

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM

ITA No. 3039, 3117 & 4038/MUM/2019
(Assessment Year 2008-09, 2014-15, 2011-12)

DCIT,CC-7(3)
Aaykar Bhavan, R.No. 655,
M.K.Road, Mumbai- 400 020

Vs.

Shri Khimji Karamshi Patel
602, 6th Floor, Petit Tower, August
Kranti Marg, Kemps Corner,
Mumbai-400 036

(Appellant)

(Respondent)

PAN No. AADPP8816G

CO No. 72/MUM/2020
Arising Out of ITA No. 3117/MUM/2019
(Assessment Year 2011-12)

&

CO No. 46/MUM/2021
Arising Out of ITA No. 4038/MUM/2019
(Assessment Year 2014-15)

Shri Khimji Karamshi Patel
602, 6th Floor, Petit Tower, August
Kranti Marg, Kemps Corner,
Mumbai-400 036

Vs.

DCIT,CC-7(3)
Aaykar Bhavan, R.No. 655,
M.K.Road, Mumbai- 400 020

(Appellant)

(Respondent)

PAN No. AADPP8816G

Assessee by : Shri. Rushabh Mehta, CA
Revenue by : Smt. Madhumalti Ghosh, CIT DR

Date of hearing: 17.11.2022
Date of pronouncement : 15.02.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. This is the bunch of three appeals filed by the learned assessing officer and 2 cross objections filed by the assessee with respect to same assessee arising out of the same search, involving Assessment year 2008-09, 2011-12 and 2014-15, involves common issues, both the parties argued them together, therefore, these appeals and cross objections are disposed of by this common order.

ITA no. 3039/Mum/2019

Assessment year 2008 - 09

02. The learned Deputy Commissioner of income Tax Central Circle 7 (3), Mumbai (the learned AO) is in appeal in ITA no. 3039/Mum/2019 before us against the order of Commissioner of Income Tax (Appeals)-49, Mumbai [for short, "CIT(A)"] dated 28.02.2019 for A.Y. 2008-09 raising following grounds of appeal :-

ITA No.3039/MUM/2019
(Assessment Year 2008-09)

"1. On the facts and circumstances of the case, the Learned CIT(A) has erred in deleting the addition of ₹ 3,00,00,000/- made by the AO on account of unsecured loan u/s. 68 of the I.T. Act, 1961 without appreciating the fact that the assessee failed to prove the genuineness of the transaction and creditworthiness of the M/s. Divine Tradecom Pvt Ltd and M/s. Rowland Trexim Pvt Ltd.

2. On the fact and circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance of ₹ 3,17,213/- made by the AO on account of interest expenditure on unsecured loan without appreciating the fact that the assessee failed to prove the genuineness of transactions during assessment proceedings.

3. On the fact and circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance of business loss of ₹

30,93,410/- made by the AO on account of interest expenditure u/s. 57(iii) of the Act on unsecured loan without appreciating the fact that the assessee failed to explain the interest expenditure.”

03. Brief facts of the case are that

- i. Assessee is an individual, filed his original return of income on 26.09.2008 declaring total income of Rs. Nil and the return was processed u/s. 143(1) of the Income Tax Act, 1961 [for short, “the Act”].
- ii. Later on, information was received from the DDIT(Inv.) Unit-3(1) and 3(2), Mumbai vide letter dated 04.03.2015 that during search/survey action conducted on 09.10.2014 in the case of Kamdhenu/Green Valley Group, it was noticed that the assessee has received unsecured loans of Rs. 50,00,000/- from M/s. Divine Tradecom Pvt. Ltd., a Kolkata based company in the year under consideration.
- iii. Further, it is informed that statement of Shri Pradeep Poddar, Director of M/s. Divine Tradecom Pvt. Ltd., M/s. Bhawna Computers Pvt. Ltd., M/s. Rowland Trexim Pvt. Ltd. and ‘many other Kolkata based companies’ was recorded u/s. 131 of the Act on 02.12.2014 wherein he stated that he has used above companies to provide accommodation entries to the Kamdhenu Group and assessee is one of the directors in Patel/Patni group of concerns, an associate group of Kamdhenu Group.
- iv. Accordingly, case of the assessee was reopened by issuing notice u/s. 148 of the Act dated 16.03.2015. Subsequently, notice u/s. 143(2) and 142(1) of the Act were issued and served.
- v. In the reassessment order passed u/s. 143(3) r.w.s. 147 of the Act dated 29.03.2016, ld Assessing Officer made addition of Rs. 3,00,00,000/- u/s. 68 of the Act being Rs. 2,50,00,000/- received from M/s. Divine Tradecom Pvt. Ltd. and Rs. 50,00,000/- received from

M/s. Rowland Trexim Pvt. Ltd. and consequential interest of Rs. 3,17,213/- and further disallowed loss of Rs. 30,93,410/- thereby assessing the total income at Rs. 3,03,17,260/-.

- vi. Aggrieved by the order of the Assessing Officer, the assessee preferred appeal before the ld. CIT(A) who granted partial relief to the assessee vide order dated 28.02.2019 and a subsequent Corrigendum Order dated 17.06.2019.
- vii. Aggrieved by the relief granted by the ld. CIT(A) to the assessee, revenue is in appeal before us.

04. The ground no. 1 and 2 relates to the deletion of addition of Rs. 3,00,00,000/- made u/s. 68 of the Act and consequential interest of Rs. 3,17,213/-. During the year under consideration, the assessee obtained unsecured loan of Rs. 2,50,00,000/- from M/s. Divine Tradecom Pvt. Ltd. and Rs. 50,00,000/- from M/s. Rowland Trexim Pvt. Ltd.

05. The ld. Departmental Representative submitted that

- i. These lender companies are operated by one Shri Pradeep Poddar who is an accommodation entry provider and that in his statement-recorded u/s. 131 of the Act on 02.12.2014, he himself had stated that he was just acting as a Dummy Director in these two companies. In this regard, primary analysis of money received by these companies was made and it was found that these companies have in turn received share capital from various other Kolkata based companies, which belonged to identified entry operators. In fact, in past, these entry operators have accepted before the department that they are in the business of providing accommodation entries and for that purpose, they have created shell companies. These entry providers provided accommodation entries in lieu of cash and rotated these cash in numerous self-controlled shell entities.
- ii. Merely because the assessee furnished the confirmation, ITR acknowledgement, financial statements and bank statement of these

lenders that, itself is not sufficient to say that the assessee has discharged his onus u/s. 68 of the Act.

- iii. companies do not have their own fund and accumulated profits are negative or just meager and that in these entities, the funds are influxed through web of other entities by way of share premium or unsecured loans and then the same are transferred to other entities.
- iv. M/s. Divine Tradecom Pvt. Ltd. and M/s. Rowland Trexim Pvt. Ltd. were purchased by Kamdhenu Group at a very low price than the net worth of these companies, which also proves that the loan transaction with the assessee is not a genuine transaction and merely an accommodation entry.

06. The LD AR submitted that the observations made by the Assessing Officer and that addressed by the ld. DR are misplaced and not properly appreciated. The ld. Counsel submitted that

- i. All the three ingredients of section 68 of the Act viz. identity of the lender, genuineness of the transaction and creditworthiness of the lender have been duly established by furnishing relevant documentary evidences in the form of confirmations, ITR acknowledgement, financial statements, bank statements of the lender, PAN card copies, details of interest paid and TDS deducted thereon, Affidavit of Shri Pradeep Poddar retracting the statement earlier made on 02.12.2014.
- ii. Statement of Shri Pradeep Poddar on whom the revenue has placed reliance upon was taken on 02.12.2014 and on very next day i.e. on 03.12.2014, Shri Padeep Poddar had filed a Police Complaint that his said statement was taken under duress and coercion and he was forcefully made to sign the statement and declaration. In this regard, the ld. Counsel drew our attention to the copy of Police Complaint placed at page nos. 39 to 43 of Paper Book. The said statement was further retracted by Shri Pradeep Poddar in his Affidavit dated 09.12.2014 which is placed at page nos. 36 to 38 of Paper Book.



Hence, statement of Shri Pradeep Poddar recorded u/s. 131 of the Act on 02.12.2014 cannot be relied upon.

- iii. No defects/ infirmities have been found by the department in any of the documentary evidences placed on record. It is also not the case where any cash was deposited in any of the bank accounts of the lenders and that the lenders had sufficient bank balance out of which loans were advanced to the assessee.
- iv. Placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of PCIT v. Ami Industries (India) P. Ltd. (ITA no. 1231 of 2017) and CIT v. Oasis Hospitalities (P.) Ltd. (2011)198 taxman 247 (Delhi) wherein it is held that adequate bank balance establishes the creditworthiness of the parties.
- v. Nothing adverse is also found in the course of inquiry by the Assessing Officer. In fact, both these lenders viz. M/s. Divine Tradecom Pvt. Ltd. and M/s. Rowland Trexim Pvt. Ltd. are reassessed u/s. 143(3) r.w.s. 147 of the Act post search conducted in Kamdhenu Group on 09.10.2014 and the concerned Assessing Officer has accepted the share capital along with premium raised by these lenders and no adverse view has been formed in the said reassessment orders of both these lenders which are placed on page nos. 13 to 15 and 28 to 30 of Paper Book.
- vi. Even source of source of loan stands established.
- vii. Merely because Kamdhenu Group acquired the shares of these lender companies at a very low rate does not have any relevance in regard to the transaction of interest bearing loan taken by the assessee.

Accordingly, Id. Counsel submitted that the Id. CIT(A) has rightly deleted the addition of Rs. 3,00,00,000/- made u/s. 68 of the Act and also the consequential addition of interest of Rs. 3,17,213/- thereon.

07. We have considered the rival submissions of the parties and have gone through the orders of lower authorities and the material placed on record.

The issue under consideration is the addition of loan of Rs. 3,00,00,000/- from two lenders viz. M/s. Divine Tradecom Pvt. Ltd. (Rs. 2,50,00,000/-) and M/s. Rowland Trexim Pvt. Ltd. (Rs. 50,00,000/-) u/s. 68 of the Act made by the Assessing Officer but deleted by CIT(A). The case of the revenue is that the director, Shri Pradeep Poddar of both these lender companies had admitted in his statement recorded u/s. 131 of the Act on 02.12.2014 to have provided mere accommodation entries to the assessee in the form of loan. However, this statement cannot be seen in isolation more so when the same person had immediately on next day, i.e. 03.12.2014 had filed a Police Complaint about the statement given on 02.12.2014 to be under duress and pressure and that even the said statement is retracted in his Affidavit dated 09.12.2014. On perusal of the balance sheet of these lender companies, it is seen that these companies have not taken any loan from third parties but have raised share capital with premium. The ld Assessing Officer in his order have stated that the companies from whom the lender companies have raised share capital and premium are also shell companies and run by entry operators. However, the said averment of the ld Assessing Officer dislodged by the fact that both these lender companies are reassessed to examine the genuineness of the share capital and share premium raised by them and that the concerned Assessing Officer have found the same to be genuine and no adverse inferences were made in their reassessment orders passed u/s. 143(3) r.w.s. 147 of the Act in March, 2016 which is much later to the search conducted on the Kamdhenu group on 09.10.2014. Hence, in this case source of source of loan to assessee is clearly stands explained by the revenue itself. The argument of the ld. DR that both these lender companies were later purchased by Kamdhenu Group at a very low price than the net worth of these companies are also not relevant in so far as the loan transaction of the assessee is concerned. The ld. CIT(A) has deleted the addition of Rs. 3,00,00,000/- made u/s. 68 of the Act and the consequential interest thereon of Rs. 3,17,213/- for the reasons as under:-

"7.5. I have perused the aforesaid documents and found that the assessee has furnished all the relevant documents in support of the transactions entered with M/s. Divine Tradecom Pvt. Ltd. & M/s. Rowland Trexim Pvt. Ltd. to establish the identity,

genuineness and creditworthiness of the lenders. During the course of hearing, the appellant stated that the unsecured loans taken from M/s Divine Tradecom Pvt Ltd through personal capacity as well as through proprietary concern M/s. Trishul Developers along-with interest were repaid back in the months of September and October 2011. On the contrary, it is seen that the AO has not pointed out any discrepancies or deficiencies in the evidences so filed except that the accumulated profits of the said entities are negative or just a meagre amount and that statements of certain parties reveal the nature of said transactions in the form of accommodation entry.

7.6 In its rebuttal, the assessee submits that mere low income cannot be the criteria to dislodge the creditworthiness of the lenders and that due consideration should be given to the net worth of the companies which is Rs. 24,29,03,235/- in case of M/s. Divine Tradecom Pvt. Ltd and Rs.27,94,00,737/- in case of M/s. Rowland Trexim Pvt. Ltd. for the year under consideration. I find merit in this contention of the assessee more so as the source of the lender companies have been examined by the revenue while reopening their case for the same year and accepting the genuineness of the investors therein. Thus, it is a case where the source of source of alleged loans cannot be doubted. In this very perspective, the allegation of the AO that the income of the lender companies in the year under consideration is very low without giving due consideration to the overall net worth of the companies which is already accepted by the revenue in the assessment is totally misplaced and unwarranted. Without prejudice, attention was also invited to the decision of the Hon'ble Delhi High Court in the case of CIT vs Vrindavan Farms Pvt Ltd (ITA No. 71/2015) in which the sole basis for the revenue to doubt the creditworthiness was the low income as reflected in the return of incomes. It affirmed the view of the ITAT that the AO had not undertaken any investigation of the veracity of the documents submitted to him by the assessee and wrongly

completed the assessment only on the presumption of the low return of income.

7.7 The expression “nature and source” has to be understood together as a requirement of identification of the source and the nature of the source, so that the genuineness or otherwise could be inferred. The Hon’ble Supreme Court, in *Kale Khan Mohd. Hanif vs. CIT [1963] 50 ITR 1*, pointed out that the onus on the assessee has to be understood with reference to the facts of each case and proper inference drawn from the facts. If the prima facie inference on the fact is that the assessee’s explanation is probable, the onus will shift to the Revenue. As far as the creditworthiness or financial strength of the creditor/subscribers is concerned, that can be proved by producing the bank statement of the creditors/subscribers showing that it had sufficient balance in its accounts to enable it to subscribe to the share capital. Once these documents are produced, the assessee would have satisfactorily discharged the onus cast upon him. Thereafter, it is for the Assessing Officer to scrutinize the same and in case he nurtures any doubt about the veracity of these documents, to probe the matter further.

7.8 Element of credit worthiness and satisfaction of AO thereafter is subjective and requires more efforts/inquiry on the part of the AO to give a finding in the order that lender is not credit worthy. The AO must make proper enquiry before making any addition. In *Khandelwal Constructions v. CIT 227 ITR 900 (Gau.)*, it has been held that section 68 empowers the Assessing officer to make enquiry. If he is satisfied that these entries are not genuine he has every right to add these as income from other sources. But before rejecting the assessee’s explanation, A.O. must make proper enquiries and in the absence of proper enquiries, addition cannot be sustained.

7.9 Further, in the case of *Nemichand Kothari vs. CIT - [264 ITR 254] [Gau]*, the Hon’ble High Court had held that:

“....Hence, the harmonious construction of section 106 of the Evidence Act and section 68 of the Income-tax Act will be that though apart from establishing the identity of the creditor, the assessee must establish the genuineness of the transaction as well as the creditworthiness of his creditor, the burden of the assessee to prove the genuineness of the transactions as well as the creditworthiness of the creditor must remain confined to the transactions, which have taken place between the assessee and the creditor. What follows, as a corollary, is that it is not the burden of the assessee to prove the genuineness of the transactions between his creditor and sub-creditors nor is it the burden of the assessee to prove that the sub-creditor had the creditworthiness to advance the cash credit to the creditor from whom the cash credit has been, eventually, received by the assessee. It, therefore, further logically follows that the creditor’s creditworthiness has to be judged, vis-a-vis, the transactions, which have taken place between the assessee and the creditor, and it is not the business of the assessee to find out the source of money of his creditor or of the genuineness of the transaction, which took place between the creditor and sub-creditor and/or creditworthiness of the sub-creditors, for, these aspects may not be within the special knowledge of the assessee...”

7.10 The assessee must satisfy three important conditions, namely, (i) the identity of the creditor; (ii) the genuineness of the transaction; and (iii) the financial capacity of the person, i.e. the credit worthiness of the creditor. However, the onus of the

assessee is limited to the extent of proving the source from which he received the cash credit. The credit worthiness of the creditor has to be judged vis-à-vis the transaction which had taken place between the assessee and the creditor, and it is not the burden of the assessee to find out the source of creditworthiness of the lender to prove the genuineness of the transaction. This issue is dealt by the Gauhati High Court in the case of CIT v. Smt. Sanghamitra Bharali (2014) 361 ITR 481 (Gau). The aforesaid points were also affirmed in the past by the Apex Court in the case of CIT v. Orissa Corporation P. Ltd reported in (1986) 159 ITR 78 (SC). In the case of CIT v. Varinder Rawley (2014) 366 ITR 232 (P & H) the court held that “where the assessee shows that the entries regarding credit in a third party’s account were in fact received from the third party and are genuine, he discharges the onus. In that case, the sum cannot be charged as the assessee’s income in the absence of any material to indicate that it belongs to assessee.

7.11 It is clear from the submission of appellant that the transactions were through account payee cheques and appellant has submitted sufficient details before the AO during the re-assessment proceedings. The source of receipt through banking channel clearly establishes the genuineness of the credit which is reflected in the books of accounts. The present case is on a much better footing in view of the fact that source of source of loan is explained by the assessee on one side whereas the AO has not brought on record any cogent evidence to disbelieve the evidences submitted by the assessee.

7.12 In the light of the above, it is now important to examine the validity of addition based on the statement of Shri Pradeep Poddar and Shri Anand Sharma.

- Statement of Shri Pradeep Poddar

The AO has referred to the statement of Shri Pradeep Poddar dated 02.12.2014 in the reasons recorded wherein it is alleged that loan taken from M/s Divine Tradecom Pvt Ltd M/s. Rowland Exim Pvt. Ltd. are in the nature of accommodation entries. The assessee submits that the statement of Shri Pradeep Poddar was recorded under duress and coercion and he was subjected to tremendous mental torture and trauma by the Investigation Officer which is quite evident from the fact that Shri Pradeep Poddar had also filed a police complaint against the Investigation Officer immediately on the very next day of the statement on oath i.e on 03.12.2014. Moreover, it is observed that Shri Pradeep Poddar has also retracted his statement so recorded vide his affidavit dated 09.12.2014 sworn before the learned Metropolitan Magistrate at Kolkata which is within a week from which the statement was recorded. Thus, the statement which has been retracted cannot be held as evidence in isolation without any corroborative evidence against the assessee. Reference in this regard can also be made to the CBDT Instruction F.No.286/98/2013-IT (INV.II) dated 18/12/2014 and letter dated 10/03/2003 issued by the Ministry of Finance & Company Affairs wherein it is stated that the search party must focus on collection of evidences and not merely admission/ confession of additional income. The Hon'ble Gujarat High Court has relying on the aforesaid instructions upheld the view that addition should not be made based on oral confession in the case of CIT v. Ramanbhai Patel (TA no. 207 of 2008) and Chetnaben J Shah v. ITO [TA no. 1437 of 2007]. Thus, respectfully following the CBDT circular as well as the decision cited by the assessee (supra), I find that the addition cannot be sustained merely on the basis of the statements taken devoid of any evidence/material to incriminate the assessee.

- Statement of Shri Anand Sharma

In this regard, the assessee argued that the copy of the statement of Shri Anand Sharma had not been provided and hence, cannot be

utilised against the assessee as at the very outset it vitiates the principles of natural justice. I have gone through the statement of Shri Anand Sharma referred to by the AO in the impugned order. It is found that the statement of Shri Anand Sharma is relevant only to the lender companies as alleged by the AO that accommodation entries from various companies of Shri Anand Sharma were obtained by M/s Divine Tradecom Pvt. Ltd. & M/s. Rowand Trexim Pvt. Ltd. Thus, what is relevant is the fact that M/s Divine Tradecom Pvt. Ltd and M/s. Rowand Trexim Pvt. Ltd. might have obtained accommodation entries, which in fact gets overruled, in view of the re-assessment order passed for AY 2008-09 wherein no addition in this regard have been made in hands of M/s Divine Tradecom Pvt. Ltd. and M/s. Rowand Trexim Pvt. Ltd. Further, the AO has not made any further enquiry in the assessment proceedings to establish such allegations. Merely on the basis of statement of Shri Anand Sharma without any corroborative evidences brought on record, the AO has failed to discharge his onus in alleging the genuineness of transaction with M/s Divine Tradecom Pvt. Ltd. and M/s. Rowand Trexim Pvt. Ltd.

7.13 Section 68 is not a charging section but a deeming fiction dealing with the burden of proof. The section casts initial onus u/s. 68 of the Act on the assessee to prove identity, genuineness and creditworthiness of the transaction to the satisfaction of the AO. If the assessee fails to do so or the explanation offered by him is not satisfactory to the AO, the AO is empowered to add the same to the total income of the assessee. The said power is to be exercised judiciously by the AO. Thus, once the initial onus is discharged by the assessee, the onus shifts on the AO to bring out fallacies in evidence brought by the assessee or by bringing new evidence that indicate the transactions undertaken by the assessee are non-genuine. Thus, the section deals with an equilibrium of onus of proof and must be viewed to evaluate as to whether the evidences brought by the assessee or AO weigh more and accordingly in whose favour the equilibrium bends. In the

present case, on one hand, the assessee has placed evidence in the form of loan confirmation, bank statement, ITR acknowledgement, Computation of Income, and signed financials of the lender companies and the reassessment order of the lender companies.

7.14 It is the contention of the Assessing Officer that the on-money generated by the assessee group has been brought back as loans and share capital through Kolkata companies but inspite of the search undertaken in the appellant's group nothing incriminating was found during the search and no evidence of either receipt of on-money or generation of any other kind of unaccounted income was found. No evidence of any cash transaction has been brought out either by the Investigation wing or by the Assessing Officer. As the assessee proved the trail of money which is through banking transactions, the onus shifts to the Assessing Officer to prove the assessee wrong but the Assessing Officer has not brought anything contrary to what has been submitted by the assessee.

7.15 In view of the overall discussion made above, it is clear that source of source of loan obtained by the assessee stands explained. Whereas, the AO has not pointed out any defect in the above-mentioned documentary evidences submitted during the re-assessment proceedings. Without pointing out any lacuna in the evidences submitted by the appellant, the sources and the genuineness of transaction cannot be doubted. It is a trite law that once evidences related to a transaction is submitted before the AO, the onus shifts on him to prove these as non-genuine. The AO has not discharged the onus cast upon him. Further, merely based on the statement of third person without any corroborative evidence will not make the loan transactions, in question, as accommodation entries. As such, in the absence of any contrary evidence or findings placed on record, the transactions cannot be treated as accommodation entries.



7.16. The decision of the Hon'ble Jurisdictional ITAT in the case of ITO v. Sringeri Technologies Pvt Ltd [ITA No. 3924/Mum/2014] is also relevant wherein similar facts were involved before the Hon'ble ITAT and it was observed as under:

11. Having considered arguments of both the sides and materials available on record, we do not find any merit in the reasons given by the AO to come to the conclusion that the assessee has failed to prove the genuineness of transaction and creditworthiness of the parties on the ground that the assessee has filed enormous details in respect of 9 companies including their PAN details, CIN master data, affidavits sworn before Executive Magistrate, reply to the notices issued u/s 133(6). The assessee also filed copies of assessment order passed u/s 143(3) by the department in respect of 4 companies. The assessee also filed a certificate from a Chartered Accountant certifying the active status of the company in the website of Ministry of Corporate Affairs. On going through various detailed filed by the assessee, we find that there is no reason for the AO to doubt the genuineness of transactions of creditworthiness of the parties. We further notice that all 9 companies are active in the website of ROC and also they have filed their balance-sheet upto 31-03-2016 and in some cases upto 31-03-2017. We further notice that the AO has furnished a report accepting the fact that all these companies are active in the website of MCA and none of the companies' name is struck off from the list published by the MCA as shell company. We further notice that the assessee has filed balance-sheet of all 9 subscribers wherein they have huge share capital and reserves and surplus to establish creditworthiness of the parties. On perusal of the balance-sheet filed by the assessee, we find that the aggregate of share capital and reserves of 9 companies is at Rs.333.67 crores, whereas investment in assessee company is only Rs.12 crores. We further notice that all companies are having regular business ranging from 2 to 3 crores. The assessee also furnished copies of sales-tax returns filed with Commercial Tax Department to prove the business activity of the assessee. All these evidences go to prove an undoubted fact that these companies are not paper companies and recognized with business activity. We further observe that the assessee also filed affidavit from the directors of subscriber companies, wherein they have explained the reasons for not receiving communication sent by the AO u/s 133(6) of the Act. They further stated in the affidavit that they have subscribed to the share capital of the company and also

furnished supporting evidences to justify investment in share capital of the company. We further notice that the assessee has furnished bank statement of subscribers wherein we do not find any instance of cash deposits or transfer from other companies prior to the date of transfer to the assessee company. Therefore, we are of the view that the AO was incorrect in treating share capital alongwith share application money as unexplained cash credit u/s 68 of the Income-tax Act, 1961.”

7.17. Further, I find that the decision of the Hon'ble jurisdictional High Court in the case of CIT v. Paradise Inland Shipping Pvt Ltd (TA No. 66 of 2016) (Bom HC) squarely applies to this case wherein it was observed as under:

5. We have given our thoughtful considerations to the rival contentions of the learned Counsel and we have also gone through the records. The basic contention of the learned Counsel appearing for the Appellants revolves upon the stand taken by the Appellants whether the shareholders who have invested in the shares of the Respondents are fictitious or not. In this connection, the Respondents in support of their stand about the genuineness of the transaction entered into with such Companies has produced voluminous documents which, inter alia, have been noted at Para 3 of the Judgment of the CIT Appeals which reads thus :

"The assessment is completed without rebutting the 550 page documents which are unflinching records of the companies. The list of documents submitted on 09.03.2015 are as follows :

1. Sony Financial Services Ltd. - CIN U74899DL1995PLC068362-

Date of Registration 09/05/1995

Memorandum of Association and Article of Association

Certificate of Incorporation

Certificate of Commencement of Business

Acknowledgment of the Return of Income AY 08-09

Affidavit of the Director confirming the investment

Application for allotment of shares

Photocopy of the share certificate

Audited account and Directors report thereon including balance sheet, Profit and Loss Account and schedules for the year ended 31.03.2009.

Audited account and Directors report thereon including balance sheet, Profit and Loss Account and schedules for the year ended 31.03.2010

The Bank Statement highlighting receipt of the amount by

way of RTGS.

Banks certificate certifying the receipt of the amount through Banking channels."

6. *On going through the documents which have been produced which are basically from the public offices, which maintain the records of the Companies. The documents also include assessment Orders for last three preceding years of such Companies.*

7. *The Appellants have failed to explain as to how such Companies have been assessed though according to them such Companies are not existing and are fictitious companies. Besides the documents also included the registration of the Company which discloses the registered address of such Companies. There is no material on record produced by the Appellants which could rebut the documents produced by the Respondents herein. In such circumstances, the finding of fact arrived at by the authorities below which are based on documentary evidence on record cannot be said to be perverse. Learned Counsel appearing for the Appellants was unable to point out that any of such findings arrived at by the authorities below were on the basis of misleading of evidence or failure to examine any material documents whilst coming to such conclusions. Under the guise of the substantial question of law, this Court in an Appeal under Section 260A of the Income Tax Act cannot re-appreciate the evidence to come to any contrary evidence. Considering that the authorities have rendered the findings of facts based on documents which have not been disputed, we find that there are no substantial question of law which arises in the present Appeal for consideration.*

8. *The Apex Court in the case of Orissa Corpn. (P.) Ltd. (supra), has observed at Para 13 thus :*

"13. In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were income- tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under S. 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so called alleged creditors. In those circumstances, the assessee could not do anything further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some



evidence on which a conclusion could be arrived at, no question of law as such arises."

9. This Court in the Judgments relied upon by the learned Counsel appearing for the Respondents, have come to the conclusion that once the Assessee has produced documentary evidence to establish the existence of such Companies, the burden would shift on the Revenue-Appellants herein to establish their case. In the present case, the Appellants are seeking to rely upon the statements recorded of two persons who have admittedly not been subjected to cross examination. In such circumstances, the question of remanding the matter for re-examination of such persons, would not at all be justified. The Assessing Officer, if he so desired, ought to have allowed the Assessee to cross examine such persons in case the statements were to be relied upon in such proceedings. Apart from that, the voluminous documents produced by the Respondents cannot be discarded merely on the basis of two individuals who have given their statements contrary to such public documents.

10. We find no infirmity in the findings arrived at by the ITAT as well as CIT Appeals on the contentions raised by the Appellants-Revenue in the present case and, as such, the question of interference by this Court in the present proceedings under Section 260A of the Income Tax Act would not at all be justified. Apart from that, as rightly pointed out by the learned Counsel appearing for the Respondents, the CIT Appeals had also noted that proceedings under Section 147 of the Income Tax Act cannot lead to re-verification of the records. These findings of the CIT Appeals have not been assailed before the Income Tax Appellate Court.

11. In such circumstances, we find that there is no case made out by the Appellants-Revenue for any interference in the impugned Orders passed by the Courts below.

12. Hence, the Appeal stands rejected.

The SLP filed against the said order of the High Court is also dismissed by the Hon'ble Apex Court in [2018] 93 taxmann.com 84 (SC).

.....
7.19 I find that the addition u/s. 68 of the Act is uncalled for in the present facts and circumstances of the case in view of the discussion made above. Accordingly, the addition of Rs.3,00,00,000/- made by the AO deserves to be deleted. Thus ground no. 4(a) and 4(b) of appeal is accordingly ALLOWED.
.....

8.3. I have carefully considered the assessment order and submission of the ld. Counsel. The issue arising is on the disallowance of interest paid on the alleged unsecured loans received. I have decided the issue regarding the addition of the alleged unsecured loans of Rs.3,00,00,000/- received from M/s DivineTradecom Pvt. Ltd. & M/s. Rowland Trexim Pvt. Ltd. in favour of the assessee. Accordingly, the consequential interest of Rs.3,17,213/- incurred on the said unsecured loans during the year needs to be allowed. Accordingly, the ground of appeal is ALLOWED.”

08. The Ld DR did not point out any infirmity in the order of the LD CIT (A). The Ld CIT (A) has given detailed reasoning for deleting the addition and further more clinching issue is reassessment of the lender companies where the monies received by them are accepted as genuine. When the source of money is accepted as compliant with provision of section 68 of the Act, in absence of any further inquiry and findings, the amount received by assessee from those companies cannot be held to be taxable in the hands of the assessee u/s 68 of the Act. Thus, reassessment orders in lender companies accepting the money if at all received from companies operated by some unscrupulous persons, then money received by assessee cannot be held to be non-genuine. In fact, that is the only allegation of LD AO, which is demolished by the reassessment orders of the lender companies. We therefore do not incline to interfere with the findings and reasoning of the ld. CIT(A) and uphold the order of ld. CIT(A).
09. Accordingly, ground no.1 and 2 of the revenue is dismissed.
010. The ground no. 3 relates to disallowance of business loss of Rs. 30,93,410/-.
011. Briefly, facts of this issue are that during the year under consideration, the assessee incurred interest expenditure of Rs. 37,66,487/- and also received interest income of Rs. 6,73,077/- resulting into a loss of Rs. 30,93,410/-. Ld AO held that assessee had not brought on record any evidence to show

direct nexus of utilization of fund whereas in fact, he had used the funds for the purpose of investments in other concerns in which he is a partner and also for other assets. Thus, as the assessee was unable to explain the commercial reason, Assessing Officer disallowed the business loss of Rs. 30,93,410/- and added the same to the total income of the assessee. In appeal before the Id. CIT (A), assessee was allowed to be granted allowance to the extent of proportionate interest for the funds utilized for investment made in the proprietorship concerns where funds were required for its business. However, later, a corrigendum order dated 17.06.2019 placed at page nos. 44 to 45 of Paper Book was passed to rectify the working of computation of relief available to the assessee which was then worked out to Rs. 3,86,176/-, thereby sustaining disallowance of Rs. 27,07,234/-.

012. In this regard, the Id. DR of the assessee relied on the order of the Assessing Officer and requested to confirm the disallowance of Rs. 30,93,410/- as interest bearing funds were not wholly and exclusively utilized for the purpose of business.
013. Id. AR requested that the Id. CIT (A) has only granted the relief to the extent the funds were utilized by the assessee for the business requirements of his proprietorship concern and hence, the relief granted by the Id. CIT (A) is only to the extent of proportionate interest of Rs. 3,86,176/- based on the utilization of funds for the very business purpose itself.
014. We have heard the rival submission of the parties and have gone through the assessment order, CIT(A)'s order and the material placed on record. The issue here is that of utilization of interest bearing funds for the purpose of business in order to claim the interest expenditure. In the present facts, it is seen that the assessee has not wholly and exclusively utilized the interest bearing funds towards his business and the Assessing Officer has accordingly, disallowed the interest thereon. However, on perusal of the Balance Sheet of the assessee, the Id. CIT(A) has given a categorical finding at para 9.4 in her order, the relevant extract of which is reproduced as under:-



“9.4 It is observed that a sum of Rs. 43,24,954/- are loans and advances on which the appellant has earned interest income of Rs. 6,73,077/- which has been duly offered to tax. The investment of Rs. 15,67,499/- in the proprietary concerns of the appellant have been utilized for the finance requirements of the respective business expenses u/s. 36(1)(iii). However, the investment made in M/s. Nishrin Investment & Trading Pvt. Ltd., the partnership firms and other assets itself is not the direct business of the appellant and hence there is no direct nexus of the utilization of the unsecured loans borrowed and the investments made in these concerns as envisaged u/s. 36(1)(iii) of the Act. Therefore, proportionate amount of the interest expenditure in the ratio of the interest free non business investments made needs to be disallowed...”

015. Since out of the overall interest bearing funds, certain funds were utilized for the purpose of business of the proprietorship concern of the assessee, to that extent, interest ought to be allowed u/s. 36(1)(iii) of the Act. We therefore do incline to interfere with the order of the Id. CIT(A) and the Corrigendum Order passed thereafter in granting relief to the assessee to the extent of Rs. 3,86,176/- on this issue u/s. 36(1)(iii) of the Act. Hence, the ground no. 3 of the revenue is dismissed.
016. In the result, the appeal of the revenue in ITA no. 3039/Mum/2019 for A.Y. 2008-09 is dismissed.

ITA no. 4038/Mum/2019

&

CO no. 46/Mum/2021

AY 2014-15

017. The revenue is in appeal in ITA no. 4038/Mum/2019 before us against the order of Commissioner of Income Tax (Appeals) - 49, Mumbai [for short, "CIT(A)"] dated 28.03.2019 for A.Y. 2014-15 raising following grounds of appeal:-

ITA No.4038/MUM/2019
(Assessment Year 2014-15)

"1. In the circumstances and facts of the case and in law, the CIT(A) has erred in deleting the addition of ₹2,63,00,000/- made by the AO as unexplained cash credit in the form of bogus loans u/s. 68 of the Act without considering the fact that the statements of Shri Anand Sharma and Shri Praveen Agarwal and other related concerns were recorded u/s. 131 of the Act wherein they had stated that the above mentioned companies were engaged in the business of providing accommodation entries.

2. Whether on facts and in law the Ld. CIT(A) was correct in allowing the appeal of the assessee, ignoring the facts of the case and placing reliance on the superficial documentation supporting the claim of the assessee.

3. On the fact and circumstances of the case and in law, the Ld CIT(A) was not justified in allowing the appeal of the assessee was superficial and the assessee could not prove the creditworthiness of the parties and hence failed to discharge his onus.

4. Whether on facts and in law the Ld. CIT(A) was correct in allowing the interest payment of ₹ 11,78,742/- on the loan as the said loan is nothing but bogus accommodation entry.

5. Whether on the facts and in law the Ld. CIT(A) was correct in allowing the disallowance of interest expenses of ₹ 30,80,593/- despite the fact that the assessee has failed to provide party

wise direct nexus of interest income and interest expenses and utilization on the loans.”

018. For the A.Y. 2014-15, the assessee has also filed Cross Objections in CO no. 46/Mum/2021, grounds of which are as under:

1. (a) *On the facts and circumstances of the case, the assessment order passed u/s. 153C r.w.s 143(3) of the Act is invalid and bad in law.*
- (b) *The Id. CIT(A) erred in facts and law in not quashing the order passed by the Id. Assessing Officer u/s.153C r.w.s.143(3) of the Act despite the undisputed fact that no incriminating /material was found in the course of searched person which belonged to the assessee and thereby failing to appreciate that the very existence of incriminating material is a sine-qua-non to assume jurisdiction u/s.153C of the Act.*
- (c) *The Id. CIT(A) erred in facts and law in not appreciating that the Id. Assessing Officer recorded his general satisfaction note for A.Y.2009-10 to A.Y.2014-15 and therefore the assessment u/s.153C for the year under consideration is not based on any year specific incriminating material.*
- (d) *The Id. CIT(A) erred in facts and law in not appreciating that mere loan books disclosing duly recorded loan transactions in books of account cannot be construed as incriminating material.*
- (e) *Without prejudice to (d), the Id. CIT(A) erred in facts and law in not appreciating that the Id. Assessing Officer made the addition of Rs.2,63,00,000/- in respect of loans taken from M/s.Everlink Investment Advisory Pvt. Ltd. and M/s.Konark Commerce Pvt. Ltd. wherein no reference about the said alleged parties was made in the satisfaction note recorded thereby there being no existence of any incriminating material in relation to the said loans.*

019. Brief facts of the case are that the assessee filed his original return of income for A.Y. 2014-15 on 19.11.2014 declaring total income at Rs. 1,87,20,000/- and same was processed u/s. 143(1) of the Act. Later, a search action u/s.

132 of the Act was carried out in the appellant's group concerns on 09.10.2014. In this case, the satisfaction note is recorded on 18.03.2016 and due date of issuing notice u/s. 143(2) for A.Y. 2014-15 was 30.09.2015 thereby making A.Y. 2014-15 as unabated year. Consequently, Assessing Officer issued notice u/s. 153C dated 22.03.2016 to the assessee requiring him to furnish the return of income for A.Y. 2014-15. Satisfaction note was also recorded by the Assessing Officer before issuing the notice u/s. 153C of the Act. In the assessment completed, the Assessing Officer made various additions u/s. 68 and interest disallowance aggregating to Rs. 3,05,59,335/-. Aggrieved by the additions so made, the assessee preferred appeal before the Id. CIT(A) who deleted all the additions / disallowances and allowed the appeal in favour of the assessee. Hence, the revenue is in appeal before us.

020. Since the Cross Objections deal with the issue of jurisdiction u/s. 153C for making the additions / disallowances, we take them first before adjudicating the appeal of the revenue for the A.Y. 2014-15.
021. The Id. Counsel of the assessee vehemently argued that the Assessing Officer has wrongly acquired the jurisdiction u/s. 153C of the Act and additions are made devoid of any incriminating material found in the course of search of third party. He drew our attention to the first proviso to section 153C which reads as under:-

“Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person”

022. He, accordingly, emphasized on the first proviso to section 153C of the Act to submit that A.Y. 2014-15 is an unabated year as the date of initiation of search begins from the date of handing over of the seized incriminating

material to the Assessing Officer having jurisdiction over the assessee. In this case, the satisfaction note is recorded on 18.03.2016 and due date of issuing notice u/s. 143(2) for A.Y. 2014-15 was 30.09.2015 thereby making A.Y. 2014-15 as unabated year. Hence, none of the additions and disallowances ought to have been made by the Assessing Officer devoid of any incriminating material, which is absent in this case for the year under consideration.

023. The ld. DR for the revenue relied on the order of the lower authorities.
024. We have heard the rival submissions of the parties and have gone through the assessment order and appellate order along with the material placed on record. The core issue involved here is the validity of additions in light of the satisfaction note recorded before issuing the notice u/s. 153C of the Act for A.Y. 2014-15 and the additions made in the assessment order having any basis to incriminating material, if any. It would be relevant to reproduce here the satisfaction note recorded on 18.03.2016 by the Assessing Officer prior to issue of notice u/s. 153C of the Act for A.Y. 2014-15 dated 22.03.2016:

“A Search action was carried out u/s 132 of the Income Tax Act, 1961 on 09.10.2014 at the offices of Lotus/Kamdhenu / Green Valley group & their Associates and at the residences of their Directors As a part of the search a Survey was conducted at the office premises of M/s Nishrin Trading and Investment Pvt. Ltd. Situated at Sir Navroji Bldg, Shankar Sneth Lane, Grant Road West, Mumbai 400 007 on 09.10.2014 which was later converted into search and seizure action u/s 132(1) on 10.10.2014.

During the course of search action certain loan books were also found and seized which were marked as Sr no 1 to 13 of Annexure A to Panchanama at 11.10.2014 Page 8 and 9 of the loan book Sr no 8 seized reflects loan transactions of by M/s Trishul Developers (prop Khimji Karamshi Patel) of Rs 2,52,28,964 /-and Rs 1.21,42,032/- with M/s Divine Tradecom Pvt Ltd and M/s Rowland Trexim Pvt Ltd. During the course of search in the said group it was found that the entities with whom the loans transactions are entered, namely M/s Divine Tradecom Pvt Ltd and M/s Rowland Trexim Pvt Ltd are Paper companies giving accommodation entries. The operator of the said companies, namely Shri Pradeep Poddar has given a statement u/s 131 that both the companies are

shell companies and used for proving accommodation entries.

The above document Identified at Loan book no 8 of Annexure A to panchanama dt 11-10-2014 found and seized and the information contained therein pertains to M/s Trishul Developer prop Shri Khimj Karamshi Patel) and the same has a bearing on the determination of its total Income, In view of the above I am satisfied that the above seized document and the information contained therein found and seized at the premises of the assessee belong to M/s Trishul Developer (Prop Khimji K Patel) which is a person other than the person referred u/s 153A and has a bearing on determination of its total Income. Hence the above assessee M/s Trishul Developer (Prop Khimji k Patel becomes liable to be governed by section 153C. Since, the aforesaid Assessee becomes liable to be governed u/s 153 of the income tax Act, 1961, notice u/s 153C is issued in this case for A. Ys. 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15.”

025. On perusal of the satisfaction note placed at page no. 1 of Common Paper Book filed before us, it is noted that it refers to certain loan books of the proprietorship concern of the assessee namely M/s. Trishul Developers were found and seized which reflects loan transactions of Rs. 2,52,28,964/- and Rs. 1,21,42,032/- with M/s. Divine Tradecom Pvt. Ltd. and M/s. Rowland Trexim Pvt. Ltd. respectively. It is clarified that these transactions with the parties are duly recorded in the books of accounts of the assessee. The satisfaction note nowhere points out as to what incriminating material was found or discovered in the course of search carried out in the case of Kamdhenu group. Even the additions and disallowances, which are made by the Assessing Officer, are not in connection to the issue referred to in satisfaction note. Moreover, satisfaction note is prepared for all the years together from A.Ys. 2009-10 to 2014-15 without pointing out any assessment year specific incriminating material for the year under consideration. It is observed that as per first proviso to section 153C of the Act, A.Y. 2014-15 is an unabated year and have attained finality as the due date of issuing notice u/s. 143(2) for the said year was 30.09.2015 whereas the satisfaction note is recorded on 18.03.2016 and notice u/s. 153C of the Act is issued on 22.03.2016. Further, it is noted that the addition of Rs. 2,00,00,000/- being unsecured loans from



M/s. Everlink Investment Advisory Pvt. Ltd. and Rs. 63,00,000/- being unsecured loans from M/s. Konarch Commerce Pvt. Ltd. has no relevance to any incriminating material found in the course of search in Kamdhenu Group on 09.10.2014. In fact, the said additions of Rs. 3,00,00,000/- u/s. 68 and the consequential interest of Rs. 11,78,742/- are based on some statements of third parties viz. Shri Anand Sharma and Shri Pravin Agarwal recorded not in the course of search in Kamdhenu Group on 09.10.2014 as referred in the satisfaction note. Thus, it is clear that the information relied upon by the Assessing Officer does not have any bearing to the search conducted and cannot be considered as incriminating material found during the search. Even the disallowance of Rs. 30,80,593/- made u/s. 36(1)(iii) for not utilising the interest bearing funds wholly and exclusively for business purposes is not connected to any incriminating material found during the search.

026. In this regard, we find that the said issue is squarely covered by the decision of the Hon'ble Apex Court in the case of *Sinhgad Technical Education Society Ltd.* (2017) 84 Taxman.com 290 (SC), wherein it is held that there has to be incriminating material pertaining to the assessment year in question in order to make any addition or disallowance in an assessment made u/s. 153C of the Act. In light of the above background of facts and settled judicial precedent, we are of the considered view that no additions or disallowances can be made devoid of any incriminating material found during the search on a third person. Accordingly, the Cross objection filed by the assessee is allowed.
027. Since the Cross Objection filed by the assessee in CO 46/Mum/2021 is allowed on the jurisdiction issue itself, appeal of the revenue in ITA no. 4038/Mum/2019 on merits of the case need not require any adjudication and is accordingly dismissed.

ITA No.3117/MUM/2019
(Assessment Year 2011-12)
CO No. 72/MUM/2020
Arising Out of ITA No. 3117/MUM/2019
(Assessment Year 2011-12)

028. The Ld AO is in appeal in ITA no. 3117/Mum/2019 before us against the order of Commissioner of Income Tax (Appeals)-49, Mumbai [for short, "CIT(A)"] dated 28.02.2019 for A.Y. 2011-12.

029. LD AO has raised following grounds of appeal:-

"On the facts and circumstances of the case, the Learned CIT(A) has erred in deleting the addition of ₹ 3,00,00,000/- made by the AO on account of unsecured loan u/s. 68 of the I.T. Act, 1961 without appreciating the fact that the assessee failed to prove the genuineness of the transactions and creditworthiness of the M/s. Jeenmata Suppliers Pvt Ltd and M/s. Chandra Ghanta Commodities Pvt Ltd."

2. On the fact and circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance of ₹ 18,60,244/- made by the AO on account of interest expenditure on unsecured loan without appreciating the fact that the assessee failed to prove the genuineness of transactions during assessment proceedings.

3. On the fact and circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance of ₹ 4,07,492/- made by the AO on account of interest expenditure u/s. 36(1)(iii) of the Act on unsecured loan without appreciating the fact that the assessee failed to explain the interest expenditure."

030. Assessee has filed cross objection in CO No. 72/MUM/2020 raising following ground of appeal :-

"(a) On the facts and circumstances of the case, the assessment order passed u/s. 153C r.w.s. 143(3) of the Act is invalid and bad in law.

(b) The Id. CIT(A) erred in facts and law in not appreciating the fact that there was no satisfaction note recorded by the Assessing Officer before invoking the provisions of section 153C of the Act in view of the CBDT Circular No.24/2015 dated 31.12.2015.

(c) The Id. CIT(A) erred in facts and law in note quashing the order passed by the Id. Assessing Officer u/s. 153C r.w.s. 143(3) of the Act despite the undisputed fact that no incriminating material was found in the course of searched person which belonged to the assessee and thereby failing to appreciate that the very existence of incriminating material is a sine-qua-non to assume jurisdiction u/s. 153C of the Act.”

031. Brief facts of the case are that the assessee had filed his original return of income for A.Y. 2011-12 on 29.09.2011 declaring total income at Rs. 2,43,73,110/- and same was processed u/s. 143(1) of the Act. Later, a search action u/s. 132 of the Act was carried out in the appellant's group concerns on 09.10.2014. Consequently, Assessing Officer issued notice u/s. 153C dated 22.03.2016 to the assessee requiring him to furnish the return of income for A.Y. 2011-12. Satisfaction note was also recorded by the Assessing Officer before issuing the notice u/s. 153C of the Act. In the assessment completed, the Assessing Officer made various additions u/s. 68 and interest disallowance aggregating to Rs. 3,22,67,736/-. Aggrieved by the additions so made, the assessee preferred appeal before the Id. CIT(A) who deleted all the additions / disallowances and allowed the appeal in favour of the assessee. Hence, the revenue is in appeal before us.
032. The ground no. 1 and 2 of the appeal relates to the deletion of addition of Rs. 3,00,00,000/- made u/s. 68 of the Act and consequential interest of Rs. 18,60,244/- respectively. The ground no. 3 relates to deletion of disallowance of interest of Rs. 4,07,492/- u/s. 36(1)(iii) of the Act.

033. During the course of hearing, the ld. DR for the revenue relied on the orders of the lower authorities. Whereas, the ld. Counsel of the assessee vehemently argued that the Assessing Officer has wrongly acquired the jurisdiction u/s. 153C of the Act and additions are made devoid of any incriminating material found in the course of search of third party. Hence, none of the additions and disallowances ought to have been made by the Assessing Officer.
034. We have heard the rival submissions of the parties and have gone through the assessment record and CIT(A)'s order along with the material placed on record. The core issue involved here is the validity of additions in light of the satisfaction note recorded before issuing the notice u/s. 153C of the Act for A.Y. 2011-12 and the additions made in the assessment order having any basis to incriminating material, if any. It would be relevant to reproduce here the satisfaction note recorded on 18.03.2016 by the Assessing Officer prior to issue of notice u/s. 153C of the Act for A.Y. 2011-12 dated 22.03.2016:

“A Search action was carried out u/s 132 of the Income Tax Act, 1961 on 09.10.2014 at the offices of Lotus/Kamdhenu / Green Valley group & their Associates and at the residences of their Directors As a part of the search a Survey was conducted at the office premises of M/s Nishrin Trading and Investment Pvt. Ltd. Situated at Sir Navroji Bldg, Shankar Sneth Lane, Grant Road West, Mumbai 400 007 on 09.10.2014 which was later converted into search and seizure action u/s 132(1) on 10.10.2014.

During the course of search action certain loan books were also found and seized which were marked as Sr no 1 to 13 of Annexure A to Panchanama at 11.10.2014 Page 8 and 9 of the loan book Sr no 8 seized reflects loan transactions of by M/s Trishul Developers (prop Khimji Karamshi Patel) of Rs 2,52,28,964 /-and Rs 1.21,42,032/- with M/s Divine Tradecom Pvt Ltd and M/s Rowland Trexim Pvt Ltd. During the acourse of search in the said group it was found that the entities with whom the loans transactions are entered, namely M/s Divine Tradecom Pvt Ltd and M/s Rowland Trexim Pvt Ltd are Paper companies giving

accommodation entries. The operator of the said companies, namely Shri Pradeep Poddar has given a statement u/s 131 that both the companies are shell companies and used for proving accommodation entries.

The above document Identified at Loan book no 8 of Annexure A to panchanama dt 11-10-2014 found and seized and the information contained therein pertains to M/s Trishul Developer prop Shri Khimji Karamshi Patel) and the same has a bearing on the determination of its total Income, In view of the above I am satisfied that the above seized document and the information contained therein found and seized at the premises of the assessee belong to M/s Trishul Developer (Prop Khimji K Patel) which is a person other than the person referred u/s 153A and has a bearing on determination of its total Income. Hence the above assessee M/s Trishul Developer (Prop Khimji k Patel becomes liable to be governed by section 153C. Since, the aforesaid Assessee becomes liable to be governed u/s 153 of the income tax Act, 1961, notice u/s 153C is issued in this case for A. Ys. 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15.”

035. On perusal of the satisfaction note placed at page no. 1 of Common Paper Book filed before us, it is noted that it refers to certain loan books of the proprietorship concern of the assessee namely M/s. Trishul Developers were found and seized which reflects loan transactions of Rs. 2,52,28,964/- and Rs. 1,21,42,032/- with M/s. Divine Tradecom Pvt. Ltd. and M/s. Rowland Trexim Pvt. Ltd. respectively. It is clarified that these transactions with the parties are duly recorded in the books of accounts of the assessee. The satisfaction note nowhere points out as to what incriminating material was found or discovered in the course of search carried out in the case of Lotus group. Even the additions and disallowances that are made by the Assessing Officer are not in connection to the issue referred to in satisfaction note. Moreover, satisfaction note is prepared for all the years together from A.Ys. 2009-10 to

2014-15 without pointing out any assessment year specific incriminating material for the year under consideration. It is observed by the Id. CIT (A) that A.Y. 2011-12 is an unabated year and has attained finality, as the due date of issuing notice u/s. 143(2) for the said year was 30.09.2012 whereas the notice u/s. 153C of the Act is issued on 22.03.2016. Further, the Id. CIT(A) also observed that the addition of Rs. 50,00,000/- being unsecured loans from M/s. Chandra Ghanta Commodities Pvt. Ltd. and Rs. 2,50,00,000/- being unsecured loans from M/s. Jeenmata Suppliers Pvt. Ltd. has no relevance to any incriminating material found in the course of search in Lotus Group on 09.10.2014. In fact, the said additions of Rs. 3,00,00,000/- u/s. 68 and the consequential interest of Rs. 18,60,244/- are based on some statements of third parties viz. Shri Anand Sharma and Smt. Amita Joshi recorded in 2013 i.e. prior to search in 09.10.2014 as referred in the satisfaction note. Thus, it is clear that the information relied upon by the Assessing Officer does not have any bearing to the search conducted and cannot be considered as incriminating material found during the search. Even the disallowance of Rs. 4,07,492/- made u/s. 36(1)(iii) for not utilizing the interest bearing funds wholly and exclusively for business purposes is not connected to any incriminating material found during the search.

036. In this regard, we find that the said issue is squarely covered by the decision of the Hon'ble Apex Court in the case of *Sinhgad Technical Education Society Ltd.* (2017) 84 Taxman.com 290 (SC), wherein it is held that there has to be incriminating material pertaining to the assessment year in question in order to make any addition or disallowance in an assessment made u/s. 153C of the Act. In light of the above background of facts and settled judicial precedent, we are of the considered view that no additions or disallowances can be made devoid of any incriminating material found during the search on a third person. Accordingly, the ground nos. 1 to 3 of the revenue are dismissed.
037. Since the appeal of the revenue in ITA no. 3117/Mum/2019 is dismissed, CO of the assessee bearing CO 72/Mum/2019 stands infructuous and need not require any jurisdiction. Hence, dismissed.



038. In result all the appeal of the LD AO and CO of the Assessee captioned above are disposed off accordingly.

Order pronounced in the open court on 15.02.2023.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 15.02.2023

Dragon and Sudip Sarkar, Sr.PS

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai