

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH  
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&  
SMT. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.2396/Mum/2015 to 2399/Mum/2015  
(Assessment Year :2006-07 to 2009-10)**

M/s. Infinity Industries Pvt. Ltd. 1 <sup>st</sup> Floor, Haroon House 294, Perin Nariman Street Opp. RBI Fort, Mumbai – 400 001	Vs.	DCIT, CC 2(2) Mumbai (Earlier known as DCIT, CC-12 Mumbai)
<b>PAN/GIR No.AAACI8002P</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**ITA No.2927/Mum/2015 to 2933/Mum/2015  
(Assessment Year :2004-05 to 2010-11)**

DCIT, CC 2(2) Mumbai Room No.804, 8 <sup>th</sup> Floor Old CGO Annexe Building M.K.Road Mumbai – 400 020	Vs.	M/s. Infinity Industries Pvt. Ltd. 1 <sup>st</sup> Floor, Haroon House 294, Perin Nariman Street Opp. RBI Fort, Mumbai – 400 001
<b>PAN/GIR No.AAACI8002P</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Tejveer Singh & Ms. Manisha Rawat
Revenue by	Shri Manish Sareen
<b>Date of Hearing</b>	<b>14/11/2022</b>
<b>Date of Pronouncement</b>	<b>23/12/2022</b>

**आदेश / ORDER****PER M. BALAGANESH (A.M):****ITA Nos.2396/Mum/2015 to 2399/Mum/2015 (A.Y.2006-07 to 2009-10) Assessee Appeal**

These appeals in ITA Nos. 2396/Mum/2015 to 2399/Mum/2015 for A.Y.2006-07 to 2009-10 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-48, Mumbai in appeal No.CIT(A)-48/I.T.145/DCCC-12/2013-14, CIT(A)-48/I.T.146/DCCC-12/2013-14, CIT(A)-48/I.T.147/DCCC-12/2013-14 & CIT(A)-48/I.T.148/DCCC-12/2013-14 respectively dated 02/03/2015 (Id. CIT(A) in short) against the order of assessment passed u/s.144 r.w.s. 153A of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 28/03/2013 by the Id. Dy. Commissioner of Income Tax, Central Circle-12, Mumbai (hereinafter referred to as Id. AO).

**ITA No.2927/Mum/2015 to 2933/Mum/2022 (A.Y.2004-05 to 2010-11) Revenue Appeal**

These appeals in ITA Nos. 2927/Mum/2015 to 2933/Mum/2022 for A.Y.2004-05 to 2010-11 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-48, Mumbai in appeal No. CIT(A)-48/I.T.143/DCCC-12/2013-14, CIT(A)-48/I.T.144/DCCC-12/2013-14, CIT(A)-48/I.T.145/DCCC-12/2013-14, CIT(A)-48/I.T.146/DCCC-12/2013-14, CIT(A)-48/I.T.147/DCCC-12/2013-14, CIT(A)-48/I.T.148/DCCC-12/2013-14 & CIT(A)-48/I.T.149/DCCC-12/2013-14 respectively dated 02/03/2015 (Id. CIT(A) in short) against the order of assessment passed u/s.144 r.w.s. 153A of the Income Tax Act, 1961 (hereinafter referred to

as Act) dated 28/03/2013 by the Id. Dy. Commissioner of Income Tax, Central Circle-12, Mumbai (hereinafter referred to as Id. AO).

**ITA No.2397/Mum/2015 (Assessee Appeal) A.Y.2007-08 & ITA  
No.2930/Mum/2015 (Revenue Appeal) A.Y.2007-08**

With the consent of both the parties, the cross appeals for A.Y.2007-08 are taken up first.

2. The assessee has raised the following grounds of appeal for A.Y.2007-08:-

*1. On the facts and circumstances of the appellant's case and in law the Ld. CIT(A) erred in confirming the action of Ld. A.O. in passing the assessment order by invoking the provisions of Sec. 144 of the Income Tax Act, 1961 as per the ground/s contained in the appellate order or otherwise.*

*2. On the facts and circumstances of the appellant's case and in law the Ld. CIT(A) erred in confirming the action of Ld. A.O. in rejecting the book results u/s 145(3) of the Act as per the ground/s contained in the appellate order or otherwise.*

*3. On the facts and circumstances of the appellant's case and in law the Ld. CIT(A) erred in confirming the disallowance to the extent of Rs.1,41,22,730/- being 15% of the total purchases of Rs.9,41,51,523/- made by AO as per the ground/s contained in the appellate order or otherwise.*

*4. The Appellant crave leaves to add, amend, alter, modify and or withdraw any of the above grounds of appeal, which are without prejudice to one another.*

*The appellant prays this Hon'ble Tribunal to delete the addition made by the Ld. A.O and confirmed by the Ld. CIT(A) and/or allow the appropriate relief admissible under the Act.*

2.1. The Revenue has raised the following grounds of appeal for A.Y.2007-08:-

*(1) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the disallowance to 15% as against 100% of bogus purchases from Bright Global Paper Private Limited without appreciating the fact that the trail of cash was established in this case by completing the circle of transactions between Bright Global Paper Private Limited withdrawal of cash from Globe Traders Private Limited and transfer the cash to promoter of Bright Global Paper Private Limited and his family members?"*

*(ii) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.4,44,55,888/- on account of estimation of G.P. 28% without appreciating the fact that assessee failed to produce documentary evidence for the purchases and business of the assessee is comparable with Shruti Arts Private Limited, as both are engaged in similar trade of paper trading and have obtained accommodation entries for purchases from Bright Global Private Limited?"*

*(iii) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.48,47,657 on account of unsecured loans without appreciating the fact that assessee has not explained the purpose of loans taken and complete information like copy of IT returns, Balance-sheet or bank statement of the lenders were not filed by the assessee to prove genuineness of transaction, identity and creditworthiness of the depositors?"*

*2. The Appellant craves leave to add, to amend and / or to alter any of the grounds of appeal, if need be.*

*3 The Appellant, therefore, prays that on the grounds stated above, the order of the CIT(A)-48, Mumbai may be set aside and that of the Assessing Officer restored.*

3. We have heard rival submissions and perused the materials available on record. The assessee is engaged in the business of dealing in papers, paper boards, inks and offset plates. A search and seizure action u/s.132 of the Act was carried out on 23/02/2010 and 20/04/2010 at the offices of Reliable Paper (India) Pvt. Ltd., and its group concerns, Mumbai wherein certain documents pertaining to the assessee were found and simultaneously action u/s.132 of the Act was carried out on the premises

of the assessee at first floor, Hariom House, 294, Perin Nariman Street, Mumbai. Pursuant to this search, notice u/s.153A of the Act was issued on the assessee on 31/01/2011. In response to this notice, return of income was filed by the assessee on 15/02/2011 declaring income of Rs.47,39,090/-.

3.1. The main issue involved in this appeal is challenging the disallowance of purchase of Rs.9,41,51,523/- made by the assessee from M/s. Bright Global Paper Pvt. Ltd. (BGPPL). The Id. AO observed that a search was conducted in the case of one Shri K.K. Gupta and concerns related to him i.e. M/s. Globe Traders Pvt. Ltd. by the Sales Tax department which revealed that the said concern was issuing bogus bills and no materials were actually supplied by them. One of the recipients of such bogus sale bill was M/s. BGPPL belonging to Salva Brothers. The Id. AO observed that it was established that BGPPL issued cheques and received back cash after deduction of commission by Shri K.K. Gupta. In other words, according to the Id. AO, cash trial was duly established with regard to the transactions that had happened between Shri K.K. Gupta and BGPPL. Since assessee herein had made purchases of papers from BGPPL, that transaction also was considered by the Id. AO as bogus. It is pertinent to note that no cash trial was established between BGPPL and assessee.

3.2. The assessee was asked to prove the veracity of the purchases made from BGPPL. The assessee furnished the relevant documents before the Id. AO. The Id. AO made independent verification by issuing notice u/s.133(6) of the Act to BGPPL. No reply was received in response to such notice. The Id. AO observed that delivery challans were not furnished by the assessee proving the movement of the goods from BGPPL to the

assessee and in view of the fact that the transaction of purchases made by BGPPL from Shri K.K. Gupta was proved to be bogus, the consequential transaction of purchase made by the assessee herein from BGPPL also had to be bogus. With these observations, the Id. AO disallowed the entire purchases in the sum of Rs.9,41,51,523/- as ingenuine in the assessment.

3.3. It is not in dispute that assessee had furnished the following documents to prove its purchases:-

- a) Details of purchases made from BGPPL
- b) Purchase invoices issued by BGPPL
- c) Copy of bank statement evidencing payments made by the assessee to BGPPL by account payee cheques
- d) Details of corresponding sales made by the assessee to third parties out of materials purchased from BGPPL
- e) Name and address of BGPPL
- f) Stock statements from 01/04/2003 to 31/03/2010 which reflects both the inward receipt of goods on purchase and outward movement of goods on sales

3.4. The assessee submitted before the Id. CIT(A) that the Id. AO had rejected the purchases made by the assessee from BGPPL on the ground that assessee could not produce the delivery challans. It was submitted that the Id. AO had not disputed the corresponding sales made by the assessee out of purchases made from BGPPL. The assessee company never admitted to have made any bogus purchases in the course of search. The cash trial was established only between Shri K.K. Gupta and BGPPL. No such cash trial was established between assessee and BGPPL.

The assessee submitted that the quantitative details containing the entire purchase of goods and sale of goods were indeed furnished before the Id. AO. Hence, the statement of Id. AO that stock register was not filed by the assessee is factually incorrect. The assessee also submitted that in the sales tax assessment framed in the hands of BGPPL, the sales made by the BGPPL to the assessee has been accepted as genuine. The assessee further submitted that BGPPL had made sales to the assessee and Miki Industries and Company Pvt. Ltd.

3.5. The Id. CIT(A) appreciated the aforesaid submissions of the assessee and concluded that –

(a) Cash trial between assessee and BGGPL was not established in the instant case.

(b) The assessee being a wholesale trader and accordingly, the corresponding sales made against purchases made from BGPPL were not doubted by the Id. AO

(c) The assessee had furnished the details of purchases and sales made by it. Accordingly, he proceeded to bring to tax only the profit element embedded in the value of such disputed purchases to tax. This profit element was estimated by the Id. CIT(A) at 15%. Aggrieved both assessee as well as Revenue are in appeal before us on this issue.

3.6. The assessee has also raised an additional ground before us stating that there is no incriminating material found during the course of search relating to this disallowance made on account of bogus purchases. This additional ground goes to the root of the matter and does not require any verification of facts. Hence, by placing reliance on the decision of the Hon'ble Supreme Court in the case of NTPC Ltd reported in 229 ITR 383, we are inclined to admit the additional ground and take up the same for adjudication.

3.7. With regard the additional ground raised by the assessee, the Id. AR placed on record the complete set of the seized material which is Annexure A-10 comprising of loose papers containing pages 1-134 found during the course of search on 23/02/2010. It is not in dispute that this is the only seized document sought to be used by the Id. AO in these appeals as incriminating document. We have gone through the entire material of Annexure A-10 comprising of pages 1-134. From the perusal of the same, we find that the said papers are nothing but purchase ledgers maintained by the assessee in the regular course of its business. In other words, the said purchase ledgers forms part of regular books of accounts maintained by the assessee. Now, a moot question arises as to whether the regular books of accounts maintained by the assessee which were found during the course of search by the search party could be construed as an incriminating material found during the course of search. In our considered opinion, the answer would be an emphatic "No". The books of accounts are regularly maintained by the assessee without knowing the fact that there is going to be a search in its premises. If the parallel books of accounts maintained by the assessee containing unaccounted transactions were found during the course of search, that would certainly become incriminating material. Whereas, the regular books of accounts which are regularly maintained by the assessee in its normal course of business cannot fall under the ambit of incriminating material found during the course of search. Our view is further fortified by the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Param Diary Limited reported in 439 ITR 89 wherein it was held that regular books of accounts of the assessee, by no stretch of imagination, could be treated as incriminating material to form basis of framing assessment u/s.143(3) r.w.s. 153A of the Act. In any case, we find that the original

return of income for the A.Y.2007-08 was filed by the assessee company on 31/10/2007 declaring total income of Rs.47,39,090/-. Subsequently, a search and seizure action u/s.132 of the Act was carried out on the assessee on 23/02/2010. Hence, as on the date of search, the assessment for A.Y.2007-08 stood already concluded and hence, becomes an unabated assessment. Hence, unless there is an incriminating material found during the course of search by the Id. AO, he cannot disturb the assessment already completed prior to the search while framing the search assessment u/s. 153A of the Act. This view is no longer res integra by the decision of the Hon'ble Jurisdictional High Court in the case of Continental Warehousing Corporation reported in 374 ITR 645. In view of the aforesaid observations and respectfully following the aforesaid judicial precedents, the additional ground raised by the assessee is allowed. Accordingly, the entire additions made in the search assessment framed u/s.144 r.w.s. 153A of the Act for the A.Y.2007-08 on 28/03/2013 would have no legs to stand.

3.8. Even on merits, we find that the only grievance of the Revenue is that the delivery challans were not furnished by the assessee to disbelieve the purchases made by the assessee from BGPPL whereas the assessee had duly furnished the complete quantitative details which is nothing but the stock register apart from other relevant documents. It is also not in dispute that the sales made by the assessee out of purchases made from BGPPL had not been doubted by the Revenue. Now, the short question that arises for our consideration is merely because delivery challans are not produced by the assessee, would that make the transaction of purchase made by the assessee invalid? Similar issue was subject matter of adjudication by the Hon'ble Jurisdictional High Court in the case of PCIT vs. Vaman International (P) Ltd. Reported in 422 ITR 520. The

substantial questions of law raised by the Revenue before the Hon'ble Jurisdictional High Court are reproduced hereunder:-

*“(A) Whether on the facts and in the circumstances of the case and in law, Tribunal was justified in holding that provisions of a 69C of the IT Act, 1961 are not applicable in case of bogus purchases or sales where the genuineness of the transaction is not explained or explanation offered by the assessee is not satisfactory and the same is to be treated as income of the assessee?”*

*“(B) Whether on the facts and in the circumstances of the case and in law. Tribunal was justified in holding that in order to prove genuineness of the said purchase transaction even though assessee did not provide any lorry receipts or delivery challans for the delivery of goods and that the same fact is established by the AO, then is it mandatory for the AO to limit himself to the more submission and other documents provided by the assessee even though the purchases are non-genuine ?”*

*“(C) Whether on the facts and in the circumstances of the case and in law, Tribunal was justified in holding that while applying the provisions of s. 69C of the IT Act, 1961, the AO was required to cause further enquiries in the matter to ascertain the genuineness or otherwise of the sham transaction?”*

3.9. In the facts of the case before the Hon'ble Jurisdictional High Court also the Id. AO had observed that assessee did not produce lorry receipts and other related documents to reflect the movement of goods sold and purchased which was crucial for determining the genuineness of the purchase transactions. In the absence thereof, the Id. AO drew the negative presumption. The Hon'ble Jurisdictional High Court after reproducing the relevant operative portion of the Tribunal order in para 17, finally observed as under:-

*17.1. Thus, from the above, it is seen that Tribunal had returned a finding of fact that the assessee had fled copies of purchase bills, copies of purchase/sale invoices, challan cum tax invoices in respect of the purchases, extracts of stock ledger showing entry/exit of the materials copies of bank statements to show that payment for such purchases were made through regular banking channels, etc., to establish the genuineness of the purchases: Tribunal held that AO could not bring on record any material evidence to show that the purchases were bogus. Mere reliance by the AD on information obtained from the ST Department or the statements of two persons made before the ST Department would not be sufficient to treat the purchases as bogus and thereafter to make addition under s. 69C of the Act. Tribunal has*

*also held that if the AO had doubted the genuineness of the purchases, it was incumbent upon the AO to have caused further enquiries in the matter to ascertain genuineness or otherwise of the transaction and to have given an opportunity to the assessee to examine/cross-examine those two parties vis-à-vis the statements made by them before the sales-tax Department. Without causing such further enquiries in respect of the purchases, it was not open to the AO to make the addition under s. 69C of the Act*

*18. We are in agreement with the view expressed by the Tribunal. In fact, Tribunal has only affirmed the finding of the first appellate authority. Thus, there is concurrent finding of fact by the two lower appellate authorities. 19. This Court in the case of CIT vs. Nikunj Eximp Enterprises (P) Ltd. (2015) 372 ITR 619 (Bom): wherein an identical fact situation arose did not interfere with the order passed by the Tribunal and held that no substantial question of law arose from such order. It was held that merely because the suppliers had not appeared before the AO, no conclusion could be arrived at that the purchases were not made by the assessee.*

*20. On thorough consideration of the matter, we do not find any error or infirmity in the view taken by the Tribunal. No substantial question of law arises therefrom. Thus, there is no merit in the appeal. Appeal is accordingly dismissed. However, there shall be no order as to costs.*

3.10. Admittedly, in the instant case before us, we find that no cash trial was established by the Revenue between assessee and BGPPL. As per the Id. CIT(A), the cash trial was established only between Shri K.K. Gupta and BGPPL. This finding of fact recorded by the Id. CIT(A) has not been controverted by the Revenue before us with cogent evidences. We find that the Id. CIT(A) had observed in page 16 para 5.4 of his order that assessee may have made purchases from grey market. We find that the Revenue had challenged this finding of the Id. CIT(A) by filing revised ground of appeal before us by stating that if purchases are made from grey market, then the provisions of Section 40A(3) of the Act would have to be invoked in the instant case. We have already deleted the entire disallowances of bogus purchases on these peculiar facts and circumstances of the instant case and by also placing reliance on the decision of the Hon'ble Jurisdictional High Court reported in 422 ITR 520 referred to supra. In any case, the Id. AO never contemplated to invoke the provisions of Section 40A(3) of the Act in the instant case. Hence, the

Id. DR before us cannot seek to improve the case of the Id. AO in the second appellate proceedings. Moreover, there is no case made out by the Id. DR that the payments to BGPPL were made by the assessee otherwise than by account payee cheques. On the contrary, the assessee had proved with its bank statements that payments to BGPPL had been indeed made by account payee cheques. Hence even on this count, the provisions of section 40A(3) of the Act on merits would not come into operation. Accordingly, the revised grounds raised by the Revenue in this regard are also dismissed. Hence, in view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, there cannot be any estimation of profit @15% embedded in the value of disputed purchases. In our considered opinion, the purchases made from BGPPL per se cannot be construed as ingenuine in the facts and circumstances of the instant case. The assessee had furnished all the relevant materials before the Id. AO. Hence, we direct the Id. AO to delete the disallowance made on account of purchases made from BGPPL. Accordingly, the ground No.3 raised by the assessee is allowed and original ground No. (i) together with revised grounds 1,2 & 3 raised by the Revenue are dismissed on merits.

4. We find that the Id. AO had rejected books of accounts purchased by the assessee and the book results thereon u/s.145(3) of the Act by observing as under:-

*“During the course of assessment proceeding based on the information available notices u/s. 133(6) and summons u/s 131 were issued to the parties whom the assessee has made purchases calling for various information from them regarding the transactions with the assessee along with the bank statements and other documentary evidences, Till date no reply has been received in compliance to the aforesaid notices u/s. 133(6) nor has any one attended in response to the summons issued to the suppliers of the assessee company. This also proves that the transactions are not genuine.*

*Since no submissions have been made by the assessee and in the absence of adequate details and information and non production of the required books of accounts the inference of estimation of income is drawn on the following reasons:*

- i) No books of accounts produced*
- ii) No stock records of inward and outward movement produced.*
- iii) No sales tax records.*
- iv) No sales tax assessment orders.*
- v) No copies of bills, lorry receipts, delivery challans, packing list were brought on record*
- vi) Non compliance of statutory inquiry called u/s 133(6) from the purchase parties.*
- vii) The assessee has not filed the VAT returns*
- viii) There are evidences of cash withdrawals against payments for the so called bogus bills.*
- ix) It is specifically established that there is no evidence of any delivery of goods as per findings in the case of K K Gupta and its related concerns. K K Gupta and concerns issued bogus sales bills to the BGPPL company, and on receipt of payments for the so called sales bills, the money has been transferred to their other entity M/s. Globe Traders Pvt. Ltd. After the amount is received in M/s. Globe Traders Pvt. Ltd. most of the amount has been withdrawn in cash or paid through cheque to the promoters of the assessee company. BGPPL has not made any purchases from the concerns of Shri. K.K. Gupta consequently the sales made by BGPPL are also bogus Therefore, sales bills issued by BGPPL to the assessee are proved to be bogus*

*Since the assessee has not filed any submission or give satisfactory explanation about the correctness or completeness of the accounts of the assessee, the books of a/cs. cannot be relied, hence the books accounts are rejected u/s 145(3) of the IT Act 1961.*

4.1. After rejecting the books of accounts of the assessee u/s.145(3) of the Act, the Id. AO by placing reliance on an information obtained from DCIT CC-14, Mumbai who pointed out that in the case of Shruti Arts Pvt. Ltd, their seized documents show gross profit of 28%. The Id. AO took Shruti Arts Pvt. Ltd. as a comparable instance and proceeded to estimate 28% of gross profit as gross profit on the disputed purchases of Rs.9,41,51,523/- made from BGPPL by the assessee herein and made a separate addition on account of gross profit. For this purpose, the Id. AO arrived at the revised gross profit of the assessee at 19% after considering the disallowance of 100% of value of purchases from BGPPL. Thereafter, the Id. AO added 9% (28%-19%) on account of gross profit

in the sum of Rs.4,44,55,888/- in the assessment. We find from the reasoning given by the Id. AO for rejection of books which have been reproduced hereinabove, the Id. AO could not bring out any defects in the books produced before him. Moreover, the entire books of accounts were also part of the seized documents as the entire computer back-up was seized at the time of search. In fact, the Id. AO had gone into the very same books for determining the total value of purchases and total value of sales while estimating the gross profit addition made in the case of the assessee. Hence, we categorically hold that the Id. CIT(A) was not justified in upholding the action of the Id. AO in rejecting the books of accounts u/s.145(3) of the Act in the facts and circumstances of the instant case. Accordingly, the ground No.2 raised by the assessee is allowed.

5. With regard to addition made on account of gross profit in the sum of Rs.4,44,55,888/- by comparing the gross profit of M/s. Shruti Arts Pvt. Ltd. is concerned, we find that the Id. CIT(A) had recorded in para 5.5 of his order that M/s. Shruti Arts Pvt. Ltd. is one of the customers to the assessee company herein. The business of M/s. Shruti Arts Pvt. Ltd. is not one of the trading in papers. In fact it is into printing and trading in papers. The Id. CIT(A) had obtained remand report from the Id. AO wherein the Id. AO had submitted that the gross profit of M/s. Shruti Arts Pvt. Ltd. is in the range of 23% to 32% and thus justified the adoption of GP rate of 28% for the assessee. The Id. CIT(A) categorically observed that no comments were offered by the Id. AO in the remand report on the comparability of businesses of Shruti Arts Pvt Ltd with the assessee herein. From the books of accounts and income tax returns of the assessee for various assessment years, the Id. CIT(A) observed that the gross profit percentage reflected by the assessee from A.Yrs. 2004-05 to 2010-11, varies from 2.34% to 5.72% as against the gross profit percentage of

M/s. Shruti Arts Pvt. Ltd. which varies from 32.25% to 23.29%. The turnover of the assessee ranges from Rs.5 Crores to 108 Crores whereas the turnover of M/s. Shruti Arts Pvt. Ltd. ranges from Rs.19 Crores to Rs.85 Crores. The Id. CIT(A) also on perusal of the tax audit report observed that business of the assessee is dealership in all kinds of paper where as the business of M/s. Shruti Arts Pvt. Ltd. is offset, screen and digital printing. The stock details mentioned in the tax audit report are art papers, MATT art papers, Chroma Boards, Inks, paints and packing material apart from having finished and unfinished stocks. M/s. Shruti Arts Pvt. Ltd. had export as well as local sales. It had plant and machinery on its own for manufacture. Considering these differential facts, the Id. CIT(A) concluded that M/s. Shruti Arts Pvt. Ltd. has completely different line of business and cannot be considered as a comparable with the business of the assessee. Accordingly, the Id. CIT(A) deleted the gross profit addition made based on the comparison of gross profit shown by M/s. Shruti Arts Pvt. Ltd. These finding of facts were not controverted by the Revenue before us with any cogent evidences. The Id. DR merely relied on the order of the Id. AO in this regard. Hence, we do not deem it fit to interfere in the order of the Id. CIT(A) in the instant case with regard to this issue of addition made on account of gross profit. Accordingly, the ground No.(ii) raised by the Revenue is dismissed.

6. The ground No.1 & 4 raised by the assessee are general in nature and does not require any specific adjudication.

7. The ground No.(iii) raised by the Revenue is challenging the deletion of addition made on account of unsecured loans in the sum of Rs.48,47,657/- u/s.68 of the Act.

7.1. We have heard rival submissions and perused the materials available on record. During the course of assessment proceedings, the Id. AO observed that assessee had taken certain unsecured loans in the sum of Rs.48,47,657/- from following members of Shri Lakhamshi J Gala, Managing Director of the assessee company. The assessee furnished the loan confirmations from all those loan creditors before the Id. AO which fact has been acknowledged by the Id. AO in page 15 para 29 of his order. However, the Id. AO observed that creditworthiness of the lenders were not proved by the assessee and hence, proceeded to make an addition u/s.68 of the Act in the case of the assessee. The assessee submitted before the Id. CIT(A) that the loans were received by the assessee only from family members of Shri Lakhamshi J Gala and that all the family members except Lakhamshi Gala HUF and Bhavesh Gala HUF were assessed to tax by the very same Assessing Officer who is assessing the assessee herein. Hence, the monies given by them to the assessee could be easily cross verified from the Income Tax records that are available with the very same Assessing Officer. The Id. CIT(A) sought remand report from the Id. AO with regard to these submissions. The Id. AO in the remand report accepted the basic facts but sought more time to examine the source of capital in the hands of the lenders. We find that when except two lenders , all the other lenders were assessed by the very same Assessing Officer, the source of capital could be easily verified from those records itself. In any case, the assessee had duly furnished the loan confirmations from all the lenders before the Id. AO which fact is not disputed by the Id. AO. Hence, we do not find any infirmity in the order of the Id. CIT(A) granting relief to the assessee in this regard. Accordingly, the ground No. (iii) raised by the Revenue is dismissed.

8. The other grounds raised by the Revenue are general in nature and does not require any specific adjudication.

**9. In the result appeal of the assessee for A.Y.2007-08 is allowed and appeal of the Revenue for A.Y.2007-08 is dismissed.**

**ITA No.2398/Mum/2015 (Assessee Appeal) ITA No.2931/Mum/2015 (Revenue Appeal) – A.Y.2008-09**

10. We find that original return of the income was filed by the assessee for the A.Y.2008-09 on 30/09/2008 declaring total income of Rs.96,38,060/-. Hence, as on the date of search on 23/02/2010, the assessment for A.Y.2008-09 stood concluded and becomes unabated assessment as the time limit for issuance of notice u/s.143(2) of the Act against the original return of income had expired already prior to the date of search. Hence, no addition could be made in the search assessment completed u/s.153A of the Act in the absence of any incriminating material found during the course of search relatable to such addition. Reliance in this regard is placed on the decision of the Hon'ble Jurisdictional High Court in the case of Continental Warehousing Corporation reported in 374 ITR 645. Accordingly, the additional ground raised by the assessee for the A.Y. 2008-09 is allowed. Hence no addition made on merits in A.Y. 2008-09 would survive.

10.1. The various additions made by the Id. AO are as under:-

- |  |   |                   |
|--|---|-------------------|
| (a) Bogus Purchases  | - | Rs.22,40,33,018/- |
| (b) Loan creditors added u/s.68 of the Act                           | - | Rs.3,85,90,362/-  |
| (c) Cessation of Trading Liability u/s.41(1) of the Act treating the |   |                   |

creditor as bogus - Rs.2,83,45,573/-

(d) Other liabilities already reflected in the regular balance sheet of the assessee added as cessation of liability u/s.41(1) of the Act. - Rs.31,99,959/-

(e) Adhoc addition added as unexplained Cash credit u/s.68 of the Act on the pretext that assessee might be having some bank accounts - Rs.50,00,000/-

10.2. We find that –

(a) The Id. CIT(A) considering the facts to be identical, restricted the addition made on account of bogus purchases only to the profit element embedded thereon @50%. Aggrieved both assessee as well as the Revenue are in appeal before us. The decision rendered by us hereinabove for A.Y.2007-08 shall apply mutatis mutandis for this assessment year also except with variance in figures.

(b) The Id. CIT(A) deleted the addition made on account of loans in the sum of Rs.3,85,90,362/- u/s.68 of the Act as the assessee had furnished loan confirmations from all the lenders and except two lenders, all other lenders were assessed by the very same Assessing Officer as that of the assessee herein. The Id. CIT(A) granted relief to the assessee in the same fashion as he granted relief for A.Y.2007-08. The decision rendered by us hereinabove for A.Y.2007-08 shall apply mutatis mutandis for this assessment year also except with variance in figures.

(c) The Id. CIT(A) deleted the additions made on account of cessation of liability u/s.41(1) of the Act in the sum of Rs. 2,83,45,573/-. The assessee furnished all the details before the Id. CIT(A). A remand report was called

for from the Id. AO. The Id. CIT(A) observed that the Id. AO had not found anything adverse on the evidences submitted by the assessee in his remand report. The Id. CIT(A) also observed that the major amount of outstanding in respect of these creditors were only BGPPL in the sum of Rs.6.05 Crores and Paper Plus Technologies Pvt. Ltd of Rs.1.38 Crores. The Id. CIT(A) observed that these amounts were subsequently paid by the assessee. The Id. CIT(A) also observed that the Id. AO on one hand added the value of purchases made from BGPPL as bogus; added the gross profit @28% on an estimated basis and further trying to add the creditor u/s.41(1) of the Act on the ground that the liabilities ceased to exist. We are unable to persuade ourselves to accept to this action of the Id. AO as it only reflects a clear non-understanding of double entry book keeping of accounts by the Id. AO. This is a classic case where the Id. AO had added both debit side as well as the credit side of the transaction separately, though both are two sides of the same coin / same transaction. The Id. CIT(A) had granted relief to the assessee duly appreciating this aspect. Hence, we do not find any infirmity in the order of the Id. CIT(A) granting relief to the assessee in this regard.

10.3. We find that the original grounds raised by the assessee for A.Y.2008-09 and additional ground for the A.Y.2008-09 are exactly identical to those grounds raised in A.Y.2007-08. Hence, the appeal of the assessee for A.Y.2008-09 is allowed.

11. We find that the original ground No.(i) and revised grounds 1,2 & 3 raised by the Revenue for A.Y. 2008-09 are exactly identical with those raised for A.Y.2007-08. Hence, the decision rendered hereinabove in the aforesaid grounds for A.Y.2007-08 shall apply mutatis mutandis for A.Y.2008-09 also except with variance in figures.

12. Similarly, the ground No. (ii) raised by the Revenue for A.Y.2008-09 is identical to ground No. (iii) raised by the Revenue for A.Y.2007-08. Hence, the decision rendered hereinabove in the aforesaid grounds for A.Y.2007-08 shall apply mutatis mutandis for A.Y.2008-09 also except with variance in figures.

13. We find that ground No.(iii) raised by the Revenue for A.Y.2008-09 has already been disposed of hereinabove in favour of the assessee.

**14. In the result, appeal of the assessee for A.Y.2008-09 is allowed and appeal of the Revenue for A.Y.2008-09 is dismissed.**

**ITA No.2399/Mum/2015 (A.Y.2009-10) Assessee Appeal &  
ITA No.2932/Mum/2015 (A.Y.2009-10) Revenue Appeal**

15. We find that the original return of income for A.Y.2009-10 was filed by the assessee company on 30/09/2009 declaring total income of Rs.81,98,460/-. Subsequently, a search and seizure action u/s.132 of the Act was carried out on 23/02/2010 in the premises of the assessee. Hence, as on the date of search, the assessment for the A.Y.2009-10 was not concluded and hence, it becomes a pending assessment which would get abated. Accordingly, there is no need for existence of any incriminating material for the purpose of framing assessment u/s.153A of the Act by the Id. AO.

15.1. For A.Y.2009-10 also, the assessee has raised an additional ground in the same fashion as was done for A.Y.2007-08. We admit the said additional ground and dismiss the same in view of the aforesaid reasoning

given by us that there is no need for existence of any incriminating material found during the course of search in respect of pending assessment. Reliance in this regard is placed on the decision of the Hon'ble Jurisdictional High Court in the case of Continental Warehousing Corporation reported in 374 ITR 645. Accordingly, the additional ground raised by the assessee for A.Y.2009-10 is dismissed.

16. The ground Nos. 1 & 4 raised by the assessee are general in nature and does not require any specific adjudication.

17. The ground No.2 raised by the assessee for A.Y.2009-10 is identical to ground No.2 raised by the assessee for A.Y.2007-08. Hence, the decision rendered thereon shall apply mutatis mutandis for this assessment year also except with variance in figures.

18. The ground No.3 raised by the assessee is challenging the addition made in the sum of Rs.1,12,00,000/- on account of loans received from these parties as unexplained cash credit u/s.68 of the Act.

18.1. We have heard rival submissions and perused the materials available on record. The assessee had made the borrowings from six parties totalling to Rs.1,12,00,000/-. Actually, the assessee had borrowed loan of Rs.1,74,20,000/- which was added as unexplained cash credit u/s.68 of the Act by the Id. AO for want of details. The Id. CIT(A), as was done in earlier years observed that a sum of Rs.62,20,000/- was received only from the family members of the assessee from whom confirmations were filed by the assessee and majority of those family members were also assessed to tax by the very same Assessing Officer as that of the assessee. Hence, the Id. CIT(A) had deleted the addition in the sum of Rs.62,20,000/- However, with regard to remaining sum of

Rs.1,12,00,000/- representing loans received from six parties, the Id. CIT(A) observed that confirmations were not filed by the assessee and accordingly, sustained the said addition made u/s.68 of the Act.

18.2. Before us, the Id. AR stated that the assessee is now able to obtain confirmation from these loan creditors and also made a statement that all these loan creditors were duly repaid by the assessee between 2009-2014. He prayed for providing one more opportunity to the assessee before the Id. AO so that the veracity of the said loan confirmations and the fact of repayment made by the assessee could be examined by the Id. AO afresh. The Id. AR before us placed on record the details of loan repayments made together with the loan confirmations. But since the same were not filed in terms of Rule 29 of the ITAT Rules, the same were ignored. However, considering the facts that the loans borrowed by the assessee from six parties had been stated to be repaid on 23/04/2009, 13/06/2009 and 23/07/2014 and also considering the fact that all the loan creditors are duly assessed to income tax, we deem it fit and appropriate in the interest of justice and fair play to provide one more opportunity to the assessee to present these details before the Id. AO and the Id. AO is hereby directed to decide the same afresh in accordance with law qua the loans received from 6 parties amounting to Rs 1,12,00,000/-. The assessee is at liberty to furnish further evidences, if any, in support of its contentions with regard to the addition made in the sum of Rs.1,12,00,000/- u/s.68 of the Act. With these directions, the ground No.3 raised by the assessee is allowed for statistical purposes.

19. In the result, appeal of the assessee for A.Y.2009-10 is partly allowed for statistical purposes.

20. The ground No.(i) raised by the Revenue is identical to ground No.(ii) raised by the Revenue for A.Y.2007-08. Hence, the decision rendered thereon for A.Y.2007-08 shall apply mutatis mutandis to this assessment year also except with variance in figures.

21. The ground No.(ii) raised by the Revenue is challenging the deletion of addition made u/s.68 of the Act on account of equity share capital in the sum of Rs.9,85,00,000/-.

21.1. We have heard rival submissions and perused the materials available on record. We find that assessee had raised equity share capital of Rs.9,85,00,000/- during the year under consideration from its existing shareholders. The assessee submitted that a sum of Rs.8.85 Crores was raised from existing shareholders who are family members of Shri Lakhamshi J Gala (Managing Director of the assessee company) and remaining sum of Rs.1,00,00,000/- was on account of bonus shares issued to the existing shareholders involving no inflow of funds. This is very clearly reflected in the balance sheet of the assessee company itself. These details were duly furnished by the assessee before the Id. AO. The Id. AO however, proceeded to add the sum of Rs.9.85 Crores as unexplained cash credit u/s.68 of the Act on the ground that no details were filed. We filed that the assessee had furnished copy of confirmations from all the existing shareholders and certificate from the Company Secretary of the Company before the Id. CIT(A) confirming the fact that the investors had duly invested in share capital of the assessee company. In the remand report, the Id. AO had accepted these facts. Considering the fact that these existing shareholders are also assessed by the very same Assessing Officer as that of the assessee herein, the Id. CIT(A) proceeded to delete the addition made u/s.68 of the Act as all the three ingredients of Section 68 of the Act are duly proved in the instant case.

We do not find any infirmity in the said action of the Id. CIT(A). Accordingly, the ground No.(ii) raised by the Revenue is dismissed.

**22. In the result, the appeal of the assessee for A.Y.2009-10 is partly allowed for statistical purposes and appeal of the Revenue for A.Y.2009-10 is dismissed.**

**ITA No.2933/Mum/2015 (A.Y.2010-11) Revenue Appeal**

23. The ground No.(i) raised by the Revenue for A.Y.2010-11 is identical to ground No.(ii) raised by the Revenue for A.Y.2007-08. Hence, the decision rendered thereon for A.Y.2007-08 shall apply mutatis mutandis for this assessment year also except with variance in figures.

24. The ground No. (ii) raised by the Revenue for A.Y. 2010-11 is identical to ground No.(ii) raised by the Revenue for A.Y.2009-10, hence, the decision rendered thereon for A.Y.2009-10 shall apply mutatis mutandis for this assessment year also except with variance in figures.

25. The ground No.(iii) raised by the Revenue for A.Y.2010-11 is challenging the addition made on account of sundry creditors in the sum of Rs.11,42,22,273/- u/s. 41(1) of the Act.

25.1. We have heard rival submissions and perused the materials available on record. The Id. DR before us relied on the orders of the Id. AO. We find that this addition was made by the Id. AO concluding that the sundry creditors to the extent of Rs.11,42,22,273/- had ceased to exist and accordingly becomes deemed income u/s.41(1) of the Act. The

assessee had furnished all the details such as name, address, PAN, confirmation together with the reasons for not making the payments to the concerned suppliers before the Id. CIT(A). The Id. CIT(A) sought for a remand report from the Id. AO. In the remand report, the Id. AO did not make any adverse comment with regard to the documents filed by the assessee. We find that the Id. CIT(A) had also observed that out of this total sundry creditors of Rs.11.42 Crores, the major amount was in respect of one creditor i.e. M/s. Shruti Arts Pvt. Ltd to the tune of Rs.5.51 Crores, in respect of which the assessee had furnished the evidences that they had been subsequently paid by the assessee. We find that the assessee continues to show these sundry creditors in its balance sheet by acknowledging this debt. Hence, the provisions of Section 41(1) of the Act cannot come into operation at all. In any case, it is not for the department to say whether a particular liability had ceased to exist. It is for the assessee to decide whether a particular liability had ceased to exist or not. The Revenue cannot step into shoes of the businessman. Reliance in this regard is placed on the celebrated decision of the Hon'ble Supreme Court in the case of CIT vs. Dhanrajgirji Raja Narasingirji reported in 91 ITR 544. Hence, we do not find any infirmity in the order of the Id. CIT(A) granting relief to the assessee in this regard. Accordingly, the ground No. (iii) raised by the Revenue for A.Y.2010-11 is dismissed.

**26. In the result appeal of the Revenue for A.Y.2010-11 is dismissed.**

27. Both the parties before us stated that no appeal has been preferred by the assessee for A.Y.2010-11 before us.

**ITA No.2929/Mum/2015 (Revenue Appeal (A.Y.2006-07))**

28. The original grounds and additional grounds raised by the assessee for A.Y.2006-07 are verbatim same with the original grounds and additional ground raised by the assessee for A.Y.2007-08.

29. We find that the original return of income for A.Y.2006-07 was filed by the assessee on 25/11/2006 declaring total income of Rs.15,64,820/-. This return was duly processed u/s.143(1) on 23/01/2008. No notice u/s.143(2) of the Act was issued selecting this case for scrutiny for A.Y.2006-07. As on the date of search on 23/02/2010, the time limit for issue of notice u/s.143(2) of the Act had admittedly expired. Hence, this assessment becomes a concluded assessment. Hence, the facts prevailing in A.Y.2007-08 would become identical with the facts in A.Y.2006-07 except with variance in figures. Accordingly, the decisions rendered by us hereinabove for A.Y.2006-07 in respect of original grounds and additional ground raised by the assessee shall apply mutatis mutandis for the assessee's appeal in A.Y.2006-07 also except with variance in figures.

**Let us take up the Revenue appeal for A.Y.2006-07.**

30. The ground No. (i) raised by the assessee for A.Y.2006-07 is identical to ground No. (i) raised by the Revenue for A.Y.2007-08. Hence, the decision rendered thereon by us for A.Y.2007-08 shall apply mutatis mutandis for this year also except with variance of figures.

31. The ground No. (ii) raised by the Revenue for A.Y.2006-07 is identical to ground No. (iii) raised by the Revenue for A.Y.2008-09. Hence, the decision rendered by us hereinabove for A.Y.2008-09 shall

apply mutatis mutandis for A.Y.2006-07 also except with variance in figures.

**32. In the result, appeal of the assessee for A.Y.2006-07 is allowed and appeal of the Revenue for A.Y.2006-07 is dismissed.**

**ITA No.2928/Mum/2015 (Revenue Appeal)- A.Y.2005-06**

33. The ground No. (i) raised by the Revenue for A.Y.2005-06 is identical to ground No. (ii) raised by the Revenue for A.Y.2007-08. Hence, the decision rendered by us for A.Y.2007-08 hereinabove shall apply mutatis mutandis for this assessment year also except with variance in figures.

**34. In the result, appeal of the Revenue for A.Y.2005-06 is dismissed.**

**ITA No.2927/Mum/2015 (Revenue Appeal) A.Y.2004-05**

35. The ground No. (i) raised by the Revenue for A.Y.2004-05 is identical to ground No. (ii) raised by the Revenue for A.Y.2007-08. Hence, the decision rendered by us for A.Y.2007-08 hereinabove shall apply mutatis mutandis for this assessment year also except with variance in figures.

**36. In the result, appeal of the Revenue for A.Y.2004-05 is dismissed.**

**37. TO SUM-UP:**

<b><u>Sr.No.</u></b>	<b><u>ITA NO.</u></b>	<b><u>A.Y.</u></b>	<b><u>Appeal By</u></b>	<b><u>Result</u></b>
<b>1</b>	<b>2397/Mum/2015</b>	<b>2007-08</b>	<b>Assessee</b>	<b>Allowed</b>
<b>2</b>	<b>2930/Mum/2015</b>	<b>2007-08</b>	<b>Revenue</b>	<b>Dismissed</b>
<b>3</b>	<b>2927/Mum/2015</b>	<b>2004-05</b>	<b>Revenue</b>	<b>Dismissed</b>
<b>4</b>	<b>2928/Mum/2015</b>	<b>2005-06</b>	<b>Revenue</b>	<b>Dismissed</b>
<b>5</b>	<b>2396/Mum/2015</b>	<b>2006-07</b>	<b>Assessee</b>	<b>Allowed</b>
<b>6</b>	<b>2929/Mum/2015</b>	<b>2006-07</b>	<b>Revenue</b>	<b>Dismissed</b>
<b>7</b>	<b>2398/Mum/2015</b>	<b>2008-09</b>	<b>Assessee</b>	<b>Allowed</b>
<b>8</b>	<b>2931/Mum/2015</b>	<b>2008-09</b>	<b>Revenue</b>	<b>Dismissed</b>
<b>9</b>	<b>2399/Mum/2015</b>	<b>2009-10</b>	<b>Assessee</b>	<b>Partly Allowed for statistical purposes</b>
<b>10</b>	<b>2932/Mum/2015</b>	<b>2009-10</b>	<b>Revenue</b>	<b>Dismissed</b>
<b>11</b>	<b>2933/Mum/2015</b>	<b>2010-11</b>	<b>Revenue</b>	<b>Dismissed</b>

Order pronounced on 23/12/2022 by way of proper mentioning in the notice board.

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

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 23/12/2022  
KARUNA, sr.ps

**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, Mumbai**