

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1851/Mum/2023**

**(A.Y. 2010-11)**

**ITA No.1850/Mum/2023**

**(A.Y. 2012-13)**

Tirupati Developers 4 <sup>th</sup> Floor, Saheb Building, Above Central Camera, 195, Dr. D. N. Road, Fort, Mumbai-400001	Vs.	ITO Ward-17(3)(4) Room No. 436, Kautilya Bhavan, Bandra Kurla Complex, Mumbai-400051
<b>स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AAFT7390L</b>		
<b>Appellant</b>	<b>..</b>	<b>Respondent</b>

Appellant by :	Shri. Prateek Jain.
Respondent by :	Shri. Prakash Kishinchandani

Date of Hearing	04.09.2023
Date of Pronouncement	27.09.2023

**आदेश / O R D E R**

**PER AMARJIT SINGH :-**

- Both these appeals filed by the assessee are directed against the different order passed u/s 250 of the Income Tax Act, 1961 ([hereinafter "the Act"] by the Learned Commissioner of Income Tax (Appeals)-28/National Faceless Appeal Centre, Delhi [hereinafter 'the CIT(A)'] dated 24.03.2023 for A.Y. 2010-11 and 2012-13.
- Since, both these appeals are based on similar facts and identical issue, therefore, for the sake of convenience these

appeals are adjudicated together by taking the ITA No. 1851/Mum/2023 as a lead case and its findings would be applicable mutatis mundis to the other appeal.

3. The grounds of appeal of the assessee are as under:

1. *On the facts and circumstances of the appellant's case and in law, the ld. Assessing Officer erred in passing the impugned order by issuing notice u/s 148 which is without jurisdiction and therefore, the re-opening is bad in law,*
2. *On the facts and circumstances of the appellant's case and in law, the Ld.CIT(A) erred in confirming the action of the ld AO in treating the loan taken from M/s Parvati Exports as unexplained, for the reasons mentioned in impugned 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 action of the Id.AO in making an addition of Rs.15,00,000/-on account of unexplained loan, for the reasons mentioned in impugned order or otherwise.*
4. *On the facts and circumstances of the appellant's case and in law, the Id. CIT(A) erred in confirming the action of the ld.AO in disallowing the interest paid on loan amounting to Rs. 12,205/-, for the reasons mentioned in impugned order or otherwise.*
5. *The Appellant craves leaves to withdraw or substitute any ground or grounds or to add any new ground or grounds of appeal on or before the hearing*

4. Fact in brief is that return of income declaring total income of ₹7,16,070/- was filed on 24.09.2010. The return of income was processed u/s 143(1) of the Act on 26.04.2011. Subsequently,

information was received from the office of the DGIT (Investigation, Mumbai) that assessee has obtained accommodation entries of loans from the entities managed and controlled by Shri. Bhawarlal Jain and his associates. Therefore, the case of the assessee was reopened by issuing of notice u/s 148 of the Act on 27.03.2015. The assessee objected to the reopening of the case u/s 147 of the Act on the ground that no specific information was received about the assessee.

- 4.1 The AO mentioned that information has been provided by the DGIT (investigation) that assessee has obtained accommodation entries of unsecured loan of Rs. 16,21,500/- from M/s Parvati Exports controlled by Shri Bhawarlal Jain. In the assessment order the AO has reproduced the facts about the search action taken placed in the case of Shri. Bhawarlal Jain and Group and held that notice u/s 148 of the Act was legal and valid.
- 4.2 During the course of assessment the AO asked the assessee to furnish details of the unsecured loan along with the confirmation from the parties from whom the loan taken, the bank statement of the person who have given the loan, and details of repayment of the loans, their bank statements and IT acknowledgments. The assessee has filed the details during the course of assessment proceedings. The AO stated that the name of the

lender entity i.e. M/s Parvati Exports appeared in the list of 70 entities managed and controlled by Shri. Bhawarlal Jain and associates through which accommodation entries of bogus purchases and bogus loans were provided. The AO also stated that cheques have been issued against receipt of cash as admitted by Shri. Bhawarlal Jain in his statement during the course of search and seizure proceedings. Therefore, the AO held that the assessee has taken loan by giving equivalent of cash, therefore, an amount of Rs 15 lacs was added to the total income u/s 69(A) of the Act.

5. The assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) vide order u/s 250 of the Act dated 24.03.2023 has dismissed the appeal of the assessee.
6. During the course of appellate proceedings before us, the Ld. Counsel submitted that assessee has furnished the relevant supporting materials i.e. confirmation from the lender parties, copies of bank statement, copies of IT acknowledgment etc. to prove the genuineness of the loan transactions. However, the AO has not disproved the supporting materials furnished by the assessee. He also submitted that AO has added the amount of loan simply on the basis of statement of third party which was later on retracted.

7. On the other hand, the ld. DR supported the order of lower authorities.
8. Heard both the sides and perused the materials available on record. The case of the assessee was reopened u/s 147 of the Act on the basis of information gathered from the DGIT(investigation) that assessee had taken accommodation entries in the form of unsecured loan from the concern managed and controlled by Shri. Bhawarlal Jain in whose case a search action was conducted on 30.10.2013 by the investigation wing of the department. During the course of assessment the AO has rejected the claim of the assessee that they have established the identity and creditworthiness of the parties and stated that it has been established that the assessee has obtained bogus loan from the M/s Parvati export which was bogus entity of Shri. Bhawarlal Jain. The assessee claimed that identity of creditors has been established on the basis of the Pan Card, return of income, account confirmation and genuineness of the transactions have been established on the basis of account confirmation and bank statements where all loan were taken account by account payee cheques creditworthy of creditor was established on the basis of balance sheet and bank statement of the parties. The AO had not controverted these material facts

with any relevant evidences. The AO has solely relied upon the statement of Shri. Bhawarlal Jain and had not carried out any independent inquiry in the matter and not pointed out any defect in the documentary evidences submitted by the assessee during the course of assessment proceedings. The coordinate Bench of ITAT, Mumbai on the similar facts and identical issues in the case of Nernichand Jain Vs DCIT, CC 1(3), Mumbai ITA No. 2641/Mum/2018 after taking into consideration similar details furnished by the assessee held that the assessee had discharged initial burden by filling various document to prove identity, genuineness of the transactions and creditworthiness of the parties and held that the AO was erred in making addition towards unsecured loan u/s 68 of the Act. Therefore, in the light of the above facts and findings of the coordinate bench in the case of Nernichand Jain as supra, I find that issue raised in the case of the assessee is similar to the case of Nernichand Jain. Considering the above findings in the case of the assessee, also the AO has failed to point out any lacuna in any evidence submitted by the assessee. Therefore, the grounds of appeal of the assessee from 1 to 3 are allowed. The legal ground no.1 was not discussed before me, therefore this ground of appeal stand dismissed.

9. In the result the appeal of the assessee is partly allowed.

**ITA No. 1850/Mum/2023 A.Y. 2012-13**

10. Grounds of appeal of the assessee are as under:

1. *On the facts and circumstances of the appellant's case and in law, the Id Assessing Officer erred in passing the impugned order by issuing notice u/s 148 which is without jurisdiction and therefore, the re-opening is bod in law.*
2. *On the facts and circumstances of the appellant's case and in law, the ld. CIT(A) erred in confirming the action of the ld AO in treating the loan taken from M/s Marc Gems as unexplained, for the reasons mentioned in impugned order or otherwise.*
3. *On the facts and circumstances of the appellant's case and in law, the ld. CIT(A) erred in confirming action of the ld. AO in making an addition of Rs.6,00,000/-on account of unexplained loan, for the reasons mentioned in impugned order or otherwise.*
4. *The Appellant craves leaves to alter, amend, withdraw or substitute any ground or grounds or to add any new ground or grounds of appeal on or before the hearing*

11. As the fact and issue involved in the present appeal is similar to the AY 2010-11 vide ITA No. 1851/Mum/2023 as discussed above in this order, therefore, applying findings of ITA No. 1851/Mum/2023 the ground of appeal from 2 to 3 are allowed

and the legal ground no.1 stand dismissed. In the result both the appeals filed by the assessee are partly allowed.

Order Pronounced in Open Court on 27.09.2023

Sd/-

(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Place: Mumbai

Date 27.09.2023

ANIKET SINGH RAJPUT/STENO

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**