

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
MS KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

ITA No. 1581/MUM/2022

Assessment Year: 2010-11

&

ITA No. 1582/MUM/2022

Assessment Year: 2011-12

&

ITA No. 1583/MUM/2022

Assessment Year: 2012-13

ITO-33(1)(1),
Kautilya Bhavan, 9th floor, Room
No. 945, Bandra Kurla Complex,
Bandra (E),
Mumbai-400051.

Appellant

Shri Kalpesh C. Shah,
Flat No. 904, Rajvaibhav Tower-
2, Dahanukar Wadi, Mahavir
Nagar, Kandiwali(W),
Mumbai-400067.

Vs.

PAN No. AAJPS 8486 R

Respondent

Revenue by : Mrs. Usha Gaikwad, DR
Assessee by : Mr. K. Gopal, Sr. Adv. &
A/w Om Kandalkar, Adv.

Date of Hearing : 21/09/2022
Date of pronouncement : 28/09/2022

ORDER

PER OM PRAKASH KANT, AM

These Appeals by the Revenue are directed against three separate orders, each dated 19/04/2022, passed by the National



Faceless Appeal Centre (NFAC), Delhi [hereinafter shall be referred as 'Ld. First Appellate Authority or FAA'] for assessment year 2010-11; 2011-12 and 2012-13 respectively. In all these three appeals common issue-in-dispute, permeating from same set of facts and circumstances is involved, and therefore, all these appeals were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. The grounds raised in all the three appeals are identically worded, except change of amount and therefore for brevity, we are reproducing the grounds raised in appeal for assessment year 2010-11, as under:

- 1. Whether, on the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of ₹1,50,00,000/- made by the AO as unexplained income under section 68 of the Act without considering the fact that the statements of Shri Akshay Doshi, Director of M/s. Bhoomi Group was recorded us 131 of the Act wherein he had stated that his company was engaged in cash transactions with various parties which did not form part of the regular books of*



accounts, and the assessee was one such person in whose name payment of above amount was clearly mentioned in his statement."

2. *"Whether, on the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.1,50,00,000/- made by the AO as unexplained income under section 68 of the Act without considering the fact that the information in this case was provided by the Investigation Wing after due analysis of data, consequent to search on the Bhoomi Group, which has been used by the AO after considering overall facts and circumstances of the case and therefore it is not based merely on as bald statement of a third unrelated party."*
3. *Whether, on the facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing the interest payment of Rs. 15,75,000/- on the said cash loan u/s 69C of the Act, as the payment of interest is not reflected in the books of accounts of the assessee and hence the source of the same remains unexplained."*
4. *Whether, on the facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing the appeal of the assessee, ignoring the facts of the case and placing reliance on the self-serving documentation supporting the claim of the assessee".*
5. *The appellant craves leave to amend or to alter any ground or add a new ground which may be necessary.*

3. In assessment year 2011-12 deletion of the (a) addition under section 68 of the Income-tax Act, 1961 (in short 'the Act') of



₹2,34,00,000/- and (b) addition under section 69C of the Act of ₹27,00,000/- has been challenged. Similarly in assessment year 2012-13, deletion of (a) addition under section 68 of ₹2,30,47,000/- and (b) addition under section 69C of ₹45,000/- have been challenged by the Revenue.

4. Both parties agreed to take the appeal of the assessee for 2010-11 as the lead case and follow the finding of the same for other two years. Accordingly, firstly we take up appeal of the assessee for assessment year 2010-11 for adjudication.

5. Briefly stated facts of the case are that the assessee, an individual having proprietary concern i.e. M/s Aatash Investments, was engaged in the business of trading in equity and derivatives and advisory services with respect to capital market and investment. For the year under consideration i.e. assessment year 2010-11, the assessee filed regular return of income on 28/09/2010 declaring



income of ₹20,18,000/-. The assessment under section 143(3) was completed on 28.12.2012 by assessing total income at ₹20,74,000/-.

5.1 Subsequently, the assessment has been reopened by way of issue of notice under section 148 of the Act dated 29/03/2017. The Assessing Officer in the impugned assessment order has mentioned information received from two sources for reopening of the assessment.

5.2 Firstly, it is mentioned that in the course of the search action under section 132 of the Act carried out at the premises of M/s Bhoomi Group, certain incriminating documents evidencing cash receipt and loan to various parties have been found and in one of the printout taken from the laptop of Ms Vasumati Modi, name of the assessee as recipient of cash loans is recorded. Shri Akshay J Doshi, the director of "M/s Bhoomi Group" of companies also accepted the cash transactions recorded in the incriminating documents found from his premises. According to the Assessing Officer, this cash loan



received by the assessee from M/s Bhoomi group was undisclosed income of the assessee.

5.3 Secondly, information was received from the non-filer management system of the Income-tax Department that Sh Kalpesh Shah having PAN AAGPS7432L had purchased shares worth ₹1,54,97,097/- for the period from 18/02/2010 to 23/03/2010 in cash market transactions through Bombay stock exchange. However no return of income was filed. Therefore the Assessing Officer recorded reason to believe that income escaped assessment.

5.4 It was noticed that return of income was filed by the assessee under PAN No. AAJPS8486R. It was admitted by the assessee that share transactions were carried out with another PAN and both PAN belonged to the assessee, so the Assessing Officer completed the assessment on the PAN, under which return of income was filed by the assessee.



5.5 The objections raised by the assessee against the notice under section 148 of the Act dated 29/03/2017, were disposed of by the Assessing Officer. During the reassessment proceeding, the assessee was asked to explain the source of alleged cash loan received of ₹1,50,00,000/- by him from M/s Bhoomi Group and repayment of interest amounting to ₹15,75,000/-. The assessee denied of any transaction or purchase or sale of the property or any other transaction with M/s Bhoomi Group. The assessee after going through the statement of Mr Akshay Doshi submitted that he nowhere stated that Mr. Kalpesh Shah is the assessee. Further, the assessee submitted that in the printout taken from the laptop during the course of the search at the Bhoomi Group, also nowhere reflect that Kalpesh Shah or Kalpesh Bhai referred in the said printout is the assessee only. The assessee asked for cross examination of Mr. Akshay Doshi however on being summoned by the Assessing Officer MrAkshay Doshi, did not appear before him for providing cross



examination to the assessee. However the Assessing Officer rejected the contention of the assessee and on the basis of one of the information in the printout taken from the laptop that Bhumi Corporation gave Cheque to M/s JHP securities, with whom assessee was carrying out his share transactions and M/s JHP security was appearing as debtor in the balance sheet of the assessee as on 31/03/2010, the Assessing Officer held that the alleged cash loan of ₹1,50,00,000/- received by the assessee as unexplained cash credit in terms of section 68 of the Act in view of the material available on record, surrounding circumstances, human conduct, preponderance of probability in nature of incriminating information/evidences available with him. The addition for alleged interest payment of ₹15,75,000/- was also made under section 69C of Act.

5.6 On further appeal, the Ld. FAA deleted the additions observing as under:



"7.4 I have carefully considered the relevant and material facts on record, in respect of these grounds of appeal, as brought out in the assessment order and submissions made during appeal proceedings. The moot point for adjudication is whether the AO was justified in adding the alleged cash loan of Rs.1,50,00,000/- purportedly received from Bhoomi Group and the interest of Rs.15,75,000/- paid thereon to the total income of the appellant, in the light of material and evidence brought on record. It is noted that the main premise of the impugned addition is the statement given by Mr. Akshay Doshi us 131 of the Act on 28/12/2015 and 04/01/2016 in relation to the excel sheet extracted from the laptop of another person, Smt. Vasumati Modi. On perusal of the contents of the document, it is noted that the name 'Kapleshbhai' is mentioned at several places against the amounts mentioned against it. There is nothing brought on record by the AO that 'Kalpeshbhai' and the assessee are the same person. It was pointed out by the appellant that the sheet states, 'Kalpesh ag profit in Doshi family'. The appellant had claimed that he does not have any relation with Doshi family and this contention of the appellant remained unrebutted by the AO. The appellant had also pointed out that Shri Akshay Doshi in his statements dated 28/12/2015 and 04/01/2016 had averred that the code reference 'ACM' in the excel-sheet denoted the monies belonging to him and his partner, Mr. Ajay Metha. I therefore find sufficient force in the submission of the appellant that Shri Akshay Doshi was using different names to hide the actual beneficiary of the transaction and therefore the use of term 'kalpeshbhai in the relevant excel sheet cannot be accepted at its face value. The appellant also invited our attention to the relevant excerpts of the statement of Shri Akshay Doshi wherein he had admitted that the transactions/noting mentioned in this excel sheet was in relation



to the property dealings done by them in relation to their projects, M/s Bhoomi Elegant and M/s Bhoomi Valley. The appellant submitted that he did not have any dealings in any of the properties belonging to the Bhoomi Group and therefore if one logically peruses the said excel sheet in light of the statement of Shri Akshay Doshi, no prudent person can reasonably infer that the transactions mentioned in this excel-sheet pertains to the assessee. It is noted that this particular fact was also highlighted before the AO and the same remained uncontroverted. I thus find merit in the submission of the appellant that even on the preponderance of human probabilities and reasonable logic, when the assessee never dealt in any manner with Bhoomi Group and in any of their properties/projects, the excelsheet titled 'kalpeshbhai' / 'kalpesh shah' found from the possession of Vasumati Modi cannot be inferred to be the assessee. Undeniably there may be several persons by the same name not only in Mumbai but across India as well and therefore the onus was on the Revenue to establish that the 'kalpesh shah' being referred to in this excel sheet was the assessee and not any other assessee having the same name. The only link, which the AO tried to establish was that the assessee had a demat/stock broking account with M/s JHP Securities and that the said broker also featured in the documents found from the premises of Mr. Akshay Doshi / Smt Vasumati Modi. The assessee had shown that he is an active investor in shares & securities and he held several stock broking/demat accounts with different brokers. Like millions of persons in India, even the assessee transacted on stock exchange through these reputed stock-brokers. Merely because even the Bhoomi Group had certain transactions with JHP Securities, it cannot be reason enough to conclude that the appellant knew the Bhoomi Group through Ms JHP Securities and had accordingly availed cash loan from Bhoomi Group.



This particular theory is clearly far-fetched and does not hold any water. It is noted that the assessee had also provided the details of MIs JHP Securities to the AO and therefore the AO ought to have made enquiries from Ms JHP Securities to substantiate his theory and take it to its logical conclusion. I however find that the AO failed to do so. For the reasons set out in the foregoing, I therefore hold that the noting found in the excel-sheet was dumb in nature and even the theory set out by the AO to link this sheet with the appellant was inconclusive and thus unreliable.

7.5 The AO in his impugned order has heavily relied on the statement of Shri Akshay Doshi dated 28/12/2015 and 04/01/2016 to hold that the notings in the excelsheet pertained to the assessee. Having gone through the entire statement, I find merit in the submission of the assessee that the statement did not contain any assertion/admission/material whatsoever on the basis of which any prudent person instructed in law would have reached Shri Doshi had implicated the appellant or alleged that the noting found therein pertained to him. Instead I find that he had made general assertions that the noting in this excel sheet contained cash transactions which were required to be multiplied by 100 (Answers to Q Nos. 384 statement dated 28/12/2015). Thereafter, in his statement dated 04/01/2016, the entire amounts noted therein were owned up by Shri Doshi as his own receipts which were offered by him and his partner Ajay Mehta equally to tax (Answer to Q No. 6 statement dated 04/01/2016). He therefore neither mentioned the name of the appellant nor has he provided the specific details of 'kalpesh shah' / 'kalpeshbhai' in his statement. Even in the questions posed to him, the Investigating Officer never queried about the identity of the persons



named in the excel-sheet. Moreover, ultimately Shri Akshay Doshi owned up the noting in these excel sheet as his own undisclosed income. I therefore agree with the submissions of the appellant that the inferences drawn by the AO by relying on such statement in light of the excel-sheet was based on pure suspicion and surmise. There was neither anything tangible nor was there any evidence brought on record, which would prove that the notings found in the excel-sheet were that of the appellant.

7.6 It is noted that inspite of the glaring infirmities and defects pointed out by the appellant in the excel-sheet as well as the statements provided by the AO, the AO himself never examined Mr. Akshay Doshi on this aspect nor opportunity of cross examination the appellant. On these facts therefore, the AO's reliance on the bald statement of Shri Doshi and the dumb document extracted from laptop of Smt Vasumati Modi to justify the impugned addition is held to be erroneous and unjustified."

6. The Ld. CIT(A) relied on following decisions:

- 1. Decision of Hon'ble Supreme Court in the case of CBI Vs V C Shukla and Others (1983) 3SCC 410**
- 2. Decision of ITAT, Panji Bench in the case of Abhay K Bharmgouda Patil Vs ACIT (96 taxmann.com 377)**

6.1 On the issue that addition cannot be sustained without providing opportunity to the assessee for cross-examination of the person based on whose statement addition is made, the Ld. CIT(A)



relied on the decision of the Hon'ble Supreme Court in the case of **CIT vs. Odeon Builders P Ltd (418 ITR 315)** and **Andman Timber Industries Ltd vs. Commissioner of Central Excise in Civil Appeal No. 4228 of 2006.**

6.2 In support of the contention that the disallowance based solely relying on the statement of third person recorded in the course of the search, without there being any independent corroborative material, is not justified, the Ld. CIT(A) relied on the decision of Hon'ble Bombay High Court in the case of **CIT vs. Reliance industries Ltd (102 taxmann.com 372).**

6.3 In support of the contention that reliance placed by the Assessing Officer on the provisions of section 292C is misplaced, the Ld. CIT(A) held that said presumption under section 292C of the Act regarding documents found and seized can be inferred against the persons from whom same is found and seized. In support of his finding, he relied on the decision of the Hon'ble Supreme Court in



the case of **CIT Vs Sunita Dhaddha SLP (Civil) No. 9432/2018 dated 28/3/2018 (SC)**.

6.4 In view of the above, the Ld. CIT(A) deleted the addition made on account of unexplained cash loan and unexplained interest expenditure.

7. Before us, the Ld. counsel of the assessee filed a paperbook containing pages 1 to 32 inter alia submissions filed before the Ld. CIT(A). The Ld. counsel also filed few decisions relied upon by the Ld. CIT(A).

8. The Ld. Department Representative relying on the order of the Ld. Assessing Officer submitted that in the documents seized from the premises of Bhoomi Group, it is evident that the assessee has invested cash loan for share purchase transactions with M/s JHP Securities Ltd. The connection of the assessee with M/s JHP Securities Ltd has been confirmed from his balance sheet, where



M/s JHP Securities Ltd is appearing as debtor. He further submitted that assessee was engaged in share purchase transactions in cash using his another (duplicate) PAN. He submitted that Ld. CIT(A) should have investigated cash transactions carried out by the assessee for share purchase transactions, which is also evidenced by documents found from the premises of M/s Bhoomi group. Accordingly, he submitted that order of the Ld. FAA on the issue in dispute should be set aside.

9. The Ld. counsel of the assessee on the other hand relied on the finding of the Ld. FAA and submitted that despite repeated requests by the assessee for providing cross examination of Akashay Doshi of Bhoomi Group, relying on whose statement addition has been made in the case of the assessee, but no cross-examination was provided. In absence of cross-examination, the Ld. Assessing Officer is not justified in making the addition in dispute.



10. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. In the case of the assessee addition of ₹1,50,00,000/- has been made under section 68 of the Act as unexplained cash credit for alleged receipt of cash loan from Bhoomi Group and addition of ₹15,75,000/- as unexplained expenditure for payment of interest in cash to Bhoomi Group.

10.1 In the case of the search action carried out at the premises of M/s Bhoomi Group, an excel sheet had been extracted from the laptop of Smt Vasumati Modi. The said Excel Sheet is having ledger account titled as “Kalpesh Shah A/c” where on right hand side of sheet, transactions of cash loan given to “Kalpesh Bhai (adj)” are recorded and on left hand side interest received from “ Kalpesh Bhai” is recorded.

10.2 During search action statement of Director of Bhoomi Group Akashay Doshi was recorded, wherein he stated that extract from



the Laptop contains three folders of Excel Sheet, interalia- Journal Account.XLS; Ledger Account.XLS; and Blockwise.XLS. The Excel Sheet folder Ledger Account. XLS contains three sheet namely 1. Ledger, 2. Name list and 3. Temp. The sheet Ledger contains various ledger account. These ledger accounts are posting of data from journal sheet. Regarding entries in Journal accounts folder, he stated that transactions recorded therein were executed in cash and had not been recorded in regular books of accounts. He also explained that each figure in the said excel sheet had to be multiplied by 100 to arrive at correct amount of the transaction.

10.3 The Ld. Assessing Officer has reproduced a scanned copy of the extract of ledger Account titled as “Kalpesh Shah A/c” and statement of Akashay Doshi, recorded in the course of such action.

10.4 Assessing Officer concluded that cash loan transactions received from Bhumi group by the assessee was in exchange of cash deposited with Bhumi group of ₹1,50,00,000/-.



10.5 In our opinion, the Leonard Assessing Officer is not justified in making the addition due to following reasons:

- (i) In terms of section 292C of the Act that if any document is found in possession or control of any person in the course of search action under section 132 of the Act, then it is presumed that said document belongs to such person and contents of such documents are true. In the instant case, the ledger account titled as “Kalpesh Shah A/c” has been found from the possession of Bhoomi Bhumi group and therefore in terms of section 292C, it is presumed that same belongs to Bhoomi Group. This presumption is rebuttable and onus to rebut is on the person from whom possession said document has been found. In the case, the Assessing Officer has presumed this document as belonging to the assessee, whereas neither Akashay Doshi or any other person of the Bhoomi Group stated that the



person titled as “Kalpesh Shah” in the ledger account is the assessee and therefore it is not understandable how the Ld. Assessing Officer figured out the assessee as the person titled as “Kalpesh Shah” in the seized document. From the statement of Sh. Akashay Doshi, also it is evident that even the authorized officer during search action did not ask any question to Sh Akashay Doshi to identify the person titled as Kalpesh Shah in the seized document. The only link which the Assessing Officer tried to establish that assessee had a Demat/stock broking account with M/s JHP Securities and name of JHP Securities Ltd was appearing in the ledger account titled as “Kalpesh Shah A/c”. But we note that nothing on record shows that any enquiry from M/s JHP securities had been carried out by the Assessing Officer or by the Ld. CIT(A) to ascertain the connection of the assessee with



JHP securities Ltd and Bhoomi Group, though the Assessing Officer reopened the assessment on one of the information that share transactions worth more than ₹1.5 crore were carried out by the assessee quoting a duplicate PAN. Thus, there is no evidence on record, which could establish that assessee is the same Kalpesh Shah, the ledger account has been titled in whose name.

- (ii) The Ld. CIT(A) has noted that Mr. Akshay Doshi owned the noting recorded in excel sheet, as his own undisclosed income, therefore the Assessing Officer is not justified in making further addition in the hands of the assessee.
- (iii) Mr. Akshay Doshi in his statement, stated that transactions recorded in the excel sheet were in relation to the property dealings done by them in their projects namely M/s Bhhomi elegant and M/s Bhoomi valley. The assessee contended that he did not have any dealings in



any of the properties belonging to Bhoomi group, and therefore the transactions mentioned in the excel sheet did not pertain to him. The Ld. Assessing Officer did not bring any record or evidence to show that assessee carried out any property transactions with Bhoomi Group.

- (iv) The assessee asked for cross examination of Mr. Akshay Doshi, however said cross-examination was not provided to the assessee. The Ld. DR submitted that summons were issued to Mr. Doshi, but he did not attend before the Assessing Officer and therefore cross-examination could not be provided to the assessee. In our opinion this argument of the Ld. DR is not justified, because Assessing Officer could have been enforced attendance of Sh Akshay Doshi exercising his authority under the Income-tax Act,



1961 (in short 'the Act'), but the assessee cannot be deprived to the principle of natural justice.

- (v) The addition in the case has been made by the Assessing Officer under section 68 of the Act as unexplained cash credit, but we find that in the case source and nature of the transaction is clear from the seized document itself, nature of which is cash loan transactions and source of said loan is Bhoomi group.

10.6 In view of above, we do not find any error in the order of the Ld. FAA on the issue in dispute and accordingly, we uphold the same. The grounds No. 1 and 2 of the appeal of the Revenue are accordingly dismissed.

11. The facts and circumstances and the grounds raised in other two assessment years i.e. 2011-12 and 2012-13 are identical to assessment year 2011-12 and the only difference is the amount of cash loan and interest payment, which is ₹2,34,00,000/- and



₹27,00,000/- in assessment year 2011-12 and ₹2,30,47,000/- and ₹45,000/- in assessment year 2012-13 respectively. Therefore following our finding in assessment year 2010-11, the grounds raised in assessment year 2011-12 and 2012-13 are decided *mutatis mutandis*.

12. In the result, all the three appeals of the Revenue are dismissed.

Order pronounced in the open Court in 28/09/2022.

Sd/-

**(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 28/09/2022
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