

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

**BEFORE SHRI ABY T. VARKEY, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NOs. 1561, 1562, 1563, 1564, 1565 & 1566/MUM/2021
(A.Y: 2013-14, 2012-13, 2014-15, 2015-16, 2016-17 & 2017-18)**

Shri Mugat Maneklal Shah 16/6, Ashirwad Building Vishwabharti CHS V.P. Road, Andheri (w) Mumbai - 400058 PAN: AEGPS7522D	v.	DCIT – Central Circle – 4(1) Room No. 1916, 19 th Floor Air India Building, Nariman Point Mumbai – 400 021
(Appellant)		(Respondent)

ITA NO. 2180/MUM/2021 (A.Y: 2017-18)

DCIT – Central Circle – 4(1) Room No. 1918, 19 th Floor Air India Building, Nariman Point Mumbai – 400 021	v.	Shri Mugat Maneklal Shah 16/6, Ashirwad Building Vishwabharti CHS V.P. Road, Andheri (w) Mumbai - 400058 PAN: AEGPS7522D
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Vijay Mehta
Department Represented by	:	Shri S.H. Usmani
Date of Hearing	:	22.09.2022
Date of Pronouncement	:	27.09.2022

ORDER**PER S. RIFAUR RAHMAN (AM)**

1. These appeals are filed by the assessee against different orders of the Learned Commissioner of Income Tax (Appeals)-52, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 19.07.2021 for the A.Ys. 2012-13 to 2017-18. ITA.No. 2180/Mum/2021 is the cross appeal filed by the Revenue for the A.Y. 2017-18.

2. Since the issues raised in all the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order.

3. The appeal of the revenue is filed with the delay of 52 days; the delay is condoned because of pandemic period.

4. Brief facts of the case, pursuant to post search assessment the Assessing Officer has held that the assessee has advanced certain cash loans to one Shri Nilesh Bharani, which has not been disclosed in the regular books of account. Accordingly, the Assessing Officer has made the addition in respect of such loan transactions as well as the alleged interest earned thereon. The additions have been confirmed by the

Ld.CIT(A) in principle but he has given some relief to the assessee in respect of calculation of loan amount and consequential interest thereon.

5. The assessment orders have been passed u/s. 153A of the Income-tax Act, 1961 (in short "Act") pursuant to the search at the premises of the assessee on 18.12.2017. It is claimed that during the course of search, no incriminating material was found. The Assessing Officer, relying upon the documents found during the course of search at the premises of Shri Nilesh Bharani on 06.12.2012 and the statements recorded therein, has arrived at the adverse conclusion and made the additions.

6. The Ld. CIT(A) has concurred with the view taken by the Assessing Officer and confirmed the additions. However, so far as the quantification of additions are concerned, the Ld.CIT(A) has held that (i) the transactions pertaining to the college (in the code name of S/46/CO) is not that of the assessee and, hence, the addition cannot be made in respect of those transactions; and (ii) while making the addition, the receipts as well as the payments cannot be aggregated and only the peak investment made by the assessee is required to be taxed.

7. Against the above order of the Ld.CIT(A), the assessee has preferred the appeals for A.Ys. 2012-13 to 2017-18. At the same time, the Department has preferred an appeal against the relief given by the Ld. CIT(A) on account of quantification of addition. Such relief has been contested only in respect of A.Y. 2017-18 as in respect of other years the tax effects are low.

8. So far as the appeals filed by the assessee are concerned, it is submitted by the Ld.AR that the addition is not called for on account of the following reasons: -

(i) The assessee has been searched on 18.12.2017 and no incriminating material has been found out.

(ii) The statements of the assessee was recorded during the course of search and in the spontaneous statements recorded on 18.12.2017 and 19.12.2017, nothing adverse was found.

(iii) The documents found from the premises of the third party, i.e. Shri Nilesh Bharani cannot be relied upon in the case of the assessee as the assessee does not have any

control over the manner in which the private records of the third party is maintained.

(iv) The provisions of the Income-tax Act contained in section 132(4A)/292C of the Act provides for the presumption of the correctness of the seized document only against the person from whose possession the documents have been found out. There is no such presumption against the third party.

(v) No corroborative evidence confirming the alleged transactions have been found or brought on record.

(vi) Shri Nilesh Bharani has filed an affidavit retracting his statements made during the course of search.

(vii) The Assessing Officer has granted the cross-examination of Shri Nilesh Bharani to the assessee and during the course of such cross-examination, Shri Nilesh Bharani has unequivocally stated that he has no such transactions as alleged by the Department.

9. On the other hand, the Ld. DR heavily relied upon the order passed by the lower authorities.

10. Considered the rival submissions and material placed on record, it is observed that the Ld. CIT(A) has doubted the cross-examination of Shri Nilesh Bharani, which took place before the Assessing Officer. The Ld.CIT(A) has observed on Page No. 29 at Para No. 6.39 that the cross-examination is vague and incomplete. It was prayed before us, although the vagueness or incompleteness of the cross-examination cannot be attributed to the assessee, the Assessing Officer is required to be granted one more opportunity to properly conduct the cross examination. After examining the facts on record, both counsels agreed for sending the matters back to the file of the assessing officer without prejudice to his other arguments. The Assessing Officer will offer the cross-examination of Shri Nilesh Bharani afresh to the assessee. The issue is to be decided by the Assessing Officer after considering the cross examination proceedings as per law. At the same time all the propositions and arguments of the assessee are kept open.

11. Coming to the appeal filed by the revenue for A.Y. 2017-18, it is seen that the Ld.CIT(A) has rightly observed on Page No. 35 at Para Nos.

6.56 and 6.57 that the transactions pertaining to the college cannot be made subject-matter of addition in the hands of the assessee. The Ld.CIT(A) has also further analyzed the seized material in Para Nos. 6.59 to 6.62 on Page No. 36 and came to a correct conclusion in Para Nos. 6.63 to 6.66 on Page nos. 37 to 40 that receipts and payments cannot be taxed in aggregate and only the peak investment needs to be taxed. The Ld.DR could not point out any error in the detailed analysis and observations of the Ld.CIT(A) in the above referred paras. In light of the above, the findings of the Ld.CIT(A) are upheld and the appeal of the Department is dismissed and appeals of the assessee are allowed for statistical purpose.

12. Since the issue involved in the appeals filed by the assessee would be reconsidered by the Assessing Officer, he is directed to decide the fate of the additions after giving opportunity of hearing to the assessee and as per law. He will also keep in mind the finding of the Ld.CIT(A) on the issue of quantification of addition and the Assessing Officer is directed to consider the findings and principles adopted by the Ld.CIT(A) while framing the set-aside assessment that is to say that (i) the transactions pertaining to the college needs to be ignored and (ii) the peak investment worked out in Para No. 6.65 on Page Nos. 38 and 39 of the Ld.CIT(A)'s

order is to be followed. Therefore, only issues raised by the assessee in their appeal are remanded to the file of the Assessing Officer.

13. In the result, appeals filed by the assessee are allowed for statistical purpose and appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 27th September, 2022

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER
Mumbai / Dated 27.09.2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum