declined to provide the statements or evidence relied upon and also declined to give opportunity to cross examine the parties. The Ld. AR further submitted that during the course of survey in the group cases of assessee, no incriminating material was found to link credits found in the books of account of the assessee and a/so to evidences collected from Shri Bhanwarlal Jain group cases during the search. The AO as well as the Ld. CIT(A) has given much importance to the modus operandi and evidence collected during the search in the case of Shri Bhanwarlal Jain ignoring the evidences filed by the assessed during the assessment proceedings. Therefore, when the assessee discharged initial burden by filing enormous documents to prove the identity, genuineness of transactions, creditworthiness of the parties, additions could not be made under section 68 of the Act, only on the basis of evidences collected from third party's information. In this regard, he relied upon various judicial precedents. The case was relied upon by the assesses are reproduced hereunder-

1. CIT vs. Goa Sponge and Power Ltd (13/02/2012) Tax Appeal No. 16 of 2012 (High Court-Bombay)
2. CIT vs. Creative World Tele films Ltd.(2011) 333 ITR 100 (Bom-High Court)
3. CIT vs. Lovely Exports (P) Ltd (2008) 216 CTR 195(SC)
4. CIT vs. Stellar Investment Ltd (2001) 251 ITR 263(SC) (Civil Appeal)
5. CIT vs. Nav Bharat Duolex Ltd. (2013) 35 Taxmann.com289(AII- High Court)
6. CIT vs. JayDee Securities & Finance Ltd. (2013) 32 Taxmann.com91 (All- High Court)
7. ACIT vs. Venkateshwarlspat Pvt. Ltd (2009) 319 ITR 393 (Chhatisgarh- High Court)
8. Mod Creations Pvt. Ltd vs. ITO (2013)354 ITR 282 (Del\_High Court)
9. CIT vs. Al AnamAgro foods (P.) Ltd (2013) 38 Taxmann.com 375 (High Court)

10. *CIT vs. Dwarkadish Investment (P) Ltd (2011) 330 ITR-298(Del-High Court)*
11. *CIT vs. Namastey Chemicals Pvt. Ltd (2013) 33 Taxmann.com 271 (Guj- High Court)*
12. *CIT vs. Peoples General Hospital Ltd. (2013) 356 ITR 65 (MP- High Court)*
13. *CIT vs. Shree Rama Multi Tech Ltd. (2013) 34 Taxmann.com 177 (Guj-HC)*
14. *CIT vs. Nikunj Eximp Enterprises (P) Ltd (2013)35 Taxmann.com 384 (Bom)*
15. *CIT vs. Samir bio-Tech Pvt.Ltd. (2010) 325 ITR 294 (Del-High Court)*

6. The ld. D.R on the other hand strongly supported the order of the ld. CIT(A) and submitted that the A.O as well as the ld. CIT(A) brought out clear facts to the effect that the assessee is one of the beneficiaries of accommodation entries provided by Bhanwarlal Jain group companies. The assessee neither controverted findings of the A.O as well as the Ld. CIT(A) nor filed any valid evidence to prove that unsecured loans taken from the above companies are genuineness transactions. Mere furnishing certain paper documents including bank statements would not sufficient enough to come out of shadow of provision of section 68 of the Act when, the evidences collected during the search as well as survey clearly shows that transactions between the parties are not genuine transactions, therefore, there is no error in the findings recorded by the lower authorities. Accordingly, additions made by the A.O should be upheld.”

7.40 It is noted that the facts in this case are similar to the facts of the above case. The ITAT has elaborated on various aspects and has decided the issue as below:

8. The provisions of section 68 of the Act deals with the cases, where any sum found credited In the books of account of the assessee in any Financial Year, and the assessee offers no explanation about the nature and source thereof or explanation offered by the assessee is not in the opinion of the AO satisfactory, then the sum so credited may be charged to income tax as the income of the assessee of that previous year. A plain reading of section 68 makes it very clear that in order to fix any credit within the ambit of section 68 of the Act, the AO needs to examine three ingredients i.e. identity, genuineness of transaction and creditworthiness of the parties. If the assessee proves all ingredients provided under section 68 of the Act, then the onus shifts to the AO to prove otherwise. In this legal background, if you examine the identity of the assessee in light of findings recorded by the AO in his assessment order, one has to examine whether the assessee has discharged burden cast upon it u/s 68 of the Act in respect of unsecured loan received from certain companies controlled and managed by Shri Bhanwarlal Jain. The AO never disputed the fact that the assessee furnished various evidences to prove identity of the loan creditors. The AO has categorically admitted that the assessee has filed various details including PAN card, ITR acknowledgement, financial statement, bank statements, confirmation letters and affidavit from the parties from whom loan has been taken. The AO has disputed the genuineness of transactions and creditworthiness of the parties. The sole basis for the AO to doubt the genuineness of transactions is search conducted in the cases of Bhanwarlal Jain by the DGIT(inv.), Mumbai Unit, where certain incriminating material found and seized as per which Bhanwarlal Jain and his associates were involved in providing accommodation entries and the assessee is one of the beneficiaries of such accommodation entries. The AO has taken note of statement recorded by the department from Shri Bhanwarlal Jain and his associates. The AO has taken note of the survey proceedings conducted in the group cases of assessee and statement recorded from directors and employees of

*the assessee group cases. Except this no contrary evidences has been brought on record by the A.O to disprove the claim of all assessee that these are genuine transactions and unsecured loan taken under normal business circumstances. Therefore, under these factual matrix we have to examine whether the credits found in the books of accounts of the assessee are hit by the provision of Section 68 of the Act or not. The sole basis for the A.O to make addition is statement of Shri Bhanwarlal Jain recorded under Section 132(4) of the Act, where he admitted that he is involved in providing bogus unsecured loans entries to various beneficiaries. The statement give by Shri Bhanwarlal Jain has been retracted by himself filings affidavit before the income tax authorities. Therefore there is no reason for the A.O to go only on the basis of statement of Shri Bhanwarlal Jain so as to treat unsecured loan taken by the assessee from the firm and companies controlled and managed by Shri Bhanwarlal Jain and his associates.*

9. *Having said so, let us examine what is the basis for the AO to arrive at conclusion that the transactions between the parties are not genuine and which are hit by the provisions of section 68 of the Act. The AO never brought out any further facts to link credits found in the books of accounts of the assessee to the evidences found during the course of search in the case of Shri Bhanwarlal Jain except statement of Shri Bhanwarlal Jain. Even during the course of survey in group cases of assessee, no incriminating material was found which can be linked to evidences collected during the course of search in case of Shri Bhanwarlal Jain. Further, during the course of survey in assessee's group cases, the directors and employees have categorically admitted that they have personally visited office of Shri Bhanwarlal Jain Group companies for arranging Loans. The AO did not controvert this fact by bringing any other evidences. On the other hand, the assessee has filed complete details including confirmations from Loan creditors, their PAN details, master data, affidavit from the directors/partners/proprietors of those companies, income tax acknowledgements receipts along with financial statements, bank statements of loan creditors in order to prove the identity, genuineness of transactions and creditworthiness of the parties. We, further, noted that all these loans have been taken through proper banking channels. The assessee has paid interest after deducting applicable TDS as per the law. These Loans have been repaid during subsequent financial year. All these documents are part of assessment proceedings. The AO has never disputed these factual aspects. Therefore, once the assessee has discharged its initial burden by filing necessary evidences in order to prove identity, genuineness of transactions and creditworthiness of the parties, then there is no reason for AO to suspect the transactions between the parties only on the ground that the person who have secured loan had admitted in his statement u/s 132(4) of the Act that these transactions are accommodation entries, more particularly when the person who gave the statement retracted his statement by filing affidavit. Further, the AO failed to carry out further enquiries in light of evidences gathered during the course of search and survey to establish the fact that in fact these transactions are non-genuine but merely relied upon the statement of Shri Bhanwarlal Jain to make addition u/s 68 of the Act. No doubt the A.O is having every right to suspect the transaction s but, that they itself would not give rise an occasion for the A.O to make additions under Section 68 of the Act, when the evidences filed by the assessee clearly proves thefact these transactions were genuine transactions which are undertaken under normal commercial business circumstances. Therefore, we are of the considered view that the A.O erred in making additions towards unsecured loan taken from companies controlled and managed by Shri Bhanwarlal Jain under Section 68 of the Act.*

7.41 After discussing the case laws cited by the assessee at para no. 10 to 13, the ITAT has observed that:

14. WE have considered the following judgments relied upon by the ld. D.R :-

1. *Principal Commission of Income Tax vs. NRA Iron & Steel (P) Ltd (2019) 103 taxmann.com 48(SC)*
2. *Principal Commission of Income Tax vs. NDR Promoters (P) Ltd (2019) 102 taxmann.com 282(Del)*
3. *Pee Aar Securities Ltd. vs DCIT (2018) 96 taxmann.com 602(Delhi-Trib)*
4. *Pavankumar M. Sanghvi vs. Income Tax Officer (2018) 97 taxmann.com 398(SC)*

After considering the case law relied upon by the learned D.R. i.e. the case of NRA Iron & Steel (P.) Ltd. we note certain distinguishing features vis-a-vis factual matrix of the present case. Upon perusal of paras 3.7 & 3.8 of the said judgement, it is noted that the Ld. AO had issued summons to as many as 19 investor entities but nobody appeared on behalf of the investor companies. Submissions were received through DAK only which created a doubt about the identity of the investor company. Further the AO independently got field inquiries conducted at the location of investor companies, the result of which has been tabulated in the said para. Notice was served on few entities but the same were not replied to. In few cases, the notices were returned back submissions were received in few cases through DAK wherein the company only provided the mode of investment but no reasons were supplied for paying a huge premium of 190/- per share. Another striking feature was that most of the investors had reflected meagre income during assessment year under dispute. The two companies in Mumbai as well as Guwahati were found to be non-existent. With respect to Kolkata companies, the response came through DAK only and nobody appeared. Further, the bank statements were not produced in most of the cases to establish the source of funds for making huge investments. However, the factual matrix, before us, in the present case is quite different. In the present case, we find that the assessee has duly discharged the initial onus of proving the identity of the investors, creditworthiness of the transactions and genuineness of the transactions. Notice issued u/s 133(6) have been responded to. In such a scenario, the onus to dislodge the assessee's claim, in our opinion, was shifted back to ld. A.O and he was duty bound to investigate the case further. However, the facts on record nowhere estblshes that such further inquiries investigations have subsequently been conducted by ld. AO in the present case. For the said proposition, we draw strength from the landmark case of Kale Khan Mohamad Hanif Vs. CIT [50 ITR 1] and Roshan Di Natti Vs. CIT [107 ITR 938] as already cited in the above decision of Hon'ble Apex Court. Similar is the ratio of Hon'ble Apex Court rendered in CIT Vs. Orissa Corporation [159 ITR 1787]. It is the law that additions could not be made merely on the basis of doubts, conjectures or surmises. After considering the entire case law as discussed above we find that the case law considered by the Revenue authorities were rendered under different set of facts which cannot be applied to the facts of the present case. Accordingly the case law relied upon by the learned D.R. are rejected.

15. In this view of the matter and considering the ratio of case laws discussed hereinabove, we are of the considered view that the assessee has discharged initial burden by filing various documents to prove identity, genuineness of transactions and creditworthiness of the parties. Therefore, we are of the considered view that the AO was erred in making additions towards unsecured loan under section 68 of the Act. The Ld. CIT(A) without appreciating these facts simply confirmed the addition made by the AO. Hence, we reverse the findings of the Ld. CIT(A) and direct the AO to delete the additions made towards unsecured loans under Section 68 of the Act.

7.42 The findings of the ITAT outlined above are squarely applicable to the facts of this case. It is noted that there is no allegation by the AO that the loan entries are coupled with similar contra-transactions in cash in the pen drive seized from the premises of Bhanwarlal Jain. The conduct of the two parties also does not lead us to an inference that each loan entry was coupled with a contra cash transaction. In fact, the appellant has provided enough evidence to demonstrate that the funds have been utilized for his business activity and subsequently, these have been genuinely returned on receipt of film receipts. It is not a case of isolated bogus transaction (wherein no return of capital or payment of interest is contemplated, as has been the case in many other Bhanwarlal Jain entries). The transactions include transactions of receipt of loans, complete or part repayment of these loans during the year and payment of interest after deduction of TDS. With respect to the inability of the appellant to provide current whereabouts of these entities, it is held that there was no reason for the assessee to keep full knowledge of the activities of the other person subsequent to squaring off of the transaction related to loans.

7.43 The reliance placed by the AO on the decisions of Hon'ble Supreme Court in the cases of Sumati Dayal and Durga Prasad More (supra). However, for such reliance, the nature of transaction should be too fortuitous and the probability of their happening should be improbable. The present set of facts do not appear to be so. It is essential that the possibilities of occurrence of the transaction are explored keeping in view the overall business scenario and facts of the case. The transactions undertaken by the appellant cannot be viewed only from the prism of the statement of Bhanwarlal Jain. It is also necessary to examine the various facts and the overall scenario to conclude whether such a transaction was possible or not. It has been discussed earlier that while the accommodation entries relate to purchase and share capital were indeed bogus with respect to these entities these entities indeed had sufficient funds on a short term basis to advance some genuine loans to desirous parties. In the present case, it is noted that the assessee has submitted sufficient documentation before the AO on the issue and overall analysis of these documents/scenarios reveal the genuineness of the transaction. The appellant has also provided sufficient documents to demonstrate the genuineness of his fund requirements. It is also noted that the funds have been taken at the time of need and have been returned immediately on receipt of film proceeds. This evidence that the purpose of these loans was not routing of own cash into business. In light of these unique facts of this case and the discussion held above and also in the light of the decision of jurisdictional ITAT in this regard, the action of the AO in making the addition under section 68 of the Act is not found tenable and is dismissed. The Ground No. 5 by the assessee are allowed. The addition made by the Assessing Officer based on loans taken during the year from the 13 parties are directed to be deleted.

7.44 Since it has been held at Ground no. 4 that the loans taken by the appellant are genuine, the interest of Rs 50,00,000 paid on this amount during the year and brokerage of Rs 1,12,500 paid by the assessee for arranging these loans are found to be genuine. Ground no, 6 and 7 are decided in favour of the assessee and are allowed.”

16. Heard both the side and perused the material on record. The A.O has disallowed the unsecured loan obtained by the assessee on the ground that same was taken from 5 parties pertaining to Sh.Bhanwarlal Jain Group. The A.O stated that these 5 parties were engaged in

providing bogus accommodation entries. The A.O has extensively discussed the issue in his assessment order in the light of the facts gathered during the course of search in case of Sh. Bhanwarlal Jain. During the course of assessment the A.O had rejected the claim of the assessee that they had established the identity and creditworthiness of the parties and stated that it had been established that assessee had entered into loan transaction with the bogus entities floated and managed by Shri Bhanwerlal Jain. The sole basis of the A.O to make addition was the statement of Shri Bhanwarlal Jain which had been retracted by him by filings affidavits before the Income Tax authorities. Mr. Nushrat Javed Khan has also retracted his statement therefore addition cannot be made merely on the basis of retracted statement without bringing on record corroborative evidence. The assessee has claimed that identify of the creditors has been established on the basis of PAN Card, return of income, account confirmations, genuineness of the transactions have been established on the basis of account confirmations and bank statements where all the loan were taken by account payee cheques and creditworthiness of the creditors were established on the basis of balance sheet and bank statement of the parties. The A.O had not controverted these material facts with any relevant evidences. In the appeal the ld. CIT(A) has deleted the amount after following the decision of the coordinate bench of ITAT in the case of Nemichand Jain Vs. DCIT,CC-1(3), Mumbai, in ITA No. 2641/Mum/2018 on similar facts as elaborated in his finding supra in the order. We have gone through the decision of coordinate bench of the ITAT in the case of Neminchand Jain Vs. DCIT as discussed in the finding of ld. CIT(A), wherein the addition on account of unsecured loan taken from companies controlled and operated by Shri Bhanwerlal Jain and his associate were made wherein

also the assessee had filed various details in order to prove genuineness of transaction i.e confirmation letter, PAN, ITR acknowledgment , bank statement, affidavit etc. in the backdrop of admission of Shri Bhanwerlal Jain in his statement recorded u/s 132(4) of the Act. In the case of the assessee the facts are also similar and assessee has also filed the similar detail and copies of document as were filed in the case of Nemichand Jain. In the Nemichand Jain case as reproduced in the finding of Id. CIT(A) supra the coordinate bench of the ITAT held that the assessee had discharged the initial burden by filing various documents to prove identity, genuineness of transactions and creditworthiness of the parties and held that the A.O was erred in making addition towards unsecured loans u/s 68 of the Act. In the case of the assessee A.O has also failed to controvert the submission of the assessee supported with the relevant material. In the light of the facts and findings of coordinate bench in the Nemichand Jain case as supra, we find that the issue raised before the Tribunal in this year pertaining to the case of the assessee are similar to the case of Nemichand P. Jain. The A.O. had made the impugned addition merely relying upon the retracted statements and failed to corroborate the same with any relevant supporting evidence/material , therefore, after taking into consideration the facts and findings of the Ld. CIT(A) and the relevant supporting material as discussed above, we don't find any infirmity in the decision of Id. CIT(A). Since, we have sustained the findings of the Id. CIT(A) on ground no. 2 of the Revenue on the issue of the genuineness of the loan taken by the assessee, therefore, we do not find any error in the order of the Id. CIT(A)in deleting addition on account of payment of interest of Rs.50 lac and payment of brokerage of Rs. 1,12,500/- as genuine expenses. Therefore grounds nos. 2 to 4 of the Revenue are dismissed.

**ITA No. 1493/Mum/2021****Ground No.1(Absence of any incriminating material during the course of search)**

19. As the facts and the issue involved in this ground are same as in ITA No. 1492/Mum/2021, therefore, applying the same as mutatis mutandis this ground of appeal of the assessee stand dismissed.

**Ground No. 2 & 3: (Inflated and bogus expenses related to production amounting to Rs.9,79,211 in respect of M/s Visual Lights and Rs.2,00,00,000 in respect of M/s Futureworks Media Pvt. Ltd.**

20. The facts and issue involved in this ground of appeal are similar and identical to the ground numbers 2 and 3 of the assessee's appeal filed vide ITA No. 1492/Mum/2021. Therefore, without reiterating the fact after applying the finding of ITA No. 1492/Mum/2021, these grounds of appeal are adjudicated as follows.

*"The ld. CIT(A) has sustained the addition to the extent of Rs.2,09,79,211/-. The relevant part of the decision of ld. CIT(A) is reproduced as under:*

*"B: Transaction of Rs.2,02,07,805 in AY 2011-12*

*6.57 The AO has disallowed this amount under section 37 of the Act holding that all transactions with FMPL entered into by the appellant are bogus. The facts leading to the disallowance have been discussed in detail above.*

*The invoices filed by the assessee have been examined and it is noted that the above amount comprises of following invoices:*

Date	Description	Amount in INR
21.9.2010	Optical Transfer & Dolby Digital	92,650
04.10.2010	Screening charges	11030

06.09.2010	Video Visual / sound recording equipment hire for five months	2,00,00,000
------------	---	-------------

6.59 *The invoices filed by the assessee have been examined. The transaction has not been identified by Nusrat Javed Khan in his statement recorded on oath. Shri Nusrat Javed Khan has explained the normal procedure of approval of bills in respect of genuine bills. At Q. No. 16, he has elaborated that the bills/ tax invoices are received by the Production Head or the Administration Head who receives and acknowledges the bills and after approving the same, forwards the bills to Mr. Khan in his capacity of Chief Accountant for making the payments. The cheques are prepared and the bills along with cheques are sent to Rakesh Madhotra for cross verification and he puts his signature on the carbon copy of the cheque before sending them to Sajid Nadiadwala for signature. At Q No. 26, he has elaborated that in cases of invoices raised without delivery of work, the step of production Head/administration head is skipped and bills are received directly by Mr. Khan.*

6.60 *The invoice with respect to camera hire charges has been carefully examined and it is noted that it fails the tests mentioned above. It is also noted that the movie stood released in October and as such, a bill for camera hire charges for five months appears doubtful without specific details relating to such hire and can be taken as an attempt to inflate expenditure. NO prior MOU between the parties has been filed with respect to this transaction although the amount is significant. It is noted that the invoice does not have any service tax/sales tax component nor it has been subject to TDS. It is clear that this represents a bogus bill without rendering of any service. The assessee, other than submitting the invoice, has not pointed out as to how this expenditure had indeed been incurred and constituted an essential item of the production of the movie.*

6.61 *The other two expenses mentioned in the above chart are found to be normal charges essential for processing movies and hence, accepted as genuine.”*

On the similar basis as discussed in the ground No. 2 and 3 of the appeal of the assessee for A.Y. 2010-11, the A.O had disallowed an amount of Rs.9,79,211/- in respect of M/s Visual Lights and Rs.2,02,07,805/- in respect of M/s Futurworks Media Pvt. Ltd. on the basis of statement of the employee of the assessee company i.e Mr. Nushrat Javed Khan and Mr. Rakesh Madhotra in respect of bogus expenses booked by the assessee company in order to inflate expenses incurred in production of movies. During the course of survey action at

M/s Futurworks Media Pvt. Limited, its director Shri Gaurav Shushil Gupta had denied the allegation made by Mr. Javed Khan and Mr. Rakesh Madhotra and stated that no cash has been given back by Futureworks Media Pvt. Ltd. for the VFX work for heropanti and Kick and claimed that substantial VFX work has been done by Futurwork Media Pvt. Ltd. for these films.

Further in response to notice issued u/s 133(6) of the Act the Future Media Pvt. Ltd. has also filed copies of memorandum of understanding dated 28.10.2009 along with scope of work, consideration and terms of payment. It was also explained that they do not have fixed policy of maintaining mails, letters, correspondence log book minutes of the meeting after the work is carried out for a particular film and a particular service. It was also explained that Mr. Gaurav Gupta and Mr. Sajid Nadiadwala various meetings at different places to finalize the work scope and other terms and conditions as described in the MOU. It was also explained that M/s Futurework Media Pvt. Ltd. has provided visual effect services like advance Autodesk smoke setup, final cut pro machine, packaging and designing 3D elements/High End Compositing and Pre-visualization concept development, motion graphics. It was also explained that details of such services were mentioned in the invoice number VFX/289 dated 28.10.2009 and memorandum of understanding.

The Future Media Pvt. Ltd. has also filed detail of payment received along with copies of ledger a/c of the assessee in response to notice u/s 133(6) of the Act.

However, the A.O has not agreed with the submission of the assessee on the basis of mainly on the following observations:

- (i) *Non log book, work sheet.*
- (ii) *Consideration variation with other entities.*
- (iii) *Unaccounted account of unconnected entity of C.G. Group.*

The Id. CIT(A) stated that the bills for hire charges for five months appeared to be doubtful. During the course of appellate proceedings before us the assessee filed paper book dated 17.03.2022. In its submission made to lower authorities vide letter dated 24.06.2021 it was explained that not a single evidence were found during the course of search which could doubt the genuineness of the said transactions. It was also mentioned in its submission placed at page No.64 of the paper book made before the lower authority that payment made to M/s Futureworks Media Pvt. Ltd. also included service tax and VAT amounting to Rs.1,16,07,807/- which was never debited to P&L. a/c. It was also explained that assessee was having long period of association with the Future media Pvt. Ltd. and have taken its various services over the years. It was also explained that the entire work of VFX, visual effects equipment hire etc, in a particular movie such as Housefull 2, Heropanti, Anjana Anjani and Kick have been executed by M/s Future Media Pvt. Ltd. It was also explained that as the said company was executing the entire work of a particular film therefore a lump sum contract was given to M/s Future Media Pvt. Ltd. and because of long association the agreement was made brief in nature. It was also explained that disallowing the entire VFX and other charges incurred for a particular movie is illogical since VFX and other charges were essential and necessary charges for any film and without which the film cannot be completed.

CIT(A) had stated in a general manner that camera hire charges for 5 months appeared to be doubtful without specifying relevant details. It is noticed that in para 9 of the assessment order, the A.O has not given any specific detail of discrepancy established from the invoices in respect of disallowance of Rs.2,09,79,211/-. The A.O has made the disallowance on drawing complete strength from the retracted statement of employees. The Id. CIT(A) has stated on assumption basis that amount of transaction was significant without corroborating with any relevant evidences/material that transaction were bogus.

We observe that Id. CIT(A) has given contrary findings on the similar circumstances and facts compared to A.Y. 2015-16 The relevant operating part of the order of the Id. CIT(A) for A.Y. 2015-16 is reproduced as under:

*“6.49 The submission made by the appellant has been examined. It is undisputed that VFX charges are essential and necessary charges to be incurred before release of any movie. Such services enhance the appeal of a movie and are an essential step before release. It is also noted that with technological advancement, impossible scenes are attempted in the movie and executed through VFX/3D animation. Hence, VFX charges are essential part of the project cost of a movie in recent times.*

*6.50 It is also noted that a survey has been conducted in the premises of FMPL. This company has been found to be a genuine and competent entity engaged in the business of rendering services in the area of visual effects which include high end compositing & pre-visualisation, concept development, 2D/3D elements, enhancements, beauty work, sound dubbing etc. The survey has revealed that such services are indeed being rendered by Futureworks to various parties including the appellant.*

*6.51 The genuineness of expenditure incurred on VFX services by the appellant, therefore, needs to be analyzed by examining the overall project cost and identifying if such activities have also been sourced from other vendors as well. Such services cannot be declared to be bogus merely because there is a variation between the MOUs of the appellant and the MOUs of other parties. The AO has reproduced an MOU between FMPL and Pooja Entertainment and Films Ltd. He has also reproduced the MOU between the appellant and FMPL. It is the AO's claim that the MOU with the appellant is general in nature while the MOU with other parties has details of manhours etc. However, perusal of the MOU between*

*FMPL and Pooja Entertainment indicates that while the scope of work is mentioned, the consideration in that MOU is also jump sum only and there is no rate contract mentioned in the MOU with reference to pricing. As such, the AO's inference is that the FMPL is charging from other parties based on manhours and there is a lumpsum consideration from the appellant is not found to be correct.*

*6.52 The MOU also indicates that while the agreement with appellant is for VFX work, the agreement with Pooja Entertainment is for additional services like digital intermediate and sound post (dubbing, premix/final mix/ mastering) etc. Hence, the conclusion drawn by the AO that the other MOUs are more specific than the MOUs with the appellant is also not found to be a tenable argument.*

*6.53 In light of the above finding, the main plank of the AO, being the variation in MOUs, in making a general finding that all the transactions between the appellant and FMPL are bogus in nature does not survive.*

*6.54 The AO has also relied on the findings of survey action on the G G Group to conclude that the G G Group, to which FMPL belongs, has engaged in providing accommodation entries and hence, there is a presumption that even FMPL is engaged in providing such accommodation entries. He notes that two concerns of the group had two undisclosed bank accounts wherein cheques were deposited and immediate cash withdrawals were made and that the appellant had issued two cheques which were deposited in these accounts of M/s Foto Industries, part of G G Group. The issue has been examined and the subsequent proceedings with respect to those undisclosed accounts has been noted. Firstly, the presumption that all members of the entire group engage in providing accommodation entry because one of the members has been found to be doing so, is not a correct presumption. It is also noted that even in the case of that entity, the cheque deposits were not found to be non-genuine. Subsequent Inquiries by the department revealed that the cheques had been deposited on genuine sale of reels and such a finding was admitted in Rule 9 report of the Commissioner before Settlement Commission. It was held in that case that the cheques had been issued by genuine parties on account of genuine sales while purchases had been made in cash. Therefore, the AO's inference that those two transactions represented bogus transaction was not found to be correct and cannot be relied upon to hold that FMPL has been regularly providing accommodation entry to the appellant. In fact, it is noted that even the AO has not drawn any adverse view with respect to those two cheques while assessing the appellant in that year.*

*6.55 In light of the above discussion, the AO's action in arriving at a general finding that all the transactions between FMPL and appellant relating to VFX work are bogus and need to be disallowed is not found to be correct. Each transaction, therefore, is separately discussed with reference to its allowability based on factual situation and circumstantial evidences.*

In the light of the above fact and also considering that being unabated assessment year it was not established from the seized material that

expenditure was bogus. Therefore, this ground of appeal of the assessee is allowed.

**Ground No. 4: Disallowance of Expenses of Rs.27,80,640/-:**

22. As the facts and the issue involved in this ground are the same as in ground no. 4 of ITA No. 1492/Mum/2021, therefore, the same is applying mutatis mutandis for disposing off this ground of appeal of the assessee.

23. During the course of search as per page No. 77 to 79 of the paper book there was accounting statement categorically giving details of expenses as Recee expenses for the different films which comprising Air fare and Travelling Visa fees and Insurance Hotels etc. Before the lower authorities it was explained that assessee company was required to explore various countries to select the appropriate shooting location for any upcoming movie which was known 'Location Recee'. In the said procedure the director or its employee travel to various locations in order to examine the requirement of the upcoming movie and then obtain the necessary approval after finalizing the same. It is observed that disallowance was made on doubtful basis without linking to specific seized material demonstrating that claim of the assessee is totally bogus. There is no material brought on record to support the complete disallowances of such expenses. However, looking to the nature of expenses and material placed on record as adjudicated such issue in the appeal of the assessee vide ITA No.1492/Mum/2020 the nature of personal element cannot be ruled out therefore, we restrict the disallowance to the 50% of Rs.27,80,640/-. Accordingly, this ground of appeal of the assessee is partly allowed

**ITA No. 2222/Mum/2021 (Revenue's Appeal)****Ground No. 1(Against relief of Rs.2,07,805/- relating to production expenses paid to M/s Future Works Media Ltd.)**

24. As the facts and the issue involved in this ground is the same as in ground no. 1 and 2 of the assessee vide of ITA No. 1493/Mum/2021, and ground Nos. 2 and 3 of the assessee vide ITA No. 1492/Mum/2021, therefore applying the same mutatis mutandis we do not find merit in the ground of Revenue to the extent of relief of Rs.2,07,805/- allowed by the Id. CIT(A). Therefore, this ground of Revenue stand dismissed.

**(Ground Nos. 2: Addition of Rs.2,50,00,000/- u/s 68 of the Act)  
 (Ground No.3: addition of Rs.30,00,000/- on account of interest of unsecured loan) Ground No. 4: Commission Expenses of Rs.4,25,000/- for arranging unsecured loan)**

25. As the facts and issues involved in these ground of appeals are same as in ground nos. 2 to 4 the Revenue vide ITA No. 2221/Mum/2021, therefore, all these grounds of appeal of the revenue stand dismissed after applying mutatis mutandis of ITA No. 2221/Mum/2021.

**ITA No. 1494/Mum/2021 (Assessee's Appeal)****Ground No. 1(Absence of any incriminating material during the course of search)**

26. Applying the finding of ground no. 1 of ITA No.1492/Mum/2021 on identical issue and facts this ground of appeal of the assessee stand dismissed.

**Ground No. 2 & 3 (Disallowing sum to the extent of Rs.1,41,63,548/- being film production related expenses)**

28. The lower authorities have not demonstrated from the specific materials that production expenses were bogus. Even the claim of the assessee that VAT/service tax was the part of the components of the bills of the expenses were not disproved by the lower authorities. This is the unabated assessment year and there is a no material which substantiate that claim of production was bogus, therefore, making the disallowance on assumption basis is not justified. It is evident from the record that impugned additions have mainly been made on the basis of retracted statements of the employees of the assessee without corroborating the same with any incriminating material.

On the similar issue and facts we have adjudicated the ground No. 2 and 3 of the appeal of the assessee for A.Y. 2010-11, 2011-12, vide ITA No. 1492/Mum/2021, 1493/Mum/2021. Therefore, applying the findings of these appeal mutatis mutandis this ground of appeal of the assessee are allowed.

**ITA No. 2223/Mum/2021 (Revenue's Appeal)**

**Ground No. 1 (Ld. CIT(A) erred in allowing relief of Rs.2,60,07,056/- by holding expenses are indispensable expenses)**

29. Without reiterating the facts the ld. CIT(A) has allowed these expenses holding the same as necessary for the business of the assessee. The ld. CIT(A) has examined the invoices filed by the assessee. The ld. CIT(A) has also taken into consideration the cost of production sheet of

the relevant film to evidence that expenses have not been inflated. The Id. CIT(A) also stated in para 6.57 of his order that M/s Future Works Media Pvt. Ltd. (FMPL) was genuinely engaged in rendering various support services related to film production.

We do not find any error in the decision of Id. CIT(A) also the issue on similar fact has been adjudicated as per ground no. 2 and 3 of the appeal of the assessee vide ITA No. 1494/Mum/2021 as supra, therefore, applying the findings mutatis mutandis this ground of appeal of the Revenue stand dismissed.

**ITA No. 1495/Mum/2021 (Assessee's Appeal)**

**Ground No.1 (Absence of any incriminating material during the course of search):**

30. As the issue involved in this grounds are the same as ground no. 1 of ITA No.1492/Mum/2021, therefore applying the same mutatis mutandis this ground of appeal of the assessee stand dismissed.

**Ground Nos. 2 & 3: (Disallowing to the amount of Rs.58,42,063/- production related expenses:)**

31. This is the unabated assessment year. The A.O made disallowance in respect of production related expenses amounting to Rs.20,50,000/- and in respect of M/s Monalisa Enterprises Rs.37,98,063/- in respect of visual height merely on the basis of retracted statement of the employee of the assessee Mr. Nushrat Javed

Khan without corroborating with any relevant seized material. The ld. CIT(A) has sustained the additions on assumption basis without linking to specific seized material. On similar issue and facts we have adjudicated the ground No. 2 and 3 of the appeal of the assessee for A.Y. 2010-11, 2011-12, vide ITA No. 1492/Mum/2021, 1493/Mum/2021. Therefore, applying the findings of these appeal mutatis mutandis these ground of appeal of the assessee are allowed.

**Ground No. 4: (Disallowance of Personal Expenses)**

32. As the facts and the issue involved in this ground are the same as in ITA No. 1492/Mum/2021, and ITA No. 1493/Mum/2021 therefore the same are applying mutatis mutandis for disposing off this ground and addition is restricted to 50% of Rs.2,58,897/-. Therefore, this ground of appeal of the assessee is allowed for statistical purposes.

**ITA No. 1496/Mum/2021 (Assessee's Appeal)**

**Ground No. 1: (Absence of any incriminating material during the course of search)**

33. As the issue involved in this ground is the same as ground no. 1 of ITA No. 1492/Mum/2021, therefore applying the same as mutatis mutandis this ground stand dismissed.

**Ground Nos. 2 & 3: (Disallowance of Rs.1,20,13,050/- being film production related expenses)**

34. As the facts and the issue involved in this ground are the same as in ground no. 2 & 3 of ITA No. 1492/Mum/2021. The assessing officer had disallowed these production related expenses merely on the basis of retracted statement of Mr. Nushrat Javed Khan without further

establishing that invoices, statement of accounts and challan issued by the M/s Monalisa Enterprises or M/s Visual Lights Pvt. Ltd. were of incriminating nature. Therefore such disallowance without corroborating with relevant material is not justified. Similarly, it is observed that disallowance of payment of Rs.22 lac to Prime Focus of VFS charges was made on doubtful basis as the ld. CIT(A) at para 6.71 of his order categorically stated that invoices raised by Prime Focus found to be in doubt without corroborating the same with any relevant material. Therefore applying mutatis mutandis the findings of Grounds 2 & 3 of ITA No.1492/Mum/2021 and ITA No. 1493/Mum/2021 these ground of appeal of the assessee are allowed.

**Ground No. 4: (Disallowance of Personal Expenses)**

35. As the facts and the issue involved in this ground are the same as in ITA No. 1492/Mum/2021, therefore applying the findings mutatis mutandis the disallowance is restricted 50% to Rs.1,16,118/-. Therefore, this ground of appeal of the assessee is partly allowed.

**Ground No. 5: (Addition of Rs.3,00,000/- being salary paid to employee in cash:**

36. During the course of assessment the A.O referred the statement Mr. Rakesh Madhotra that salary in cash @ Rs.25,000/- per month was given to him. In response the assessee explained that Mr. Rakesh Madhotra has retracted his statement, therefore, this contention was not tenable that he has received salary in cash. However, the A.O has not accepted the submission of the assessee and made disallowance of Rs.3,00,000/-. The ld. CIT(A) has sustained the addition stating that Mr. Rakesh Madhotra has stated in his statement u/s 132(4) of the Act that

in addition to the cheque payment of Rs.1,10,000/- he was paid Rs.25,000/- per month in cash.

37. Heard both the side and perused the material on record. It is undisputed fact that lower authority has made impugned addition merely on the sole basis of retracted statement without corroborating the allegation of payment of the such salary in cash with any relevant evidence/supporting material. Therefore, we don't find any justification in the decision of Id. CIT(A). Accordingly, this ground of appeal of the assessee is allowed.

**ITA No. 2238/Mum/2021 (Revenue's Appeal)**

**Ground No. 1: (Deleting of Rs.4,98,75,125/-of production related expensesin respect of M/s Futureworks Media Pvt.Ltd.)**

38 Without reiterating the facts during the course of search one of employee of the assessee company Mr. Nushrat Javed Khan has identified in his statement the following production expenses as being in the nature of bogus expenses:

*"6.60 The above transaction comprises of following breakup and has been identified by Mr. Nusrat Javed Khan as being in the nature of bogus entry.*

<i>Services</i>	<i>Party</i>	<i>Amount</i>	<i>A.Y.</i>	<i>Movie</i>
<i>Visual Effects</i>	<i>FMPL</i>	<i>55,95,528</i>	<i>2015-16</i>	<i>Heropanti</i>
<i>Visual Effects</i>	<i>FMPL</i>	<i>4,43,82,200</i>	<i>2015-16</i>	<i>Kick</i>
<i>Total</i>		<i>4,99,77,728</i>		

Merely on the basis of statement of Mr. Nushrat Javed Khan and Mr. Madhotra the A.O opined that the claim of expenses do not match with any actual work done by Future Works Pvt. Ltd. related to VFX work and further stated that assessee had debited Rs.4 crore towards M/s Prime Focus Technologies Pvt. Ltd. for the VFX services. The A.O also observed

that MOU between Future Works and assessee was also very concise and cryptic without detailed methodology for cost computation.

The Id. CIT(A) has deleted the disallowance holding that the said expenditure were genuine and MOU depend on the two parties entering the agreement and the customer who dictates the nature of MOU. It is also stated that description in each of the MOU is broad based.

In the light of the above facts we consider the A.O has failed to prove contrary that VFX services were not rendered by the M/s Future Media Pvt. Ltd. and also failed to corroborate the retracted statement of Mr. Nusrat Javed Khan and Mr. Madhotra with relevant supporting evidence/material therefore this ground of appeal of the Revenue stand dismissed.

**Ground No. 2:Deleting Payment made to M/s Nadiadwala Grandson Films Ltd.(NGFL) towards foreign shooting expenses of Rs.16,11,29,496/-)**

39. The A.O opined on the basis of retracted statement of Mr. Madhotra that non-genuine payment of Rs.16 crore was made to M/s Prime Focus (London) while the actual work done was to the extent of Rs.4 crore which was carried out by M/s Prime Focus India for VFX services performed by them for “Kick” for which a separate payment of Rs.4 crore was made by assessee. It was also stated that all message relating to casting of film Kick were deleted at the instruction of chartered accountant. The A.O stated that this amount of Rs.16 crore was received back by Mr. Sajid Nadiadwala through unknown channel and main reason for inflating of such expenses was to obtain grants from UK Governments as any person incurring expenses in London for any work

related to making a film would be entitled to receive 25% of the amount of expenses incurred as subsidy. The assessee submitted that the statement of Mr. Madhotra was incorrect and was retracted. Mr. Sajid Nadiadwala had also denied the allegation made in the statement. The assessee had furnished the ledger accounts along with supporting material to its claim.

The AO has not agreed with the submission of the assessee and stated that transactions of Rs.16 crores was routed through Prime Focus London was created only to avail subsidy of 25% from U.K. Government.

The ld. CIT(A) has allowed the appeal of the assessee. The ld. CIT(A) has given detailed findings at para 6.83 to 6.104 of CIT(A) appeal order.

The ld. CIT(A) stated that A.O merely relied on the retracted statement of the employee of the assessee that assessee and Prime Focus London had an agreement for rendering of VFX work for a consideration of Rs.16 crores which was routed back to the promoter director and no actual work was performed by that company. However, during the search no document evidencing an agreement between Prime Focus London and the assessee or Prime Focus London and U.K. subsidiary of the assessee have been found. No MOU have been found to be entered between Prime Focus India and the assessee for rendering VFX work in India. The retracted statement of the employee cannot be solely basis for impugned addition without corroborating with relevant material. The assessee has furnished supporting material to demonstrate that substantial part of shooting of the film has been taken place in U.K. The ld. CIT(A) has elaborated the scheme for promotion of film shooting in U.K. of British Government at page no. 49 to 51 of his order. The tax rebate on incurring shooting expenses is granted by the U.K. Government on filing

of return and making a claim through a return which is audited and subjected to scrutiny by revenue authority of that Government. NGFL a British Subsidiary had remitted a part of the tax rebate being Rs.365,58,000/- to the assessee as a parent company since it had financed the cost. The said amount has been incurred as a part of the turnover of the movie “Kick”.

After taking into consideration the finding of the Id. CIT(A) and material on record we observe that the A.O had not disproved the aforesaid material facts of incurring expenses by the assessee for shooting of the film at London and claim of tax rebate of Rs.3.65 cr. Therefore, we do not find any infirmity in the decision of the Id. CIT(A). Accordingly, this ground of appeal of the Revenue stand dismissed.

**ITA No. 1497/Mum/2021 (Assessee’s Appeal)**

**Ground No. 1: (Absence of any incriminating material during the course of search)**

40. As the issue and facts involved in this ground are the same as ground no. 1 of ITA No. 1492/Mum/2021, therefore applying the mutatis mutandis this ground of appeal stand dismissed.

**Ground Nos. 2 & 3: (Disallowance of Rs.1,19,62,432/- being film production related expenses)**

41. The facts and the issues involved pertaining to production expenses related to Monolisa Enterprises and Visual Lights Pvt. Ltd. were same as adjudicated in ground no. 2 & 3 vide ITA No. 1492/Mum/2021, similarly the Id. CIT(A) has also disallowed an amount of Rs.50 lac pertained to Viking Media solely on the basis of retracted statement of employee Mr. Pasi without corroborating with relevant material. Therefore, applying the

findings of ground no. 2 & 3 of ITA No. 1492/Mum/2021 mutatis mutandis these ground of appeal of the assessee are also allowed.

**Ground No. 4: Disallowance of Personal Expenses of Rs.20,00,010/-:**

42. As the fact and issue involved in this grounds are the same as ground no. 4 of ITA No. 1492/Mum/2021, therefore applying its findings mutatis mutandis. We direct the A.O to restrict such disallowance to the extent of 50% of these expenses. Therefore this ground of the assessee is partly allowed.

**Ground No. 5: (Payment of salary in cash):**

43. As the fact and issue involved in this grounds are the same as ground no. 5 of ITA No. 1496/Mum/2021, therefore applying its findings mutatis mutandis this ground of appeal is allowed.

**ITA No. 2237/Mum/2021 (Revenue's Appeal)**

**Ground No. 1: (Disallowance of Rs.50 lac on account of accommodation entry provided by Viking Media Entertainment Pvt. Ltd. )**

44. The A.O was of the view that Viking Media had provided accommodation entry to the assessee on account of sale of remake rights of Telgu Movie 'Varsham' to the amount of Rs.3 crore. The assessee had entered into an agreement with Viking Media for purchase of movie remake rights of Telgu Movie 'Varsham' for a consideration of Rs.3 crore vide agreement dated 03.11.2015 which was titled as 'Remake Right Agreement'. The A.O treated the transaction, as bogus stating that assessee needed fake invoice and Viking Media generated a cash of Rs.3.42 crore through Executive membership fee, which it needed to

bring to accounts. The A.O has relied on the statement of the employees of the assessee Mr. Nusrat Javed Khan and Mr. Rakesh Madhotra.

The Ld. CIT(A) has allowed the appeal of the assessee. The relevant part of CIT(A) is reproduced as under:

**“Decision**

6.48 *The various issues raised by the AO and the appellant’s submission are examined. The appellant has filed a copy of the tax invoice dated 4.11.2015, copy of the agreement dated 05.11.2015 and e-receipt dated 6.11.2015 issued by the Government of Maharashtra for payment of stamp duty of Rs.1,50,000 leviable on the agreement in support of the claim that the documents are registered. These documents were also filed before the AO.*

6.49 *The salient features of the present addition are also noted. There is no dispute that Varsham was a superhit Telugu film which launched Prabhas as an extremely popular Tamil actor. The claim of the AO is that the rights for its remake in Hindi by the appellant represented a bogus transaction. The claim of the assessee is that if the AO’s version is accepted, this would mean that the copyright owners of this movie allowed the appellant to re-make a Hindi movie without charging any consideration which is against normal business prudence.*

6.51 *From the observations of the AO, it appears that the decision to enter into an agreement for purchase of remake rights of the movie Varsham was a decision taken during the year itself when Viking had generated a substantial amount through ‘Executive Membership Fee’ and was desirous of introducing this amount in the books, while the appellant was in lookout for fake invoices to inflate its expenses.*

6.52 *The contents of the agreement, which was already available with the AO, having been found and seized at the appellant's place as well as at the premises of Viking Media, tell a different story. The chronology of events has been enumerated on the first page of the agreement. The movie was made by M/s Sumanth Art Productions and released in 2004 and was a smash hit. The remake rights of the film in Hindi language were transferred by M/s Sumanth Art Productions, being the copyright owner to Mr. Satish Salvi through an agreement dated 10<sup>th</sup> May 2011 for a consideration mentioned in that agreement. Mr. Satish Salvi in turn, vide an agreement dated 11.11.2011, assigned remake rights of the film in Hindi language to Viking Media. Once the appellant was ready to make a Hindi film on this story line, it approached Mr. Salvi (the assignor) to enter into a formal agreement for transfer of remake rights vide this agreement dated 3.11.2015.*

6.53 *It is also noted that necessary stamp duty related to the agreement has been paid and the agreement has been signed by both the parties to the agreement. It is also noted that as a general practice, corporate agreements are*

*held to be effective once they are signed by both the parties and their registration with the registration office is not generally done once the stamp duty has been paid. As such, the defects in the agreement noted by the AO do not make the agreement ineffective or un-implementable in any way.*

6.54 *It is noted that even the AO does not dispute the fact that the appellant has produced the film 'Baaghi' and this movie acknowledges in the movie itself that it is a remake of the telugu film Varsham. It is also not disputed that there is no other hindi movie based on this telugu film. There is no doubt that the appellant could not have made a Hindi remake of the above film without acquiring the copyright to do so.*

6.55 *The inference drawn by the AO that the entire scheme has been hatched because Mr. Salvi has generated certain amounts in cash through club membership scheme which he needed to bring into his books and the appellant needed fake bills to inflate his expenses is found to be far fetched. This is because the present agreement for transfer of remake rights has its genesis in an agreement between Mr. Salvi and the original producer of the film M/s Sumanth Art Productions wherein the remake rights of a Hindi remake of the movie were acquired by Mr. Satish Salvi for a consideration through a registered agreement. The agreement is dated 1.5.2011 and is a registered document. The present agreement already contains the details of this earlier agreement between Mr Salvi and the telugu producer for acquiring the Hindi remake rights for a consideration. It is noted that this agreement between Mr Salvi and Sumanth Art Productions has been found and seized by the Department at bundle no. A-54 of the material seized from office premises of NGEPL and was in the knowledge of the Officer. Hence, the first time, the remake rights of Varsham were transferred was in year 2011 and subsequently, the appellant acquired these rights in 2015 when NGEPL had decided to remake the movie. It is a matter of record that the production of the movie started immediately after acquisition of such rights and the movie was released in 2016 acknowledging that it was a remake of Varsham.*

6.56 *Once Mr. Salvi has paid a consideration for acquiring the remake rights, it would be illogical to conclude that he would part with such right without any consideration and that the elaborate arrangement between him and the appellant was totally fake and no consideration was ever paid for such copyright. It is also a known fact that the Hindi remake Baaghi was also a huge hit in the Indian market, collecting over Rs 125 crore. In light of the above facts, it can safely be concluded that the agreement between the two parties was not a total sham and concoction.*

6.57 *However, it is also noted that both, Mr. Nusrat Javed Khan and Mr. Madhotra have indicated that there was some inflation in the consideration paid for these rights. It is also noted that Mr Ravindra Pasi, in his statement, at Q No. 9, admitted to having received Rs.50,00,000/- in cash after which an RTGS was done for a similar amount. Such amount had been received after two installments had been paid pursuant to the copyright agreement.*

6.58 *Looking at the totality of facts elaborated above and the statement of the employees, the agreement with Mr. Salvi for transfer of Hindi remake rights of*

*telugu film Varsham is found to be genuine. However, the statement of the three employees reveals that there was an inflation of expenditure on this issue. The statement of Mr. Pasi indicates that the appellant had received a return cash to the extent of Rs 50,00,000/with reference to the payment of Rs.3 crore to Mr. Salvi. Hence, there appears to be credible evidence that the cost of the rights were inflated to the extent of Rs.50 lakh. The actual cost of the agreement is liable to be fixed at Rs.2.5 crore.*

*6.59 The disallowance made by the AO with respect to the purchase of Hindiremake rights from Viking Media is accordingly restricted to Rs 50,00,000/-.*

*6.60 The ground no.2 and 3 are decided in accordance with para 6.39 and 6.58 and is treated as partly allowed. The disallowance of Rs.28,26,537/- paid to Monalisa and Rs.41,35,895/paid to Visual Lights stand confirmed. The disallowance of Rs.3,00,00,000/- to Viking Media is restricted to Rs.50,00,000/-“*

45. Heard both the sides and perused the material on record. Without reiterating the facts the A.O has made the impugned additions solely on the basis of retracted statement of the employees of the assessee. During the course of assessment the assessee has submitted the entire document, agreement invoices, bank statement in support of genuineness of transactions. It is undisputed fact that assessee had made the film 'Baaghi' on the basis of remake of the telgu film 'Varsham'. The A.O has purely relied upon the retracted statement without disproving the correctness of the supporting documents furnished by the assessee. Considering the above facts the detailed findings of the Id. CIT(A) we do not find any merit in the appeal of the Revenue. Therefore, this ground of Revenue stand dismissed.

**Ground No. 2 & 3 (The CIT(A) erred in deleting the addition of Rs.4,00,00,000/-)(Without appreciating statement of Shri Rakesh Madhotra on receiving cash from M/s Super Cassettes Industries Ltd.)**

46. The A.O has opined on the basis of statement of Mr. Madhotra that Mr. Sajid Nadiadwala had received cash of Rs.4 crore from M/s Super

Cassettes Industries Ltd. pertaining to sale of Music Rights of movie Rangoon. The A.O referred the retracted statement that it was agreed between the two parties that total amount of Rs.10 crores would be paid by M/s Super Cassettes Industries Ltd. for sale of music rights of Rangoon in cheque, out of which Rs. 5 crore has been received till date. The A.O also referred the statement of Mr. Abdul Faruq Shaikh, driver of Mr. Sajid Nadiadwala that he had brought cash of Rs.4 crore from T-Series in the first week of November, 2015.

The Id. CIT(A) has deleted the addition. The relevant part of the decision of CIT(A) is reproduced as under:

“Decision

*7.11 While making the addition, the AO has relied on the statement of Mr. Madhotra and Mr. Abdul Faruq Shaikh to conclude that a part of the total consideration for sale of music rights of film Rangoon have been received in cash. The AO has treated the same as unaccounted income and has brought the same to tax in this year.*

*7.12 In this regard, the statement given by Mr. Madhotra has been examined. His statement (Q. No, 34 and 35 of statement u/s 132(4) and Q No. 12 of statement u/s 131) have been reproduced by the AO in his order. The key excerpts of the statement are that: -*

- *The terms of agreement provide for fixed majority component of the consideration at the beginning and some part at the delivery of the product.*
- *It has been observed that a part of the consideration is also received by Sajid Nadiadwala in cash.*
- *As far as my knowledge is concerned, Shri Sajid Nadiadwala instructs Shri Javed Khan, Chief Accountant and Shri Farokh, his driver to directly receive the cash from persons from Super Cassette Industries Ltd.*
- *It was informed to me by Shri Javed Khan last month that amount of Rs 4 crore in cash has been received from M/s Super Cassette Industries Ltd.*
- *Aconsideration of Rs.10 crore is to be paid by M/s Super Cassette Industries Ltd. for purchase of Rangoon music rights in cheque, out of which 5 crore has been received till date. It is therefore, apparent that the cash received of Rs.4 crore from M/s Super Cassette*

*Industries Ltd. pertains to the sale of music rights of movie Rangoon.*

7.13 *The statement of Mr. Madhotra u/s 132(4) is found to be presumptive as far as the transaction relating to sale of music rights of Rangoon is concerned. The language used in the statement clearly establishes that Mr. Madhotra was not involved in the transaction relating to such sale and that he has shared an information given to him by Mr. Nusrat Javed Khan. It is also noted that Mr. Khan has merely shared an information that cash of Rs 4 crore has been received from M/s Super Cassette Industries Ltd. and it has been presumed by him that it relates to the sale of Rangoon music rights. It is noted that an elaborate statement of Nusrat Javed Khan has been recorded during the same period. But he has not shared any such information with the authorities.*

7.14 *Even in his statement u/s 131 recorded during search, Mr. Madhotra admits that an agreement has been reached for grant of music rights of Rangoon to M/s Super Cassette Industries Ltd. for a consideration of Rs 10 crore in cheque but observes that since an amount of Rs.5 crore was received in cheque, the receipt of Rs.4 crore in cash can be presumed to pertains to the same transaction. Such presumption is not found to be correct as Mr. Madhotra has himself elaborated in the earlier part of the statement that part of the consideration is received at the time of agreement and remaining part can be received subsequently, at the time of delivery of the product.*

7.15 *The agreement itself has been examined. It is noted that the assessee has got the agreement "Music & Audio Visual Song Rights for the Film tentatively titled "RANGOON" registered with Delhi Government on 17<sup>th</sup>) November, 2015 i.e. before the search action was initiated wherein the agreement contains the total consideration at Rs.10 crore and a payment of Rs 5 crore is acknowledged.*

7.16 *The submission made by the appellant that the remaining payment was received subsequent to the search action and that during the year, the entire consideration of Rs.10 crore has been received and has been included in the revenue for the year is found to be correct and acceptable. In the assessment order, the AO has not doubted the agreement and has merely relied on the statement to conclude that an unaccounted receipt of Rs 4 crore with respect to this agreement. However, he has failed to address the contention of the appellant that since the entire consideration mentioned in the agreement i.e. Rs.10 crore has already been offered to tax, a further addition of Rs. 4 crore cannot be made.*

7.17 *The agreement has not been disputed by the AO. Further, it is undisputed that the entire consideration mentioned in the agreement has been received by the appellant by cheque and has been offered to tax. In light of such facts, the statement of Mr. Rakesh Madhotra, which has been found to be presumptuous and without any documentary support cannot be relied upon to make a further addition of Rs 4 crore. Mr. Rakesh Madhotra himself admits that he has not been involved in this transaction and has merely been informed on such issues by Mr. Javed Khan. Such third-party evidence, in absence of any documentary evidence, cannot be relied upon.*

*7.18 In light of the above discussion, the addition of Rs 4 crore made by the AO is not found tenable and is directed to be deleted. The ground no. 4 is decided accordingly and is allowed.”*

47. Heard both the sides and perused the material on record. Without reiterating the facts as referred supra the A.O had made the addition solely on the basis of retracted statement of Mr. Madhotra. The assessee had established the genuineness of the transaction with the support of relevant document which was not contrary disproved by the A.O. it is undisputed fact that as per agreement registered on 16.09.2015 the total consideration for sale of music right of the movie “Rangoon” was Rs.10 crores. An amount of Rs. 5 crores was received till the date of search and remaining Rs. 5 crore has been received after the said date. The total amount of Rs.10 crore has been duly offered for income during the year under consideration. Therefore, we do not find any force in the appeal of the Revenue and same stand dismissed.

48. In the result, the appeals of the assessee i.e ITA No. 1492 to 1497/Mum/2021 are partly allowed while the appeals of the revenue i.e 2221 to 2223, 2237 & 2238/Mum/2021 are dismissed.

Order pronounced in the open court on 07.06.2022

Sd/-

(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER

Sd/-

(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Mumbai, Dated 07.06.2022

PS: Rohit

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ The CIT(A)
4. आयकरआयुक्त(अपील) / Concerned CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, अहमदाबाद/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/BY ORDER,  
सत्यापितप्रति //True Copy//

(Asst. Registrar)  
ITAT, Mumbai