

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
IT(SS)A Nos. 19, 20 & ITA 659/SRT/2018
(Assessment Years: 2012-13, 2013-14 & 2014-15)
(Hearing in Physical Court)

A.C.I.T. Central Circle-4, Room No. 508, 5 th Floor, Aayakar Bhavan, Majuragate, Surat-395001.	Vs.	Smt. Falguni Sandipkumar Naik, D-40/41, Kishor Park Society, Ghod Dor Road, B/h St. Xavier's School, Surat. PAN : AASPN 5647 G
APPELLANT		RESPONDEDNT

Department by	Shri H.P. Meena, CIT-DR
Assessee by	Shri Rasesh Shah, CA
Date of hearing	19/05/2022
Date of pronouncement	24/06/2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This set of three appeals by the Revenue are directed against the separate orders of the learned Commissioner of Income Tax (Appeals)-4, Surat [in short, the Id. CIT(A)] even dated 11/07/2018 for the A.Y. 2012-13, 2013-14 and 2014-15. In all these appeals, the Revenue has raised certain common grounds of appeal, except variations of addition under section 68. Facts in these years are almost similar except variation in additions or disallowances, therefore, with the consent of parties, these three appeals were clubbed, heard together and are being decided by this consolidated order to avoid the conflicting decision. For appreciation of facts, the appeal for the A.Y. 2012-13 is treated as a "lead case".

In this appeal, the Revenue has raised following grounds of appeal:

- “1. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.4,23,79,328/- out of the total addition of Rs. 4,32,03,011/- on the basis of remand report of the A.O., whereas the A.O. at para no.8 of the remand report dated 25.06.2018 had specifically reported after verification of facts that the contention of the assessee was an afterthought and hence not acceptable.*
 2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in assuming that identity, creditworthiness and genuineness of the transaction have been proved only on the basis of the facts that the lenders submitted confirmation and statement of bank account/acknowledgment of return of income (in certain cases).*
 3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in assuming that identity, creditworthiness and genuineness of the transaction have been proved, whereas the lenders even could not submit copy of bank statement or copy of acknowledgment of return of income in certain cases.*
 4. *It is, therefore, prayed that the order the Ld. CIT(A)-4, Surat may be set aside and that of the AO may be restored to the above extent.*
 5. *The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”*
2. Brief facts of the case are that a search action was carried out under Section 132 of the Income Tax Act, 1961 (in short, the Act) in Surat based Surat Metallic Group on 28/11/2013. The assessee was also covered in the same search action. Consequent upon the search action, a notice under Section 153A of the Act was issued to the assessee on 06/04/2015 for filing return of income for subject assessment year. In response to notice under Section 153A, the assessee filed her return of income on 11/01/2016 declaring total income of Rs. 1.364 crore. During the assessment, the Assessing Officer noted that in the search action,

various incriminating documents with regard to unaccounted income of assessee pertaining to the year under consideration was found and seized. The Assessing Officer on perusal of Profit & Loss Account (P&L account) and balancesheet noted that the assessee has shown unsecured loan of Rs. 5.046 crores during the financial year under consideration. The assessee was asked to furnish the details of parties by the Assessing Officer. The assessee furnished the required details of the lenders. In order to verify the correctness of transactions, the Assessing Officer issued notice to all the parties. Out of total 30 parties, the Assessing Officer recorded that notice under Section 133(6) of the Act was issued and unserved. Further notice to 22 parties were issued and served. No reply was received from those parties. The details of all the parties were compiled by the Assessing Officer in the following manner:

Notice u/s 133(6) dated 14.03.2016 issued and unserved

Sr. No.	Unsecured loan taken from	Amount (Rs.	Remarks
1	Anil Trading Co.	31,890/-	Identity, creditworthiness and genuineness of loan transaction unverified
2.	Ashok Enterprise	10,02,959/-	-----do-----
3.	Divyesh Kantilal	5,27,781/-	-----do-----
4.	Malvi Corporation	11,00,000/-	-----do-----
5.	Shantilal Manilal HUF	25,00,000/-	-----do-----
6.	Shreenathji Trading Co.	20,05,918/-	-----do-----
7.	Tejas Gems J.S.	10,89,095/-	-----do-----
8.	Yug Exim	12,50,000/-	-----do-----
	Total	95,07,643/-	

Notice u/s 133(6) dated 14/03/2016 issued and served:

Sr. No.	Unsecured loan taken from	Amount (Rs.)	Reply received/not received	Remarks
1.	Sandip B Naik HUF	15,00,000/-	Not received	Father in law of assessee
2.	Ushaben V Patel	15,00,000/-	Not received	Identity, creditworthiness and genuineness of loan transaction unverified
3.	Blue Feather Infracon	36,00,000/-	Not received	Case of Blue Feather Infracon in which assessee is partner in the firm is under scrutiny in this office and it is verified from his books.
4.	Om Sai Developers	1,44,00,000/-	Not received	Identity, creditworthiness and genuineness of loan transaction unverified
5.	Siddikabanu Hafez Said Abdul Raheman	60,00,000/-	Not received	----do----
6.	South City House	11,00,000/-	Not received	Case of South City House is under scrutiny in this office and it is verified from his books.
7.	Aksh Gems	10,00,000/-	Not received	Identity, creditworthiness and genuineness of loan transaction unverified
8.	Bhurabhai R Patel	6,13,469/-	Not received	----do----
9.	Harshil Impex	12,00,000/-	Not received	----do----
10.	Hemabhai	6,45,200/-	Not received	----do----
11.	Ketankumar Rameshbhai	53,859/-	Not received	----do----
12.	Khushi Gems	8,00,000/-	Not received	----do----
13.	Lakhabhai Jivrajbhai	6,31,450/-	Not received	----do----
14.	Mitul Manusukhbhai	20,11,178/-	Not received	----do----
15.	Payal Diamond	11,00,000/-	Not received	----do----

16.	Rameshbhai	6,34,623/-	Not received	----do----
17.	Sanghvi Entrprise	10,57,863/-	Not received	----do----
18.	Vashrambhai	6,24,046/-	Not received	----do----
19.	Vatsal Enterprise	44,055/-	Not received	----do----
20.	Veer Corporation	7,39,814/-	Not received	----do----
21.	Virabhai Denshibhai	6,39,911/-	Not received	----do----
22.	Mahek Entrprise	10,58,521/-	Received	Identity, creditworthiness and genuineness of loan transaction verified

3. The Assessing Officer asked the assessee to furnish the confirmation of each of the parties' along with name, address, PAN, relevant party wise transaction, amount and mode of payment/receipt, bank statement of parties showing the amount, copy of ITR along with P&L account and balance sheet of such parties. The Assessing Officer recorded that vide reply dated 09/03/2016 submitted some confirmation and further stated that she is unable to furnish details of unsecured loans of rest of the parties for the reasons that the lender parties are not cooperating with her. The assessee also stated that she has no legal authority to secure their cooperation and the Assessing Officer has power to get the confirmation by issuing notice under Section 133(6) of the Act. Further she has no objection to exercise such power for seeking document from those parties. The Assessing Officer recorded that the assessee furnished some reply on 14/03/2016 at the fag-end of scrutiny assessment proceedings. The Assessing Officer issued notice to one of such parties on 14/03/2016 but no reply was

received from such parties. The Assessing Officer took his view that the total transaction involving the loan amount is Rs. 5,04,61,532/-, out of which he has verified identity of lenders, genuineness of transactions of **Rs. 72,58,521/-**. Therefore, the remaining transaction of unsecured loan of Rs. 4,32,03,011/- is treated as unaccounted cash credit and made addition under Section 68 of the Act.

4. On appeal before the Id. CIT(A), the assessee filed detailed written submissions. The submission of assessee is recorded in para 5 of the order of Id. CIT(A). In the submission, the assessee submitted that the assessee filed all the details as called for by the Assessing Officer along with the name and address of all the depositors from whom unsecured loans were availed during the year under consideration. The assessee had also furnished confirmations along with other documentary evidences. The assessee submitted that in respect of some of the depositors from whom unsecured loan had been availed, during the year were not cooperating. The also submitted that the assessee is a female and all her financial affairs are being handled by her husband Sandip Naik and subsequent to the search, the assessee landed in huge financial crisis. The assessee's husband was a partner in a firm Valencia Corporation, which was developing a residential project in Vesu. In the said firm there were certain legal issues related to land and other matters and the assessee's husband even sold out his share in the said firm to some other partner. However, the other partner has not compensated/repaid the assessee's husband his share in the firm and the project

of the said firm is at standstill till date, leaving the entire capital of the assessee's husband being blocked therein. This worsened the financial crisis of the husband of the assessee and as a result of which the husband of the assessee was under great pressure, mental trauma and depression, which prevented him from attending even his day to day office and business routines. The further submitted that in view of the financial crisis, the assessee could neither pay the interest on unsecured loan to the depositors on time nor could the assessee repay the unsecured loans as per commitment. However, some of the depositors did not furnish the requisite papers and accordingly the assessee furnished the name and address of such depositors along with her bank statement showing the receipt of unsecured loans from them. The assessee submitted that the Assessing Officer issued notices u/s. 133(6) to the depositors who did not cooperate with the assessee and it may be noted that the said notices stands duly served on all the depositors from whom unsecured loans have been received during the year under consideration. On receipt of the notices under section 133(6) some of the depositors furnished all the documents as asked for by the Assessing officer, whereas some of the depositors did not furnish any reply before finalisation of the assessment proceedings. The submitted that the detail of additions of unsecured loans as made by the Assessing Officer during the year under consideration primarily for the reason that the reply to the notices under section 133(6) were not received. In respect of some of the depositors, the submitted that the amount of unsecured loan of Rs. 5,71,011/- as added by the

Assessing Officer is patently wrong, since the said amount is in respect of only interest amount credited to the account of the depositors and the same is not the receipt of any new funds. The Id. AR also submitted that in the event of the assessee not receiving any new unsecured loans from the said parties there is no question of making any addition u/s. 68 in respect thereof. The assessee has not even claimed any interest expenses on unsecured loans in her return of income and there is even no question of disallowing the interest expenses in respect of the alleged non genuine unsecured loans. In respect of unsecured loan received from parties shown in the table mentioned above, the assessee has furnished her bank statement showing the receipt of loan from those parties, along with their names and addresses and on the basis of which the Assessing Officer has issued notices under section 133(6) which stands served on some of them. However, the Assessing officer has treated all such depositors as non- genuine from whom replies to the notice under section 133(6) was not received by him at the time of finalising the assessment order. The Assessing Officer has grossly erred in treating the said loans as unexplained only for the reason that the said depositors have not furnished their replies in response to the notices under section 133(6).

5. The Id. CIT(A) after considering noted that during the appellate stage, the assessee furnished details of lenders but some of the lender were not cooperating as the assessee was unable to pay interest on deposits due to financial difficulty and prayed for re-verification and reconfirmation of lenders.

On perusal of the detailed submissions of the assessee, the Id CIT(A) directed the Assessing Officer to conduct enquiries from lenders for verification of transactions and furnish his remand report. On the direction of Id. CIT(A), the assessing officer initiated remand proceedings. During the remand proceedings, the assessee was asked to furnish any other address in case of addresses of lenders have been changed. The assessee vide her submission dated 08/05/2018 furnished details regarding addresses of lenders. On the new address, the Assessing officer again issued notice under Section 133(6) of the Act. The Assessing Officer recorded that on sending such notices, he has received confirmations and other related documents in the following manner:

Sr. No.	Party Name	Amount	Interest	Documents received			Received on	Transaction date as per statement
				Confirmation	IT Ack.	Bank Statement		
1.	Akash Gems (Prop.P.T Rajput HUF)	1000000	-	Yes	-	Yes	28/05/2018	21/03/2012
2.	Ashok Enterprise (Prop. Prakashchandra M Modi)	1002959	2959	Yes	-	Yes	08/06/2018	23/03/2012
3.	Bhurabhai R Patel	613469	33469	Yes	Yes	Yes	22/05/2018	07/10/2011
4.	Divyesh Kantilal	527781	27781	Yes	Yes	Yes	17/05/2018	14/10/2011
5.	Harshil Impex (Prop. Anil B. Gandhi)	1200000	-	Yes	-	Yes	28/05/2018	22/03/2012
6.	Hemabhai	645200	35200	Yes	Yes	Yes	25/05/2018	07/10/2011
7.	Khushi Gems (Prop. Pravinbhai K. Patel HUF)	800000	-	Yes	-	Yes	08/06/2018	21/03/2012
8.	Lakhabhai Jivrajbhai	631450	34450	Yes	Yes	Yes	22/05/2018	07/10/2011
9.	Malvi Corporation (Prop. Bharatbhai H Ponkia	1100000	-	Yes	-	Yes	08/06/2018	21/03/2012

10.	Mitul Manasukhbhai	2011178	11178	Yes	Yes	Yes	22/06/2018	14/03/2012
11.	Payal Diamond (prop. Kalubhai L. Bagatharia)	1100000	-	Yes	-	Yes	28/05/2018	21/03/2012
12.	Rameshbhai	634623	34623	Yes	Yes	Yes	25/05/2018	07/10/2011
13.	Sanghvi Enterprise (Prop. Arvindkumar S. Shah)	1057863	57863	Yes	Yes	Yes	25/05/2018	07/10/2011
14.	Shantilal Manilal HUF	2500000	-	Yes	-	-	08/06/2018	13/10/2011
15.	Shreenathji Trading Co. (Prop. Rohitkumar B. Shah)	2005918	5918	Yes	Yes	Yes	28/05/2018	22/03/2012
16.	Vashrambhai	624046	34046	Yes	Yes	Yes	22/05/2018	07/10/2011
17.	Veer Corporation (Prop. Chetankumar K. Shah)	739814	39814	Yes	Yes	Yes	22/05/2018	10/10/2011
18.	Virabhai Devshibhai	639911	34911	Yes	Yes	Yes	17/05/2018	07/10/2011
19.	Yug Exim (Prop. Manishaben V. Ponkia)	1250000	-	Yes	Yes	-	28/05/2018	21/03/2012
20.	Om Sai Developers	14400000	-	Yes	Yes	Yes	21/05/2018	29/03/2011
21.	Siddikabanu Hafez Said Abdul Raheman	6000000	-	Yes	-	Yes	05/06/2019	26/11/2011
22.	Tejas Gems (Prop. Bharat Mafatlal Shah HUF)	1089095	89095	Yes	Yes	Yes	29/05/2018	04/07/2011
23.	Ushaben V Patel	1500000	-	Yes	Yes	Yes	25/05/2018	24/02/2012
24.	Anil trading Co. (Prop. Anilbhai I. Kapadia)	31890	31890	Yes	-	-	28/05/2018	31/03/2012
25.	Ketankumar Rameshbhai	53859	53859	Yes	Yes	Yes	23/04/2018	31/03/2012
26.	Vatsal Enterprise (Prop. Hemantbhai D. Gajjar)	44055	44055	Yes	Yes	Yes	07/06/2018	31/03/2012

6. The Assessing Officer recorded that he was in receipt of information from the Investigation Wing that Shri Chetan kumar Kantilal Shah (Proprietor of **Veer Corporation**, one of the lender from whom the assessee received unsecured

loan of **Rs. 7,39,814/-** engaged in providing accommodation entry for unsecured loans/bogus purchases. Hence, the unsecured loan from the said parties to be treated as non-genuine. Further the interest payment of Rs. **44,055/- to Vatsal Enterprise**, the assessing officer was also in receipt of information that proprietor of Vatsal Enterprise, namely Hemantbhai D Gajjar is also providing accommodation entry. With the above finding the assessing officer furnished his remand report dated 26.06.2018.

7. The copy of remand report dated 26/06/2018 was furnished to the assessee. The assessee filed her reply dated 09/07/2018. In the reply/rejoinder, the assessee submitted that all the persons from whom the assessee received unsecured loan have confirmed and submitted necessary document in the remand proceedings. All the notices were served either on receipt of such notices; they furnished their confirmation, ITR or bank statement. The Assessing Office has not raised objection except with regard to parties viz serial No. 17 and 26 i.e. Veer Corporation and Vatsal Enterprise. For both the lenders, the assessee explained that Vatsal Enterprise, the amount outstanding is only on account provision of unpaid interest and there is no acceptance of any loan from the said party in this assessment year. The amount of interest of Rs. 44,055/- is not claimed by assessee as expenditure but is debited to the capital account. Thus, there is no question of making any addition either under Section 68 for unexplained cash credit or under Section 37(1) for non-genuine interest expenses. The copy of her capital account was furnished. With regard to second objection in respect of Veer

Corporation, the assessee submitted that outstanding amount of Rs. 7,39,814/- consist of acceptance of new loan of Rs. 7.00 lacs during the year under consideration and provision of interest of Rs. 39,814/- thereon. The said interest payment has not been claimed as interest expenses but has been debited in the capital account of the assessee. Hence, there is no question of making addition in respect of said amount of Rs. 39,814/- either under Section 68 as unexplained cash credit or under Section 37(1) as disallowance expenditure. On the objection of Assessing Officer that he has received information from Investigation Wing wherein that the proprietor of Veer Corporation namely Chetankumar K Shah is engaged in the business of providing accommodation entry and the same is treated as non-genuine. The assessee submitted that in response to notice under Section 133(6), he has filed confirmation alongwith ITR and bank statement, confirming the transaction, thus information received from the Investigation Wing is not applicable in case of assessee. Moreover, no direct information is received from the Investigation Wing in case of assessee, hence the same cannot be directly made applicable unless there is a statement of Chetankumar K Shah against the assessee which is not available in the present case. The Assessing Officer want to rely upon the information received from the Investigation Wing without giving any opportunity of rebutting the information of cross examination of parties should have been provided but which has not been provided to the assessee.

8. The Id. CIT(A) after considering the contents of assessment order, submission of assessee and remand report of Assessing officer held that the Assessing Officer made addition under Section 68 on account of unsecured loan and interest payment of Rs. 4.320 crore which includes unsecured loan of Rs. 4.263 crore plus interest of Rs. 5,71,011. In the remand report, the Assessing Officer reported that interest payment to Vatsal Enterprise and amount of Rs. 739814/- from Chetankumar K Shah was from entry provider. In the remand report, the Assessing Officer submitted the confirmation along with documentary evidence of all the lenders, except two cases of Veer Corporation and Vatsal Enterprise. The Id. CIT(A) on the basis of remand report of Assessing Officer treated unsecured loans and interest payment from Chetankumar K Shah of Rs. 739814/- and interest paid to Vatsal Enterprise as an accommodation entry and disallowance to that extent was upheld.
9. With regard to remaining amount of Rs. 4.237 crore, the Id. CIT(A) held that in the remand report, the Assessing Officer reported that the amount of Rs. 4.237 crores have been verified by the lenders which is supported with evidence in the form of confirmation, bank account and return of income and accordingly, deleted the addition by taking a view that identity, creditworthiness and genuineness of transactions have been proved. Accordingly the Id CIT(A) deleted the addition of Rs. 4.237 Crore. Aggrieved by the order of Id. CIT(A), the Revenue has filed the present appeal before this Tribunal.

10. We have heard the submissions of learned Commissioner of income tax- departmental representative (Id. CIT-DR) for the revenue and the Id. Authorised Representative (AR) of the assessee and have also gone through the orders of the authorities below carefully. The Id. CIT-DR for the revenue submits that during the assessment proceedings, the Assessing Officer issued notice to various lenders. To verify the identity, the assessee was asked to prove the creditworthiness and genuineness of transactions. The assessee failed to discharge the onus lies upon the assessee. The Assessing Officer could verify the loan transaction of Rs. 5.046 crore thereby the assessee grated partial relief. Those transactions were treated as genuine and remaining transactions which remained unverified were added as unexplained cash credit. The Id. CIT(A), accepted the additional evidence in contravention of Rule 46A of the Income Tax Rules, 1962 (in short, the Rules). The assessee was not prevented from filing the documents which were filed for the first time in the remand report. The Id. CIT-DR prayed for restoring the order of Assessing Office by reversing the finding of Id. CIT(A).

11. On the other hand, the Id. AR of the assessee submits that it was a search case. Notice under Section 153A of the Act was issued to the assessee. No incriminating material was found during the search action. The assessee has shown income of Rs. 1.364 crore. During the assessment, the Assessing Officer on the basis of details provided by assessee, raised issue about unsecured loan. The assessee provided requisite details of the lenders, which consist of their

name, PAN, and other details. The lenders party were not cooperating during the assessment as the assessee was unable to pay interest to such depositors. Though, the transaction of unsecured loan was genuine. During the appellate stage, the assessee furnished detailed submission explaining the circumstances. The assessee also explained that she was unable to pay interest on unsecured loans on time to the lender thus, they were not cooperating with the assessee. The assessee furnished the similarly details to the Id. CIT(A). On the request of assessee, the submission and the details furnished by the assessee were forwarded to the Assessing Officer for fresh verification and his remand report. During the remand proceedings, the Assessing Officer issued fresh notice under Section 133(6) of the Act. In response to notice under Section 133(6), all the parties filed confirmation and other documents as desired by assessing officer. The parties further filed either their income tax acknowledgement or bank statement to prove the genuineness of transaction. Thus, not only before the Assessing officer but before the Id. CIT(A), the assessee proved identity of all the parties, creditworthy and genuineness of transaction. Before the Id. CIT(A), the assessee proved creditworthiness of parties and genuineness of transactions. The Assessing Officer objected against the interest payment to Vatsal Enterprise and loan transaction and interest payment to Veer Corporation. The transaction with both the parties were treated as non-genuine and the addition of their transactions were confirmed by the Id. CIT(A).

12. The Id. AR submits that no separate grounds of appeal for violation of Rule 46A of the Rules was raised by the Assessing officer/Revenue. Even otherwise, there is no violation of condition of Rule 46A as the assessee has not filed any fresh evidence. The matter was remanded to the assessing officer on the written submission furnished by the assessee and the parties responded to the notice issued by the Assessing Officer under Section 133(6) of the Act and furnished their confirmation, either bank account and/or return of income to prove the genuineness of transactions. In the remand report, the Assessing Officer has not objected against the addition except transactions with two parties which has already been affirmed by the Id. CIT(A). the assessing officer in his remand report accepted that the transaction has been verified by him.
13. The Id. AR for the assessee submits that the case of A.Y. 2013-14 and 2014-15 are identical except variation of amount or transaction with two or more parties. The Id. AR for the assessee prayed for confirming the order of Id. CIT(A). In support of his submission, the Id. AR of the assessee relied upon the decision of Hon'ble Gujarat High Court in the case of PCIT Vs G&H Enterprises (2016) 72 taxmann.com 91 (Guj) wherein it was held that "where all relevant details related to customers who gave booking advance to assessee-developer were available with Assessing Officer, he could have easily verified advance booking amounts paid to assessee builder; if some of them did not appear, transactions could not be held to be non-genuine."

14. We have considered the rival submissions of both the parties and have gone through the orders of the authorities below. We find that the Assessing Officer made addition under Section 68 of the Act with regard to unsecured loans received by assessee from 26 parties in the want of sufficient evidence about the addresses/identity of parties, genuineness of transactions and creditworthiness of creditors. The Assessing Officer also held that the notice to the creditors was issued under Section 133(6) but no reply was received from any of the parties. The Assessing Officer treated the entire loan amount from 26 creditors as unexplained cash credit under section 68. As recorded above, before the Id. CIT(A), the assessee filed detailed written submissions. In the written submissions, it was stated that the Id. CIT(A) asked the assessee to furnish her remand report. During the assessment proceedings, the Assessing officer again issued notice to all the 26 creditors. The Assessing officer furnished remand report vide his letter dated 26/06/2018 and compiled the details of all the parties/lenders which we have recorded in para-5 (supra).
15. We find that the Assessing Officer objected about the genuineness of transactions with regard to transactions of Veer Corporation and Vatsal Enterprise only. The Id. CIT(A) on appreciation of remand report and the submission furnished by the assessee, treated the transactions of unsecured loans with two parties i.e. Veer Corporation and Vatsal Enterprise in the nature of accommodation entries and the addition of their transactions was upheld and transactions of remaining unsecured loan was deleted.

16. We find that the Id. CIT(A) upheld the addition with regard to lenders on the allegation of Assessing Officer that those two parties were in the business of accommodation entry provider. We further find that for remaining 24 creditors, the Assessing Officer has accepted that their transactions have been verified with supporting evidences furnished by lenders in the form of confirmations, bank account and in some cases, return of income was also furnished. We find that the Id. CIT(A) accepted the transaction only on furnishing remand report by Assessing officer, wherein the Assessing Officer himself reported that the transactions with lenders have been verified. We find that against 24 lenders, there is no allegation of the assessing officer that they are in business of entry provider.

17. So far as the objection of Id. CIT-DR is concerned that the Id CIT(A) admitted additional evidence in violation of Rule 46A, we find that the objection is misplaced as neither any specific grounds of appeal is raised nor we find any violation of Rule 46A of the Rules, as the assessee has not furnished any new evidence or sought any permission for admission of additional evidence. The fresh details were called by assessing officer from lenders by issuing notice under section 133(6). Even otherwise at the time of conclusion of hearing, we directed the Id. CIT-DR to call the assessment record for all assessment years and be filed before the registry of this Tribunal. In compliance of our direction, the assessment order for all three years were filed. On perusal of assessment records, we find that all the parties have filed their confirmation and other

corroborative evidences which is recorded by assessing officer, (as per details in para-5 above), in response to notice of Assessing Officer under Section 133(6) of the record before assessing officer, which we have verified from the assessment record. Thus, the objection of Id CIT-DR has no substance. In view of the aforesaid factual discussion, we do not find any infirmity or perversity in the order passed by the Id. CIT(A), accordingly, we uphold the same. In the result, the grounds of appeal raised by the revenue fail.

18. In the result, this appeal of Revenue for AY 2012-13 is dismissed.

19. Now we take appeal for the A.Y. 2013-14 being IT(SS)A No. 20/Srt/2018 wherein the Revenue has raised following grounds of appeal:

- “1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the entire addition of Rs.3,63,64,249/- out of the total addition of Rs. 3,90,19,602/- on the basis of remand report of the A.O., whereas the A.O. at para no.8 of the remand report dated 25.06.2018 had specifically reported after verification of facts that the contention of the assessee was an afterthought and hence not acceptable.*
- 2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in assuming that identity, creditworthiness and genuineness of the transaction have been proved only on the basis of the facts that the lenders submitted confirmation, acknowledgment of return of income and statement of bank account (in certain cases).*
- 3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in assuming that identity, creditworthiness and genuineness of the transaction have been proved, whereas the lenders even could not submit copy of bank statement in certain cases.*
- 4. It is, therefore, prayed that the order the Ld. CIT(A)-4, Surat may be set aside and that of the AO may be restored to the above extent.*

5. *The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal."*

20. In this appeal, the Revenue has raised similar grounds of appeal as raised in appeal for AY 2012-13, except variation of addition. We find that during the first appellate stage, the Id. CIT(A) directed the Assessing Officer to furnish remand report. The Assessing officer furnished remand report on 26/06/2018 along with complied details of all the creditors in the following manner:

Sr. No.	Party Name	Amount	Interest	Documents received			Received on	Transaction date as per statement
				Confirmation	IT Ack.	Bank Statement		
1.	Shantilal Manilal HUF	2000000	-	Yes	-	-	08/06/2018	11/04/2012
2.	Charmi Corporation (Prop. Ashish S. Sanghvi)	1611452	111452	Yes	-	-	08/06/2018	17/08/2012
3.	Palm International (Prop. Ambadas C. Sonar)	1048658	48986	Yes	Yes	Yes	28/05/2018	03/11/2012
4.	Rashmi Shah	710816	-	Yes	Yes	Yes	22/05/2018	12/02/2013
5.	Sudhaben Ramesh	812362	12362	Yes	Yes	Yes	28/05/2018	12/02/2013
6.	V.D. International (Prop. Rita J. Gaglani)	1048986	48986	Yes	Yes	-	28/05/2018	02/11/2012
7.	Abhay H Mehta HUF	1283753	33753	Yes	Yes	-	28/05/2018	17/12/2012 & 03/01/2013
8.	Dashrathbhai R Mehta	720252	20252	Yes	Yes	Yes	22/05/2018	02/01/2013
9.	Hitesh Jagdishchandra	950000	-	Yes	Yes	Yes	21/05/2018	03/01/2013
10.	H K Mehta & Co. (Prop. Hardik H Mehta)	255960	5959	Yes	Yes	Yes	17/05/2018	03/01/2013
11.	M B System	10000000	-	Yes	Yes	Yes	18/04/2018	04/09/2012
12.	Mukesh J Mehta	1000000	-	Yes	Yes	Yes	21/05/2018	03/01/2013
13.	Nandlal Jekishan	2000000	-	Yes	Yes	Yes	17/05/2018	19/12/2012
14.	Nidhi Export (Prop. Abhay H Mehta)	2004164	54164	Yes	Yes	Yes	21/05/2018	17/12/2012 & 03/01/2013

15.	Parth Enterprise (Prop. Vithalbhai N Vasoya HUF)	500000	-	Yes	Yes	Yes	21/03/2016	02/01/2013
16.	Rameshbhai Jagmo	1341238	141238	Yes	Yes	Yes	17/05/2018	07/04/2012
17.	Ramila Shah	1183000	-	Yes	Yes	Yes	21/03/2016	17/12/2012
18.	Rinkal Gems (Prop. Pravinkumar P. Doshi)	2561644	61644	Yes	Yes	Yes	21/05/2015	31/12/2012
19.	Shripalkumar	500000	-	Yes	Yes	Yes	21/05/2018	03/01/2013
20.	Surya Rayon Pvt. Ltd.	2500000	-	Yes	Yes	Yes	19/04/2018	28/09/2012
21.	Hotel JB	2566575	-	-	-	-	-	-
22.	Pashwa Corporation	1074301	74301	Yes	-	-	08/06/2018	17/08/2012
23.	Divyesh Kantilal	63334	6334	Yes	Yes	NA	17/05/2018	31/03/2013
24.	Shreenathji Trading Co. (Prop. Rohitkumar B Shah)	240710	240710	Yes	Yes	NA	25/05/2018	31/03/2013
25.	Tejas Gems (Prop. Bharat Mafatlal Shah HUF)	130691	130691	Yes	Yes	NA	25/05/2018	31/03/2013
26.	Bhurabhai R Patel	73616	73616	Yes	Yes	NA	22/05/2018	31/03/2013
27.	Hemabhai	77424	77424	Yes	Yes	NA	22/05/2018	31/03/2013
28.	Lakhabhai Jivrajbhai	75774	75774	Yes	Yes	NA	22/05/2018	31/03/2013
29.	Mitul Mansukhbhai	241341	241341	Yes	Yes	NA	22/05/2018	31/03/2013
30.	Rameshbhai	76155	76155	Yes	Yes	NA	22/05/2018	31/03/2013
31.	Sanghvi Enterprise (Prop. Arvindkumar S. Shah)	126943	126943	Yes	Yes	NA	22/05/2018	31/03/2013
32.	Vashrambhai	74886	74886	Yes	Yes	NA	22/05/2018	31/03/2013
33.	Veer Corpotation (Prop. Chetankumar kantilal Shah)	88778	88778	Yes	Yes	NA	22/05/2018	31/03/2013
34.	Virabhai Devshibhai	76789	76789	Yes	Yes	NA	17/05/2018	31/03/2013

21. We find that the Assessing officer raised objection about the transactions with Veer Corporation and **Hotel JB**. The Id. CIT(A) after considering the remand report of Assessing Officer wherein he has reported that transaction of Rs. 3.636

crores is verified and Hotel JB has not given any confirmation as there was dispute between the assessee and lender. Thus, the transactions of unsecured loan except the transaction with **Veer Corporation**, proprietor Chetankumar Kantilal Shah and unsecured loan of **Hotel HB** of Rs. 25,65,575/- remained unverified and was upheld and remaining addition was deleted. Considering our finding in appeal for A.Y. 2012-13, the order of Id. CIT(A) for this year i.e. 2013-14 is affirmed with similar observation.

22. In the result, this appeal of Revenue is dismissed.

23. Now we take appeal for the A.Y. 2014-15 being ITA No. 659/Srt/2018 wherein the Revenue has raised following grounds of appeal:

- “1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the entire addition of Rs.3,28,69,187/- on the basis of remand report of the A.O., whereas the A.O. at para no.7 of the remand report dated 25.06.2018 had specifically reported after verification of facts that the contention of the assessee was an afterthought and hence not acceptable.*
- 2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in assuming that identity, creditworthiness and genuineness of the transaction have been proved only on the basis of the facts that the lenders submitted confirmation, acknowledgment of return of income and statement of bank account (in certain cases).*
- 3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in assuming that identity, creditworthiness and genuineness of the transaction have been proved, whereas the lenders even could not submit copy of bank statement in certain cases.*
- 4. It is, therefore, prayed that the order the Ld. CIT(A)-4, Surat may be set aside and that of the AO may be restored to the above extent.*
- 5. The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”*

24. In this appeal, the Id. CIT(A), during the appellate stage, on the submissions of assessee the Id CIT(A) obtained remand report from assessing officer, the assessing officer furnished his remand report, vide report dated 26/06/2018. The assessing officer furnished the details of various lenders in the following manner:

Sr. No.	Party Name	Amount	Interest	Documents received			Received on	Transaction date as per statement
				Confirmation	IT Ack.	Bank Statement		
1.	Tejas Gems (Prop. Bharat Mafatlal Shah HUF)	1000000	-	Yes	Yes	NA	25/05/2018	Opening Balance
2.	Abhay H Mehta HUF	115538	115538	Yes	Yes	Yes	18/05/2018	31/03/2014
3.	H K Mehta & Co. (Prop. Hardik H Mehta)	23026	23026	Yes	Yes	NA	28/05/2018	31/03/2014
4.	Nidhi Export (Prop. Abhay H. Mehta)	180375	180375	Yes	Yes	NA	28/05/2018	31/03/2014
5.	Rinkal Gems (Prop. Pravinkumar P Doshi)	230548	230548	Yes	Yes	NA	28/05/2018	31/03/2014
6.	Ramila Shah	6000000	-	Yes	Yes	Yes	21/03/2016	17/05/2013
7.	Jirawala Corporation (Prop. Mahendra Kantilal Shah)	3500000	-	Yes	Yes	Yes	21/05/2018	27/06/2013 & 30/08/2013
8.	Mahalaxmi Corporation (Prop. Mahendra Kantilal Shah)	1300000	-	Yes	Yes	Yes	21/05/2018	28/06/2013
9.	Mukesh N Desai	20519700	-	Yes	Yes	Yes	17/04/2018	05/04/2013 & 21/05/2013

25. The Id. CIT(A) on the basis of remand report of assessee, held that the Assessing Officer submitted that the confirmation along with documentary evidences of the lenders have been verified in the remand proceedings with supported evidences. Thus, the Id. CIT(A) deleted the entire addition.

Considering our finding in appeal for A.Y. 2012-13, we affirm the order of Id. CIT(A) with similar observation.

26. In this result, this appeal of the Revenue is dismissed.

27. Finally, all these three appeals of the Revenue are dismissed. One copy of this order be placed in respective files

Order pronounced on 24/06/2022, in open court and result was also placed on notice board.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated:24/06/2022

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By Order

Sr. Private Secretary, ITAT Surat