

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 6121/MUM/2018
Assessment Year: 2008-09
&
ITA No. 6122/MUM/2018
Assessment Year: 2009-10**

Shri Sanjay Shantilal Jain,
72-7, Kalpatatru Residency
Tower B, Sion Koliwada Road,
Sion,
Mumbai-400022.

PAN No. AABPJ 3761 A

Appellant

Vs.

DCIT Central Circle-8(3),
6th floor, Aayakar Bhavan,
M.K. Road,
Mumbai-400020.

Respondent

Assessee by : Mr. Rushabh Mehta, AR
Revenue by : Mr. Manoj Kumar, CIT-DR

Date of Hearing : 27/07/2022
Date of pronouncement : 12/08/2022

ORDER

PER OM PRAKASH KANT, AM

These two appeals by the assessee are directed against two separate orders both dated 21/08/2018, passed by the Ld. Commissioner of Income-tax (Appeals)-50, Mumbai [in short 'the



Ld. CIT(A)'] for assessment year 2008-09 and 2009-10 respectively.

As common grounds have been raised in these appeals, therefore same were heard together and disposed off by way of this consolidated order for convenience.

ITA No. 6121/MUM/2018
Assessment Year: 2008-09

2. Firstly, we take up the appeal for assessment year 2008-09.

The grounds of the appeal are reproduced as under:

1. *On facts and circumstances of the case, the Ld. CIT(A)-50, Mumbai erred in not holding that the order passed u/s. 143(3) r.w.s. 153A by the DCIT, CC-8(3), Mumbai ("Assessing Officer) is without jurisdiction, invalid and bad in law.*
2. *The Ld. CIT(A) erred in facts and law in upholding the addition of loan amounting to Rs. 60,00,000/- by treating it as accommodation entry.*
3. *The Ld. CIT(A) erred in facts and law in upholding the addition of interest amounting to Rs. 4,25.343/- on the above accommodation loan.*
4. *Without prejudice to 3 above, the Ld. CIT(A) erred in facts and law in not allowing interest expense of Rs. 1.24.600/- as per the loose papers.*



5. *The Ld. CIT(A) erred in facts and law in upholding the addition of interest income of Rs. 1,21,423/- based on ITS details.*
6. *The Ld. CIT(A) erred in facts and law in upholding the addition of labour charges of Rs. 3,00,660/- based on ITS details.*
6. *The Ld. CIT(A) erred in facts and law in upholding the addition of loan aggregating to Rs. 32,50,000/- as unexplained cash credit u/s. 68 of the Act.*
7. *All the above grounds are independent and without prejudice to each other.*

3. Briefly stated facts of the case are that assessee filed regular return of income on 30/09/2008 declaring total income of ₹12,37,430/- which was processed under section 143(1) of the Income-tax Act, 1961 (in short 'the Act'). Subsequently, the search and seizure action under section 132 of the Act was carried out on 11/06/2013 on the premises of the assessee along with cases of "RSBL" group. Consequent to search action, notice under section 153A of the Act was issued asking the assessee to file return of income. In response, the assessee filed return of income on 07/10/2014 declaring income of ₹12,37,430/- which was declared



in the regular return of income. The Assessing Officer in the assessment completed under section 153A on 31/03/2016 made various additions and assessed total income at ₹1,13,34,860/-. On further appeal, the Ld. CIT(A) rejected the grounds of the assessee and dismissed the appeal. Aggrieved the assessee is before the Tribunal by way of raising grounds as reproduced above.

4. Before us the Ld. counsel of the assessee filed a paperbook containing pages 1 to 51.

5. The Ld. counsel of the assessee did not press ground No. 1 of the appeal being general in nature. He also did not press the ground No. 2 to 4 of the appeal. Accordingly, ground No. 1 to 4 of the appeal are dismissed as infructuous.

5.1 Regarding ground No. 5 to 7 the Ld. counsel submitted that additions made are not based on any incriminating material found or seized during the course of the search. He submitted that in view



of the decision of the Hon'ble Delhi High Court in the case of **CIT v. Kabul Chawala (2016) 380 ITR 573 (Delhi)**, if no assessment proceedings are pending as on the date of the search than no addition can be made without basis of incriminating material. The Ld. counsel submitted that time limit for issuing notice under section 143(2) of the Act had already expired prior to the date of the search and even no notice under section 148 of the Act was issued before initiation of the search, therefore, it can be concluded that return of income of the assessee have been accepted and attained finality. Hence, no assessment or reassessment was pending as on the date of the initiation of search. According to him both the conditions of the decision of the Hon'ble Delhi High Court in the case of Kabul Chawala (supra) stands fulfilled and thus no addition can be made without link of any incriminating material found during the course of the search. He also relied on the decision of the Hon'ble Delhi High Court in the case of **PCIT Vs Kurele paper Mills Private**



Limited 380 ITR 571 (Delhi) and submitted that SLP filed by the Revenue against the said decision has been dismissed by the Hon'ble Supreme Court on 07/12/2015.

6. The Ld. DR on the other hand relied on the order of the lower authorities.

7. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. In respect of the ground No. 5 to 7 of the appeal, the objection of the assessee are that no assessment proceedings were pending in respect of the assessment year under consideration as on the date of the search and also addition has been made without any reference to incriminating material. We find that Revenue has not challenged the fact of non-pendency of any assessment on the date of search. From the assessment order, we find that addition in dispute in ground No.



5 and 6 have been made on the basis of ITS details. The relevant finding of the Ld. Assessing Officer are reproduced as under:

“5. As per ITS, the assessee had received interest of Rs. 1,21,423/- on FDs which is not offered in the return of income. The assessee submitted that he is unable to trace the documents. Hence, an amount of Rs. 1,21,423/- is added to the total of the assessee. Penalty proceeding is initiated u/s. 271(1)(c) of the Income Tax Act, 1961 for furnishing inaccurate particulars of income.

6. As per ITS, the assessee received labour charges of Rs. 3,00,660/- which is not offered in the return of income. When confronted, the assessee submitted that he did not receive the payment. The assessee is following mercantile system of accounting and hence the amount should have been offered on accrual basis. Hence, amount of Rs. 3,00,660/- is added to the total income of the assessee. Penalty proceeding is initiated u/s. 271(1)(c) of the Income Tax Act, 1961 for furnishing inaccurate particulars of income.”

7.1 Regarding the ground No. 7 also though the Assessing Officer has not referred to any incriminating material but the Ld. CIT(A) has made general observation that the assessee was engaged in obtaining accommodation entries. The relevant para of the Ld. CIT(A) is reproduced as under:



“18.4 I have taken note of the fact that there is substantial adverse & incriminating material on record to prove that the appellant has indulged in taking & giving cash unaccounted loans / advances. Further, even accommodation entries of loans have been taken by the Appellant from the bogus concerns of Gautam Bhanwarlal Jain Group. During the course of the search and survey operation on the Appellant, substantial incriminating material has been found, relating to accommodation entries taken by the Appellant, which has already been discussed in great details in the earlier part of the appellate order. The same is not repeated here for the sake of brevity, but it is relied upon to prove that there is incriminating material on record to hold that the appellant has taken accommodation entries by paying entry charges.”

7.2 We find that there is no specific reference of any incriminating material for sustaining the addition in dispute of ₹32,50,000/- which was made by the Assessing Officer under section 68 of the Act.

7.3 In view of above, both the conditions of the decision of the Hon'ble Delhi High Court (supra) in the case of Kabul Chawal (supra) that for making addition under section 153A of the Act, firstly, the assessment proceedings should be pending as of the date



of the search and secondly, there should be incriminating material for making the addition, are not fulfilled. Therefore, the Ld. CIT(A) is not justified in sustaining the additions challenged by the assessee in ground No. 5 to 7 of the appeal. The grounds of the appeal of the assessee are accordingly allowed.

ITA No. 6122/MUM/2018
Assessment Year: 2009-10

8. The grounds raised by the assessee in assessment year 2009-10 are reproduced as under:

"1. (a) On facts and circumstances of the case, the Ld. CIT(A)-50, Mumbai erred in not holding that the order passed u/s. 143(3) r.w.s. 153A by the DCIT, CC-8(3), Mumbai ("Assessing Officer) is without jurisdiction, invalid and bad in law.

(b) The Ld. CIT(A) has grossly erred in facts and law in not appreciating the explanations and material placed on record as well as true content of the seized material and taking the wholistic view of the matter by telescoping the real income of the assessee.

2. The Ld. CIT(A) erred in facts and law in upholding the addition of interest amounting to Rs. 5,19,530/- on alleged bogus loan taken in A.Y. 2008-09.



3. (a) The Ld. CIT(A) erred in facts and law in upholding the addition of loan aggregating to Rs. 38,75,000/- as unexplained cash credit u/s. 68 of the Act.

(b) The Ld. CIT(A) erred in facts and law in not appreciating that the addition of Rs. 38,75,000/- cannot be made u/s. 68 of the Act devoid of any incriminating material found in the course of search once the assessment had already attained finality prior to the date of search

(c) The Id. CIT(A) has even erroneously mentioned the fact in para 17.2 of his order that no assessment order u/s. 143(3) is passed prior to search.

4. All the above grounds are independent and without prejudice to each other."

9. At the outset Ld. counsel of the assessee submitted that assessee is not pressing ground No. 1 and 2 of the appeal and therefore both these grounds are dismissed as infructuous.

10. In respect of the ground No. 3, wherein the addition made of ₹38,75,000/- of unexplained cash credit terms of section 68 of the Act has been challenged by the assessee. The Ld. counsel submitted that no assessment was pending as of the date of the search and addition has been made without reference to any incriminating



material therefore following the decision of the Hon'ble Delhi High Court in the case of Kabul Chawala (supra), the addition need to be deleted. The Ld. DR on the other hand relied on the orders of the lower authorities.

11. We find that assessment under section 143(3) of the Act for the year under consideration was completed by the Assessing Officer on 15/12/2011. This fact has been mentioned by the Assessing Officer in para 5 of the impugned assessment order. Thus there was no pendency of the assessment as on date of the search. The addition under section 68 of ₹38,75,000/- has been made by the Assessing Officer observing as under:

“6. The assessee has claimed following loans taken during the year under consideration other than those from family members or close relatives:

Sr. No.	Name of the Party	Amount (₹)
1.	Rajesh Jain	1,00,000/-
2.	Swami Samarth Medical	35,00,000/-
3.	Chandadevi Ranmal	1,00,000/-
4.	Sukhidevi Ranmal	1,00,000/-
5.	Riti D. Jain	75,000/-



	Total	38,75,000/-
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6.1 *The assessee has furnished only confirmation of the party and no supporting documents as regards genuineness of loans are furnished. As discussed above, the details were furnished on 29.03.2016 and it was not possible to make any verification. The amount is appearing as liability in the balance sheet of the assessee and the onus is on the assessee to explain cash credit appearing in his books of accounts as per the provisions of section 68 of the Income Tax Act 1961 as to establish identity of the party, genuineness of transaction and creditworthiness of the party. The assessee failed to offer any explanation at all on this liability as appearing in his balance sheet. Mere filing of confirmation is not sufficient in view of decision of Hon'ble Supreme Court in the case of Durgaprasad More 82 ITR 510. The Hon'ble Kerala High Court in the case of M/s. Diza Holdings Pvt. Ltd 120 Taxmann 539 has held as under:*

On the terms of section 68, the burden is on the assessee to offer a satisfactory explanation about the nature and source of the amount found credited in the books of the assessee. It is also clear that the mere furnishing of particulars is not enough. The mere fact that payment is by way of account payee cheque also not conclusive. Therefore, the Assessing Officer was entitled to consider whether notwithstanding the fact that the payments were not made by cheques, whether the assessee had satisfactorily explained the nature and source of the amounts found credited in the books of the assessee. The Assessing Officer was satisfied that the so-called depositors did not have the resources to make such deposits.



6.2 Hence, the onus lies on the assessee to establish the cash credit appearing in his books of accounts which the assessee failed to explain. Hence, addition of Rs.38,75,000/- is made to the total income of the assessee u/s.68 Tax Act. Penalty proceedings is initiated u/s.271(1)(c) the Income Tax Act for furnishing inaccurate particulars of income.

7. In view of the above discussion, total income of the assessee is computed

	Amount (₹)
Income as per return of income	42,07,350/-
Add: Interest on bogus loans as discussed above.	5,19,530/-
Add: u/s 68 as discussed above.	38,75,000/-
Assessed Total Income	86,01,880/-

12. On perusal of the above finding of the Assessing Officer, we find that there is no reference of any incriminating material for making the addition. The Ld. CIT(A) has also not mentioned any specific incriminating document material found during the course of the search, for sustaining the addition in dispute. Therefore, following our finding in assessment year 2008-09, the addition in dispute in the assessment year consideration is also deleted. The ground No. 3 of the appeal is accordingly allowed.



13. In the result, both the appeals of the assessee are allowed partly.

Order pronounced in the open Court on 12/08/2022.

**Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 12/08/2022
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

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