

**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. 7218/MUM/2019
Assessment Year: 2011-2012**

&

**ITA No. 7219/MUM/2019
Assessment Year: 2013-2014**

&

**ITA No. 616/MUM/2021
Assessment Year: 2014-2015**

Shri Hitendra C Ghadia,
1702, Millennium Grand
Cooperative Housing Society,
Sector 11, Kharghar,
Opposite Nimisha Hospital,
Navi Mumbai-410 210.

PAN No. AALPG 1399 M

Appellant

Vs.

DCIT Central Circle-1(1),
9th floor, Pratishtha
Bhavan, Old CGO
Annexe, Maharshi Karve
Road,
Mumbai-400020.

Respondent

Assessee by : Ms. Hiral Sejpal a/w
Mr. Sarthak Kumardas,
Revenue by : Mr. Rakesh Ranjan, CIT-DR
Date of Hearing : 01/11/2022
Date of pronouncement : 30/11/2022



PER OM PRAKASH KANT, AM

These appeals by the assessee are directed against a common order dated 12/09/2019 passed by the Ld. Commissioner of Income-tax (Appeals)-47, Mumbai [in short the Ld. CIT(A)] for assessment year 2011-12 , 2013-14 and 2014-15 respectively. These appeals being connected with the same assessee, were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. First of all, we take up the appeal of the assessee in ITA No. 7218/Mum/2019 for assessment year 2011-12. The grounds raised by the assessee are reproduced as under:

“Ground No. 1:

1. *On the facts and circumstances of the case and in law, the Hon’ble Commissioner of Income Tax (Appeals)-47 Mumbai [‘the CIT(A)], erred in upholding the additions made by the Deputy Commissioner of Income Tax, Central Circle -1(1) (‘the AO’) without considering the fact that no relevant incriminating material or evidence was found or seized during the search undisclosed income of the Appellant in respect of the alleged investment of Rs. 25,00,000.*



2. *The Appellant prays that the order be considered illegal, void and bad in law and be quashed and the addition be deleted.*

Without Prejudice to the aforesaid ground

Ground No. 2

1. *On the facts and circumstances of the case and in law, the Hon'ble CIT(A), erred in upholding the additions made by the AO amounting to Rs. 25,00,000/- u/s. 69A of the Act in respect of alleged payments made for purchase of immovable property by invoking the presumptions u/s. 292C of the Act, without appreciating the other circumstantial evidences submitted.*
2. *The Appellant prays that the AO be directed to delete the aforesaid additions amounting to Rs. 25,00,000/-*

Ground No. 3

The appellant craves leave to add to, alter any/ or amend the foregoing grounds of appeal.”

3. Briefly stated facts of the case are that the assessee, an individual, was engaged in the business of civil construction, deriving income from house property, business, capital gain and other sources. A search and seizure action under section 132(1) of the Income-tax Act, 1961 (in short 'the Act'), was carried out by the Investigation Wing of the Income Tax Department, Mumbai at premises of the assessee on 28/01/2015. Consequently, 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 06/07/2016 declaring total income at Rs.11,06,293/-. The assessment under section 143(3) read with section 153A of the Act was completed on 27/12/2016 after making various addition/disallowances. On further appeal, the Ld. CIT(A) allowed part relief. Aggrieved with the additions sustained by the Ld. CIT(A), the assessee is in appeal before the Tribunal, raising the grounds as reproduced above.

4. Before us, the learned counsel of the assessee filed a factual paper book containing pages 1 to 90. The learned counsel also filed a paperbook containing additional evidences along with petition dated 04/06/2021 for admission of those additional evidences. The learned counsel also filed compilation of decisions relied upon.

5. The ground No. 1 of the appeal relates to the addition of Rs.25 lakh made by the Assessing Officer in relation to investment for purchase of a plot of land at Panvel, near Mumbai.

6. The facts in brief, qua the issue in dispute are that in the search action carried out at the premises of the assessee, receipts of



payment including cash as well as cheque were found and seized, which have been inventorized during search as Page No. 2 to 10 of document Bundle No. 5. These documents contain receipts of Rs.25 lakh in cash issued by 'Bhoir' family Members against plot No. 59, sector -5, Karanjade, Panvel. The other document seized in same bundle at page No. 30 to 60, are the copies of allotment same plot of land (hereinafter shall be referred as the plot) to 'Bhoir' family by the "City and Industrial Development Corporation" (CIDCO), Maharashtra. During the course of the assessment proceedings, the Assessing Officer asked the assessee to explain source of the cash payment. It was explained by the assessee that said plot had been purchased in name of 'Hitendra Ghadia & Sons HUF' of which he is the Karta and not by him in his personal capacity. The assessee denied having made any payment prior to 11th Nov., 2010. The assessee contended that the prior payments reflected in the receipt are from M/s KGN builders to the 'Bhoir' Family. He further submitted that the seized documents include a Tripartite agreement dated 11th Nov. 2010 for purchase of this plot, wherein Bhoir family were the assigners/Vendors, M/s KGN Builders and developers



(KGN) was a confirming party and Hitendra Ghadia & Sons HUF through its Karta (i.e. the assessee) was the assignee/ Purchaser.

7. The Assessing Officer and the Ld. CIT(A) are of the view that cheque payments of Rs.50,000/- (seized page No. 61) and Rs.1,50,000/- (seized page No. 62) are appearing in the books of accounts of the assessee therefore, cash payment is also presumed to have been made by the assessee to Bhor family and no source of which has been explained by the assessee, therefore, same was held as unexplained investment of the assessee.

8. We have heard rival submission of the parties and perused the relevant material on record.

8.1 Before us the learned counsel of the assessee has filed additional evidence and submitted that initially M/s KGN agreed to purchase this plot from Bhor family and made payments by cheques as well as by cash (including the cash receipt under reference). She further referred to 12 cheques from m/s KGN in favour of Bhoir family including the cheques receipts in seized document under reference. The learned counsel submitted that



Assessing Officer has added the cash payment on the presumption that cheque receipt of Rs.1.5 lakh bearing Ch no. 041215 dated 15/09/2010 of IDBI Bank (seized docuemrnt No. 62) and Rs. 5.00 Lakhs bearing Cheque No. 041218 of IDBI dated 29/10/2010 (seized document No. 69) are recorded in the books of accounts of the assessee and held that since the seized cheque receipts are duly recorded in the books of accounts of the assessee which are found to be for actual transaction, the natural corrolary is that the cash receipt are also actual payment. But the learned counsel of the assessee submitted that above-mentioned cheques were issued by KGN and appearing in their books of account and not in the books on account of the assessee or his HUF. In view of these additional evidences filed, the learned counsel submitted that issue might be restored to the file of the Assessing Officer. Before us the assessee has filed following additional evidences:

Sr. No.	Particulars	Pg. No.
	As regards Ground No. 2	
1.	Copy of Balance Sheet for AY 2011-12 of Hitendra Ghadia & Sons (HUF)	1-3
2.	Copy of Bank Statement for AY 2011-12 of Hitendra Ghadia & Sons (HUF)	4-6
3.	Copies of 12 cheques from M/s KGN Builders and Developers in favour of Bhoir Family	7-18



4.	Copies of 4 pay orders from Hitendra Ghadia & Sons (HUF) in favour of Bhoir Family	19-20
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8.2 Prime facie, on test check, we have found cheques mentioned in the receipts matching with photocopy of cheques issued by KGN, which have been filed as additional evidence, but same need proper and detailed verification by the Assessing Officer.

8.3 We find that in view of receipts of cash payment found from the premises of the assessee, the Assessing Officer invoked section 132(4A) read with section 292C of the Act and held that because those receipt of cash payments were found in possession of the assessee therefore it was presumed that those belongs to the assessee and contents thereon are true. This presumption u/s 132(4A) is rebuttable presumption, but before lower authorities, the assessee did not attempt to rebut the same. For the first time before us, the assessee has filed additional evidence to rebut that those receipts of cash payments pertain to other person and attempted to subsatntite also.

8.4 In view of the above facts and circumstances, we feel it appropriate to admit these additional evidences and restore this



issue of addition of Rs.25 lakh paid as cash against the plot to, the file of the Ld. Assessing Officer for deciding afresh. The assessee is directed to file copy of the original evidences before the Assessing Officer and will be at liberty to file any other evidence. If required for verification by the Assessing Officer, the assessee shall produce the principal officer of KGN and members of Bhoir family for verification of the facts of the claim of the assessee that those cash payments were made by the KGN. The assessee may also produce books of account of KGN for verification. The Assessing Officer is at liberty to carry out the inquiries which deemed fit in the facts and circumstances of the case for verification of the original evidences filed by the assessee. The ground No. 1 of the appeal of the assessee is accordingly allowed for statistical purposes.

9. The ground No. 2 of the appeal of the assessee is connected with the addition of Rs.25 lakh, which we have adjudicated in ground No. 1 of the appeal of the assessee. So no separate adjudication of ground No. 2 is required.



10. Now, we take up the appeal of the assessee for AY 2013-14.

The grounds raised by the assessee are reproduced as under:

“Ground No.1

1. *On the facts and circumstances of the case and in law, the Hon’ble Commissioner of Income Tax (Appeals)-47 Mumbai [‘the CIT(A)], erred in upholding the additions made by the Deputy Commissioner of Income Tax, Central Circle – 1(1) (‘the AO’) respect of the loans taken amounting to Rs. Rs. 19,82,000/- u/s. 68 of the Income Tax Act, 1961 (‘the Act’) without providing an opportunity to cross-examine.*
2. *The Appellant prays that the AO be directed to delete the aforesaid additions amounting to Rs. 19,82,000/-.”*

11. Before us, the assessee has also raised additional ground which is reproduced as under:

“Additional Ground No. 1 - Additions made without considering the fact that no relevant incriminating material or evidence was found or seized during the search in respect of unsecured loans.”

12. The facts qua, the issue in dispute are that in the assessment order passed under section 153A read with section 143(3) of the Act addition of Rs.19,82,000/- has been made for holding the unsecured loans of Rs.9,72,000/- from Sh Rajesh Munjapara and



Rs.10,10,000/- from Sh Ketan Munjapara as unexplained cash credit.

13. The Assessing Officer has referred to bank account statement of Sh. Rajesh Munjapara (HUF) and his statement recorded in the course of the survey which was carried out as part of the search proceeding on 'Millenium Group' including the assessee. For ready reference, said statement is reproduced by the Assessing Officer, is extracted as under:

“59.2 The facts are that during the course of the survey operation u/s. 133A of the Act in the case of M/s Millenium Corporation, a statement of Shri Rajesh Munjapara, was recorded u/s. 131 of the Act. The said statement is incriminating in nature and hence the relevant portion of the same is reproduced as under:

“Q.4 You have a saving bank account bearing no. 35640 in Abhyuday Cooperative Bank Ltd, CBD Belapur branch. It is seen that there are numerous transactions in this bank account, since 20.06.2012 to 07.01.2014. It is seen that you have received a Cheque of Rs. 8 Lakh for Millennium Icon and there are cash deposits of Rs. 1,49,000/- further, the amount of Rs. 9,47,050/- is transferred of M/s. B M Buildcon and after multiple transanctions it is seen that Rs. 9.72 Lakh was paid to Shi Hitendra Ghadia. Further on 06.01.2014 there is



receipt of Rs. 1,99,725/- as gift and Rs. 3.69 lakh has been received on account of interior work of flat 1702 in Millennium Icon and ultimately all the deposits in the bank account are transferred to Shri Hitendra Gadia. Please explain the details of the transactions with Millenium Corporation and with Hitendra Ghadia. Also provide the details of any work done by you for the Millennium Corporation or her sister concerns. Have you given any unsecured loan to any of the above mentioned persons?

Ans. I know the bank account Abhyudaya Bank. I have not done any work for Millenium Icon. I don't know the transactions in the bak account no: 354540. I gave pre-singed cheques to Shi Kishor Kumar Ghadia. He only operated this bank account and I am not known any of the entry in the bank account. I have not deposited any cash in this account. I have done a small work of furniture in flat no. 1702 for Shri Kishor Kumar Ghadia for Rs. 2.5 lakh approximately. He has not paid any amount to me till date for this work also. I don't know any gift received to me and I have not deposited any gift in this bank account. This deposit must be done by Shri Kishor Ghadia. I have not given any loan or any payment to the persons said by you in the question or any other related party of them. I have also not received anything from them.

Q.6 It is seen that there is saving bank account of your brother Shri Ketan Munjapara bearing account number 35639 and similar transactions are seen in this bank account also. Whether your brother anytime stayed here and done any



work for Millennium or Ghadia family or any sister concern of them? Did he received any payment to them?

Ans. As per my information he has not worked for any of this concern or person. He stayed here for 3 years from 2010 to 2013. Now he stays in Indore and doing some service. I talked with him on phone and he told that I don't know any transactions in the bank account and he has not given or received any payment from these persons or concerns."

13. Thus in the statement Sh Rajesh Munjapara admitted that he was unaware of the transaction in the bank account No. 35640 of his HUF and had given pre-signed cheques to sh Kishor Ghadia. He even further admitted that he was unaware of the deposits made in the said bank account and same might have been done by Sh Kihore Ghadia. He also talked to his brother Ketan Munjapa and confirmed same thing about account of his brother. Though the assessee submitted confirmation of loan from Sh Rajesh Munjapara and Ketan Munjapara along with the acknowledgement of income tax return, computation of income and bank statement, the Assessing Officer rejected the same and held that genuineness of the transaction and creditworthiness of the lenders were not satisfactory. The Ld. CIT(A) observed return of income of both the



unsecured loan parties and concluded parties do not have any substantial source of income to offer a loan of this amount to the assessee, therefore he upheld the addition of unexplained cash credit made by the Assessing Officer.

14. Before us the learned counsel of the assessee has filed a factual paperbook containing pages (1 to 12) and petition admitting for additional evidence along with additional evidence paperbook containing pages (1 to 21). The learned counsel also filed compilation of the decisions relied upon.

14.1 Before us the learned counsel of the assessee submitted that statement by Sh Rajesh Munjapara before the Income-tax Authorities was given under coercion and undue pressure and for substantiating, the same, the learned counsel has filed an affidavit from Sh Rajesh Munjapara to the effect that statement before the authorities was given under pressure. The learned counsel submitted that the statement was recorded under coercion and pressure apparently due to following reasons:



“7.6.1.1. In his statement on oath, Rajesh Munjapara at question 3 mentioned that he did not file return of income because his income is below taxable limit. However, it is submitted that Rajesh Munjapara has been filing his return of income as against mentioned in the statement erroneously and to substantiate the same, the last return which was filed by him before the date of statement recorded on 29.01.2015 was for AY 2012-13 dated 27.02.2014 (Acknowledgement of the said return is submitted at page no. 19 of additional evidence paper book.

7.6.1.2. Further, Rajesh Munjapara stated that he had given pre-signed cheques to Kishor Ghadia, however in the course of search proceedings which included Mr. Kishor Ghadia, there were no pre-signed cheques found at his residence or his place of work.

7.6.1.3. Further, Mr. Rajesh Munjapara erroneously at response no.4 mentioned that he has not given any loan or any payment to the person as mentioned in the question. However, it is submitted that the question included the loan transaction with M/s. B&M buildcon of Rs. 9,47,000, the confirmation of which is submitted at pg. no.20 of additional evidence paper book signed by Mr. Rajesh Munjapara.”

15. The learned counsel submitted that the Assessing Officer and Ld. CIT(A) have solely relied on the statement of Rajesh Munjapara while deciding the issue in dispute but it is settled law that a statement on the stand-alone basis cannot be equated with



incriminating material so as to enable to make the addition. The learned counsel in support of her contention relied on the decision of the Co-ordinate Bench of Tribunal in the case of **DCIT Vs Manoj Desai in ITA No. 6301/Mum/2018 dated 7/12/2020.**

15.1 Further, she referred to additional ground and submitted that presence of incriminating material discovered in the the course of search is a sine qua non for addition/disallowance in respect of the unabated assessment. In support, she relied on the decision of the Hon'ble Supreme Court in the case of **PCIT Vs Meeta Gutgatia (2018) 96 taxmann.com 468 (SC).**

15.2 Further, she referred to various pages of the additional evidence paperbook and submitted that source of loans given to the assessee was duly justified. The relevant submissions of learned counsel are reproduced as under:

“7.11It is further submitted that Rajesh Munjapara was a labour contractor and for the year under consideration, his HUF had given loan to M/s. B & M Buildcon of Rs. 9,47,000 (Loan confirmation attached at pg. no. 20 of additional evidence paper book is enclosed) for his work done for Snehlata Choudhary for Rs. 8,00,000 and other receipts. The



same is duly reflected in the bank statement of his HUF attached at pg.no 15-16 of the additional evidence paper book. The confirmation from Rajesh Munjapara that he had done work for Snehlata Choudhary is also attached at pg.no. 14 of additional evidence paper book. From the repayment of the said loan from M/s. B&M Buildcon along with interest aggregating to Rs.9,71,258 duly reflected in the bank statement and computation of income (interest component) of his HUF, his HUF had advance loan to the Appellant of Rs. 9,72,000, thereby proving the creditworthiness of the lender. These were the sources of funds from which loan was advanced to the Appellant.

7.12 Similarly, Ketan Munajapara was a contractor and for the year under consideration, his HUF had given loan to M/s. B & M Buildcon of Rs. 9,90,000 (Loan confirmation attached at pg.no 21 of additional evidence paper book) from his work done for the Appellant as mentioned above in Para 1.7 with supporting evidences of Rs. 9,07,200 and other receipts duly reflected in the bank statement of his HUF attached at pg.no 11-12 of the additional evidence paper book. From the repayment of the said loan from M/s. B & M Buildcon along with interest aggregating to rs. 10,10,831 duly reflected in the bank statement and computation of income (interest component) of his HUF, had advance loan to the Appellant of Rs. 10,10,000, thereby proving the creditworthiness of the lender. These were the sources of funds from which loan was advanced to the Appellant.



7.13 Also, Ketan Munjapara has actually carried out RCC work of row house of the Appellant situated at Plot No. E-109, Sector-12, Kharghar, Navi Mumbai and also done interior work of flat jointly owned by Ilaben and Kishor Ghadia situated at 1702, Millenium Icon, Sector 15, Kharghar, Navi Mumbai. To substantiate the same, copies of invoices raised by him on the Appellant and Ilaben/ Kishor Ghadia along with the confirmation of Ketan Munjapra that he has done the work of the Appellant and Ilaben/ Kishor Ghadia are submitted at pg.no 7-10 of additional evidence paper book. Further, the payment of Rs. 9,07,200 made by the Appellant for the said RCC work was received by Ketan Munjapara which can be seen from the bank statement submitted at pg.no.11-12 of the additional evidence paper book.”

15.3 The learned counsel also submitted bank statement of M/s B & M Buildcone as part of additional evidence.

16. The learned DR on the other hand objected for admission of the additional evidence including the affidavit of sh Rajesh Munjapara retracting from his statement. He submitted that retraction after long period shows that now he has been pressurised by the assessee to retract from his earlier statement. He submitted that no evidence of any pressure or coercion by the Income-tax authorities during recording his statement had been brought on



record and the the assessee is making bald allegations without any supporting evidences.

17. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The additional ground of the assessee being purely of legal nature admitted for adjudication in view of settled principle of law.

17.1 As far as the additional ground of the appeal of the assessee that without any incriminating material found in the course of the search, in unabated assessment no addition/disallowance could have been made, we find that during the course of the survey carried out along with the search proceeding, Sh Rajesh Munjapara was asked regarding entries of deposits in the bank account of his HUF, wherein he admitted that he was not aware about the deposits and blank cheque of said bank account were handed over to Sh Kishore Ghadia. In such circumstances it is not the only statement of Sh Rajesh Munjapara has been relied upon for making assessment, but the relevant bank account entries of which were not explained, was clearly in the nature of incriminating material



found during the course of the search, and therefore the decision of Hon'ble Supreme Court in the case of Meeta Gutgutia (supra) relied upon by the learned counsel of the assessee is not applicable over the facts of the instant case. Accordingly the additional ground raised by the learned counsel of the assessee is dismissed.

18. As far as regular ground No. 1 of the appeal for not providing cross-examination of the Sh Rajesh Minjapara is concerned, we find that now the assessee himself has produced affidavit of Sh Rajesh Munjapara as additional evidence retracting his earlier statement. Detail of additional evidence filed is reproduced as under:

Sr. No.	Particulars	Pg. No.
	As regards all the Grounds	
1.	Copy of notice by the Assessing Officer to M/s Millennium Corporation dated 20.10.2016	1-2
2.	Acknowledged copy of reply submitted by M/s Millennium Corporation dated 06.12.2016	3-16
	As regards Additional Ground No. 1	
3.	Affidavit of Rajesh Munjapara retracting the statement given on oath u/s 131 (1 original to the members)	17-18
4.	Copy of acknowledgement of Return of Income of Rajesh Munjapara for AY 2012-13	19
	As regards ground No. 1	
5.	Loan Confirmation from B&M Buildcon to Rajesh Munjapara HUF	20
6.	Loan confirmation from B&M Buildcon to Ketan Munjapara HUF	21



18.1 In view of the additional evidence filed which are having impact on the merit of the addition made and therefore we feel it appropriate to admit additional evidence and restore the matter back to the file of the Ld. Assessing Officer for deciding afresh. Since now the assessee has claimed that Sh Rajesh Munjapara has retracted from his earlier statement, and therefore the onus is on the assessee to produce him before the Assessing Officer along with all necessary documents in support of his contention that his earlier statement was recorded under coercion and pressure. The assessee should also produce the witnesses in presence of whom his earlier statement during the course of the survey was recorded. The ground No. 1 of the of the appeal of the assessee is accordingly allowed for statistical purposes.

19. Now, we take up the appeal of the assessee for assessment year 2014-15. The grounds raised in the appeal are reproduced as under:

“Ground No. 1

1.1 *On the facts and circumstances of the case and in law, the Hon’ble Commissioner of Income Tax (Appeals)-47 [“the CIT(A)],*



erred in upholding the additions made by the Deputy Commissioner of Income Tax, Central Circle – 1(1)(‘the AO’) amounting to Rs. 22,47,000/- u/s 68 of the Income Tax Act, 1961 (‘the Act’) in respect of the unsecured loans taken alleging that the creditworthiness of the lenders was not established.

1.2 The CIT(A) erred in –

- Disregarding the factual and legal submissions made by the appellant at the time of appeal;
- Not making any further investigation with respect to the claim; and
- Verifying the source of source of the lenders.

1.3 The Appellant therefore prays that the AO be directed to delete the aforesaid additions amounting to Rs. 22,47,000/-.

Ground No. 2:

The Appellant craves leave to add to , alter any/or amend the foregoing grounds of appeal.”

20. The brief facts qua the ground are that the Assessing Officer made addition of Rs.28,28,000/- treating the unsecured loans received from various parties as unexplained cash credit in terms of section 68 of the Act. The relevant finding of the Assessing Officer in respect of each unsecured loan party is reproduced as under:

“4.2.1 **Bharat Dholariaya (HUF) : Rs. 2,00,000/-**

The assessee has filed copy of bank statement of the lender which reveal that there is a cash deposit of Rs.



100000/- each on 16.01.2014 & 18.01.2014 respectively. Out of which a loan of Rs. 200000/- is given to the assessee on 20.01.2014. The source of these cash deposits is not explained.

4.2.2 **Divyesh Vagasiya : Rs. 5,78,000/-**

The assessee has furnished a copy of bank statement of this lender which reveals a cash deposits of Rs. 49,000/-, Rs. 2,00,000/- & 150000 on 06.09.2013, 20.12.2013 & 21.12.2013 respectively. The source of cash deposits in the lenders account is claimed to be out of sundry loans and cash receipts. However, the source of the same is not known and not duly explained.

4.2.3 **Kantibhai Dholariya HUF : Rs. 2,50,000/-**

The assessee has filed copy of bank statement of the lender which reveals that there is cash deposit of Rs. 1,00,000/- each on 16.01.2014, 17.01.2014 & 50,000/- on 17.01.2014 respectively, out of which a loan of Rs. 250000/- is given to the assessee on 20.01.2014. The source of these cash deposits ----- of the lender is not known.

4.2.4 **Rajnikant R Patodiya : RS 8,50,000/-**

The assessee has filed copy of bank statement of the lender which reveals that there is a cash deposit of Rs. 49000/- on 06.09.2013, Rs. 3,00,000/- each on 20.12.2013 & 21.12.2013 respectively, out of which a loan of Rs. 250000/- is given to the assessee on



08.09.2013, Rs, 300000/- each on 20.12.2013 & 21.12.2013 respectively. The source of these cash deposits is claimed to be out of sundry loans in the hands of the lender, but the same is not duly explained.

4.2.5 **Ramila Ravaji Patodiya : Rs. 5,50,000/-**

The assessee has filed copy of bank statement of the lender which reveals that there is a cash deposits of Rs. 49000/- on 06.09.2013 & Rs. 3,00,000/- on 20.12.2013, out of which a loan of Rs. 2,50,000/- is given to the assessee on 08.09.2013, Rs. 300000/- each on 20.12.2013. The source of these can deposits is claimed to be out of sundry loans in the hands of the lender, but the same is not duly explained.

4.2.6 **Vinubhai Gajera (HUF) : Rs.4,00,000/-**

On further appeal, the Ld. CIT(A) allowed part relief and sustained addition of the 22, 47,000/-. Aggrieved with the addition sustained, the assessee is in appeal before the tribunal by way of grounds reproduced above.”

21. Before us the learned counsel of the assessee has filed a paper book containing pages 1 to 67.

22. We have heard rival submission of the parties on the issue in dispute and perused the material on record including paperbook



filed by the assessee. The additional in respect of each party is discussed below:

1. Mr Bharat Dhalaria :

22.1 The Assessing Officer made addition of Rs.2 lakh, which was shown by the assessee as unsecured loan from Mr Bharat Dhalaria. The assessee filed ledger confirmation from the party, acknowledgement of return of income and computation of income of said party, which are available on page 19 to 21 paperbook. The learned counsel also referred to bank statement and copy of 7/12 extract (i.e. land revenue records showing crop on agriculture land), which are available on page 37 to 39 of the paperbook. The learned counsel also submitted that addition in the case of Mrs Ushaben Ghadia amounting to Rs.14 lakh for assessment year 2014-15, with respect to the unsecured loan given by Bharat Dhalaria (HUF) has been deleted by the Tribunal in order dated 23/03/2022.

22.2 The learned DR on the other hand submitted that before the Ld. CIT(A) no evidence of sale of agricultural produce and surplus income in the hands of Sh Bharat Dhalaria was explained. He



further submitted that in the case of the assessee, immediately before issuing loan of Rs.2 lakh to the assessee on 21/01/2014, there is a cash deposit of Rs. 1 lakh on 16/01/2014 and another cash deposit of Rs. 1 lakh on 18/01/2014 and source of which has not been explained from the income tax returns or financial statements of said party filed by the assessee, and therefore the Ld. CIT(A) is justified in upholding the addition of rupee two lakhs.

22.3 We find that the Ld. CIT(A) upheld the addition observing as under:

“14.0 I have considered the facts of the case, submission of the Appellant, the observations of the AO contained in the assessment order and the other materials on record on this issue. Ground No. 4 deals with the addition of Rs. 2 lakhs made by the AO as unexplained loan received from Shri Bharat Dholariya. While completing the assessment the AO observed that cash of Rs. 1 lakh each was deposited on 16.1.2014 and therefore the AO treated this amount as unexplained. In the appellate proceedings the assessee however argued that Shri Bharat Dholariya was earning agricultural income and own some land in respect of 7/12th extract regarding loan ownership was also filed. The assessee accordingly argued that this loan should be treated as explained.



14.1 *I have considered the arguments of the assessee and do not agree with the same. Firstly Shri Bharat Dholariya is not being assessed to tax and therefore sources of income are never disclosed to the Department. Further it is not clear as to how much agricultural income did Shri Bharat Dholariya earned during the relevant period and whether he could have had surplus cash of Rs. 2 lakhs in his hands, as on the date of deposits, after meeting his own expenses, since neither the sources of income has been separately explained nor the availability of cash in the hands of the cash credit is established nor the loan creditor is being assessed to tax therefore, I am not in a position to give any relief to the assessee in this regard and the addition made by the AO is upheld.”*

22.4 In view of cash deposits appearing in the bank account of unsecured loan party immediately before issuing loan to the assessee, the onus was on the assessee to explain whether such cash deposits in the hands of said party was a part of taxable receipt or other explained receipt, but the assessee failed to justify the source of such deposits in the hands of said unsecured loan party immediately before issuing loan to the assessee. In view of failure to explain the source of cash deposits, availability of agricultural income in the hands of said party also cannot justify



genuineness of the transaction and creditworthiness. As far as, reliance placed by the assessee on the decision of the Tribunal in ITA No. 618/Mum/2021 is concerned, we find that there is no reference of deletion of any such loan given by Bharat Dhalria (HUF) to Ushaben Ghadia, in said order and therefore reliance placed on the said decision is misplaced. For ready reference, the ground of appeal reproduced by the Tribunal (supra) are extracted as under:

“Grounds of appeal read as under:-

Ground No. 1

1.1 On the facts and circumstances of the case and in law, the Hon’ble Commissioner of Income Tax (Appeals)-47 Mumbai [‘the CIT(A)’], erred in upholding the additions made by the Deputy Commissioner of Income Tax, Central Circle-1(1)(‘the AO’) amounting to Rs. 1,99,725/- u/s. 68 of the Income Tax Act, 1961 (‘the Act’) in respect of the gifts received from Haribhat Vekariya alleging that the creditworthiness of the lender was not established.

1.2 The CIT (A) erred in _

- Disregarding the factual and legal submissions made by the appellant at the time of appeal;*
- Not making any further investigation with respect to the claim; and*
- Verifying the source of source of the lender.*



1.3 The Appellant therefore prays that the AO be directed to delete the aforesaid additions amounting to Rs. 1,99,725/-.

Ground No. 2:

2.1 On the facts and circumstances of the case and law, the CIT(A) erred in disallowing the deduction claimed u/s. 80C on account of tuition fees paid amounting to Rs. 75,539/-

2.2 The appellant prays that such disallowance of deduction made be allowed.”

22.5 In view of above, we uphold the addition made by the Assessing Officer and sustained by the Ld. CIT(A) in respect of unsecured loan of Rs. 2 lakh from Sh Bharat Dhalaria.

1. Divyesh Vagasia Rs. Rs. 3,99,000/-.

22.6 The Assessing Officer added unsecured loan of Rs.5,78,000/- received from the party. The Ld. CIT(A) after considering submission of the assessee restricted the addition to the extent of cash deposited in the bank account of said party. The relevant finding of the Ld. CIT(A) is reproduced as under:

“18.0 I have considered the facts of the case, submissions of the Appellant, the observations of the AO contained in the assessment order and the other materials on record on this issue. In ground no. 5 the assessee has disputed the addition of Rs. 5,78,000/- as unexplained loan u/s. 68. While



completing the assessment the AO observed that cash of Rs. 49,000/-, Rs. 2,00,000/- and Rs. 1,50,000/- was deposited in the bank accounts of the loan creditor as on 06.09.2013, 20.12.2013 and 21.12.2013, out of which loan of Rs. 5,78,000/- has been give. The AO therefore treated the loan as unexplained cash credits.

- 18.1 During the appellate proceedings the assessee argued that Shri Divyesh Vagasiya has given loan to several persons in the past where from this loan was received back in cash was deposited in the bank account and out of the sum loan cheque has been issued to the present assessee. However, no evidence in this regard could be furnished by the assessee. Even otherwise giving cash loan and received back of the same is in violation of Section 269Ss and 269T of Income Tax Act. Besides the assessee also argued that this amount is repaid in the same year however the same is not material as far as addition made by the AO u/s. 68 is Diveysh Vagaisya is Rs. 5,78,000/- while cash deposited in the bank account is only Rs. 3,99,000/-. Therefore out of addition of Rs. 5,78,000/-, a sum of Rs. 3,99,000/- is upheld and remaining amount of Rs. 1,79,000/- is directed to be deleted.”

22.7 The learned counsel of the assessee referred to ledger confirmation, acknowledgement of return of income and computation of the income available on paperbook page 22 to 24. She also referred to bank statement of said party and extract of 7/12 statement, available on page 40 and 41 of the paperbook. The



learned counsel submitted that no addition has been made in the case of B &M Builcone for assessment year 2014-15 with respect to the unsecured loan given by Mr. Divesh Vaghasia.

22.8 The learned DR on the other hand relied on the order of the lower authorities and submitted that the Ld. CIT(A) has fairly restricted the addition to the extent of cash deposit in the bank account of said party.

22.9 On persusal of bank statement of said party available on page 40 of the paperbook, we find that there are cash deposits of Rs.49,000; Rs.2,00,000/-; and Rs.1,50,000/- in the bank accounts of said party on 06/09/2013; 28/12/2013 and 21/12/2013, out of which loan of Rs.5,78,000/- has been given. The assessee has failed to correlate these fixed deposits with any of the receipt or loans in the financial statement of said party and therefore failed to justify creditworthiness/genuineness of the transaction. In the circumstances, we do not find any error in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we uphold the same.



22.10 Similar observations have been made by the Ld. CIT(A) in respect of unsecured loans from other parties namely Sh Kantibhai Dholarai (Rs.2,50,000/-) ; Sh Rajnikant R Patodiya (Rs.6,49,000/-) Smt Ramila R Patodiya (Rs.3,49,000/-) shVBinubhaiGajera (Rs. 4,00,000/-). The Ld. CIT(A) sustained the addition to the extent of cash deposits in the bank account of relevant unsecured loan party. In view of our finding in respect of first two unsecured loan parties, we uphold the finding of the Ld. CIT(A) in respect of the other unsecured loan party being identical facts and circumstances. Before us the learned counsel of the assessee also argued that in case of some parties loan amount was repaid in the same year therefore no addition should have been made. This argument of the assessee has already been rejected by the Ld. CIT(A) and we concur with the said finding of the Ld. CIT(A) as onus is on the assessee to explain the nature and source of the credit appearing in his books of accounts and return of the said amount is not relevant as far as the provision of section 68 of the Act is concerned.

22.11 In view of our discussion, the sole ground of appeal of the assessee is dismissed.



23 In the result, the appeals of the assessee for assessment year 2011-12 and 2013-14 are allowed party for statistical purposes, whereas the appeal of the assessee for assessment year 2014-15 is dismissed.

**Order pronounced under Rule 34(4) of the ITAT Rules,
1963 on 30/11/2022.**

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

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

Mumbai;
Dated: 30/11/2022
Dragon Legal/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