

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos.975 to 978 & 979 to 981/Mum/2022  
(A.Ys. 2008-09 to 2010-11 & 2012-13 to 2014-15)**

Vivek Raghu Shetty 1/1 Shrinagar Building, Chandavarker Road, Borivali (West), Mumbai – 400092	Vs.	Asst. Commissioner of Income-tax, Circle 32(3) M.K. Road, New Marine Lines, Churchgate Mumbai – 400020
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No:AAEPS2750D		
Appellant	..	Respondent

Appellant by :	AnujKisnadwala
Respondent by :	Ujjawal Kumar

Date of Hearing	20.09.2023
Date of Pronouncement	23.10.2023

**आदेश / O R D E R**

**Per Bench:**

All these appeals filed by the assessee are directed against the different order of NFAC for assessment year 2008-09 to 2010-11 & 2012-13 to 2014-15. Since, common issue on identical facts are involved in these appeals filed by the assessee, therefore, for the sake of convenience all these appeals are adjudicated together by taking ITA No. 975/Mum/2022 and 979/Mum/2022 as a lead case and its finding will be applied mutatis mutandis to the other appeals wherever it is applicable.

## **ITA No. 975/Mum/2022**

- “1. The learned CIT (A) has erred in law and on facts in not deleting addition of unsecured loans amounting to Rs.12,00,000/- made by the Assessing Officer u/s. 68 of the Act alleging the same to be accommodation loan transactions.
2. The learned CIT (A) has erred in law and on facts in partly deleting addition of Rs.12,000/- out of total addition of Rs. 36,000/- made by the Assessing Officer u/s 69C alleging the same to be commission charges paid @ 3% for the alleged accommodation loans taken by the assessee.
3. The learned CIT (A) has erred in law and on facts in not deleting disallowance of interest amounting to Rs. 1,23,721/- on alleged accommodation loan taken during the year by the assessee
4. The learned CIT (A) has erred in law and on facts in not deleting disallowance of interest of Rs. 4,74,066/- made by the Assessing Officer on alleged accommodation loans taken in previous assessment years.
5. The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal.”

The assessee has raised the following additional ground of appeal:

“1. The Hon'ble CIT(A) ought to have held that the Ld. AO has erred in initiating proceedings, u/s 147 of the Income Tax Act, 1961 by issuing notice u/s 148 of the Act. The Hon'ble CIT(A) ought to have held that the proceedings-initiated u/s 147 of the Income Tax Act is bad-in-law and hence the notice issued u/s 148 of the Act is itself void and needs to be quashed.”

2. During the course of appellate proceedings before us the assessee has also filed additional ground of appeal on 19.06.2023 as incorporated supra in this order. In the additional ground of appeal the assessee has challenged the proceeding initiated u/s 147 of the Act and submitted that additional Ground is purely a legal ground based on the fact and issue on record. Therefore, pleaded that the same may be admitted for adjudication. The assessee has also referred the following decision in support of admitting the additional ground:

- i. *National Thermal Power Corporation Vs. CIT [229 ITR 383SC]*
- ii. *Jute Corporation of India Ltd. Vs. CIT [187 ITR 688 SC]*
- iii. *Ahmedabad Electricity Co. Ltd. Vs. CIT [199 ITR 351 SC]*

3. After hearing both the sides and perusal of material on record we find that additional ground filed by the assessee is based on the facts

and material referred in the record, therefore, following the decision of National Thermal Power Corporation the additional ground filed by the assessee is admitted for adjudication.

4. During the course of appellate proceedings before us the Id. Counsel at the outset discussed the additional ground of appeal filed by the assessee.

5. The fact in brief is that return of income declaring total income of Rs.292,046/- was filed on 30.09.2008. The return of income was processed u/s 143(1) and subsequently, the assessment was reopened u/s 147 of the Act by issuing of notice u/s 148 of the Act on 24.03.2015. The reason recorded for reopening the assessment is reproduced as under:

*“As per information available with this office from DGIT(Inv.) IX(2), Mumbai, Bhanwarlal Jain Group is a leading entry provider operating in Mumbai. The Group is providing accommodation entries in the nature of bogus unsecured loans and advances Search and seizure action were carried out on 03/10/2013 on Bhanwarlal Jain Group. In the course of Search and Seizure action, evidences were collected and statements of various persons involved in these groups were also recorded.*

*From the list, it is noticed that the assessee, SHRI VIVEK R. SHETTY (PANE AAEPS27500) is also appearing in the beneficiary list who has obtained accommodation entries of bogus unsecured loans for an amount of Rs.64,00,000/- (Rs.10,00,000/- from M/s Mohit Enterprises, Rs.22,00,000/- from M/s Meenakshi Exports and Rs.32,00,000/% from M/s Mayur Exports). In view of the above. I have reasons to believe that on income to the extent of Rs.64,00,000/- has escaped assessment within the meaning of Sec 147 of the IT. Act. Hence, approval to re-open the case of the assessment for AY 2008-09 u/s 147 of the IT Act, 1961 may kindly be granted Accordingly, as per the provisions of section 151(2) of the IT Act, 1961 sanction may please be accorded to issue notice u/s 148 of the IT Act, 1961.”*

In the reason recorded the assessing officer mentioned that assessee had obtained accommodation entries or unsecured loans of Rs.64,00,000/- from M/s Mohit Enterprises, M/s MinaxiExport, M/s Mayur Export, the concerns controlled by Shri Bhanwarlal Jain and his associates. During the course of assessment vide letter dated

05.10.2015 the assessee has objected the reason recorded for reopening

of the assessment. The assessee submitted that all the loans received mentioned in the reason recorded for reopening of the assessment were received from the aforesaid parties before 1<sup>st</sup> April, 2007 and the same had become time barred for reopening during the year under consideration. The assessee also explained that AO had also added the following amount during the assessment for A.Y. 2012-13 which were outstanding along with interest:

<i>i.</i>	<i>Mohit Enterprises</i>	<i>10,80,730</i>
<i>ii.</i>	<i>Meenakshi Exports</i>	<i>28,10,600</i>
<i>iii.</i>	<i>Mayur Export</i>	<i>34,58,336</i>

During the course of assessment the assessee also submitted vide letter dated 07.09.2015 that he has received loan of Rs.12,00,000/- during the year 2007-08 from M/s Minaxi Export and all other loans were received prior to 1<sup>st</sup> April 2007.

6. The assessing officer referred the statement of Shri Bhanwarlal Jain in which they have stated that they were engaged in providing accommodation entries of loans from the entities managed by them. In the assessment order the AO has reproduced the facts about the search action taken placed in the case of Shri Bhanwarlal Jain and Group. The AO stated that it is established fact that assessee has obtained accommodation entries in the form of unsecured loans and made addition of Rs.12,00,000/- as unexplained cash credit u/s 68 of the Act. The AO has also added interest expenses and commission expenses on the said loan.

7. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

8. During the course of appellate proceedings before us the ld. Counsel discussed the legal ground that notice issued u/s 148 of the Act is bad in law/he referred copy of reason recorded dated 06.08.2015 which is reproduced as supra in this order. The ld. Counsel submitted that assessing officer mentioned in the reason recorded that income to the extent of Rs.64,00,000/- has escaped assessment within the meaning of Sec. 147 of the Act, however, the correct fact is that during the year under consideration the assessee has obtained unsecured loan to the extent of Rs.12,00,000/- only. The ld. Counsel submitted that in the reason recorded the AO had not mentioned the correct fact of the case on the basis of which the assessment was reopened. Therefore, ld. Counsel contended that the reopening of assessment is bad in law and notice issued u/s 148 of the Act is not valid. In support of his contention the ld. Counsel has placed reliance on the various judicial pronouncements placed in the paper book referred as follows:

- “1. *Judgement of Hon'ble Delhi High Court in the case of PCIT Vs. Meenakshi Overseas (P) Ltd (395 ITR 677) for AY 2004-05 dated 26-05-2017*
2. *Order of Cuttack Bench, Income Tax Appellate Tribunal Cuttack in case of Madan Mohan Pradhan, M/s. MaaGouri Enterprises Vs. ITO, Ward 2(1), Bhubaneswar (ITA No. 491/CTK/2017) for AY 2008-09 dated 07-09-2018.*
3. *Judgement of Hon'ble Bombay High Court in the case of PCIT-5 Vs. Shodiman Investments (P.) Ltd for AY 2003-04 (422 ITR 337) dated 16-04-2018.*
4. *Order of Delhi Bench C, Income Tax Appellate Tribunal Delhi In case of Shri Karan Khurana Vs. The Income Tax Officer, Ward-48(2), Delhi for AY 2010-11 (ITA.No.1783/Del/2019) dated 17-03-2021.*
5. *Order of Mumbai Bench G, Income Tax Appellate Tribunal Mumbai in case of The Income Tax Officer-23(1)5, Mumbai Vs. M/s Grace Development Associates for AY 2013-14 (ITA.No. 712/Mum/2018) dated 16-03-2023.*
6. *Order of Mumbai Bench E, Income Tax Appellate Tribunal Mumbai in case of ACIT Vs. M/s. Star One RealconPvt. Ltd for AY 2011-12 (ITA.No. 1837/Mum/2020) dated 29-10- 2021.*

7. *Order of Mumbai Bench D, Income Tax Appellate Tribunal Mumbai in case of The Income Tax Officer-24(1)5 Vs. ShriDhansukh D. Mehta for AY 2011-12 (ITA No.1725/Mum/ 2018) dated 12-07-2019.*
8. *Order of Mumbai Bench B, Income Tax Appellate Tribunal Mumbai in case of NareshHiran Vs. The Income Tax Officer-30(2)(4) for AY 2012-13 (ITA No.1235/Mum/ 2017) dated 31-10-2019.”*

On the other hand, the ld. D.R submitted that no such questions were raised before the Assessing officer and assessee has made compliance with the notice issued u/s 148 of the Act and placed reliance on the order of the lower authorities.

9. Heard both the sides and perused the material on record. The case of the assessee was reopened by issuing of notice u/s 148 of the Act dated 24.03.2015. The notice u/s 148 of the Act was issued on the basis of reason recorded by the assessing officer wherein it is mentioned that assessee has obtained unsecured loan of Rs.64,00,000/- and there was escaped income to the extent of Rs.64,00,000/-. However, the correct fact was that the impugned loans were not obtained by the assessee during the year under consideration and assessee in his submission submitted that he had obtained unsecured loan of Rs.12,00,000/- during the year under consideration. It is evident that in the reason recorded the AO has not mentioned correct factson the basis of which the case of the assessee was reopened u/s 147 of the of the Act. We have perused the decision of Hon'ble Bombay High Court in the case of PCIT Vs.Shodiman Investments (P) Ltd. as referred supra in this order wherein held that reopening notice has to be issued by the assessing officer on his own satisfaction not on borrowed satisfaction. As per the aforesaid decision the AO is required to link the material with the reason recorded. In the case of Pr.CIT Vs. Meenakshi Overseas (P) Ltd. as referred in this order the Hon'ble Delhi High Court held that where reason failed to demonstrate link between tangible material and form of reason to

believe income of escaped assessment then consequently reassessment is unjustified. In the case of Shri Karan Khurana Vs. The ITO, Ward 48(2) Delhi ITAT held that the reopening of the assessment on the basis of incorrect amount recorded in the reason the reopening of assessment is invalid. The relevant extract of the operating para is reproduced as under:

*19.2 In the present case, the AO recorded wrong facts on many count in the reasons recorded for reopening of the assessment i.e. AO recorded incorrect amount of Rs. 58,40,171/- credited in HSBC account, Noida despite he has admitted in the assessment order that it was Rs. 30,74,006/-. The AO in the reasons also recorded incorrect fact that no assessment has been completed in this case u/s 143(3) but in the reason itself AO recorded that earlier reassessment has been done u/s 147/148 read with section 143(3) of the Act. The AO also incorrectly recorded that sanction for reopening of assessment is required under proviso to section 151(1) of the Act despite such proviso does not exist in the statute as it was amended in 2015. The AO, therefore, recorded wrong, incorrect and non-existing reasons for reopening of the assessment. It makes clear that there is a total non-application of mind on the part of the AO while recording the reasons for reopening of the assessment. The AO has recorded incorrect amount which escaped assessment. The reasons failed to demonstrate the live link between the alleged tangible material and the formation of belief that income chargeable to tax has escaped assessment. The decisions relied upon Ld. Counsel for assessee in the cases of Pr. CIT Vs. Meenakshi Overseas (P) Ltd. 395 ITR 677 (Del.), Pr. CIT Vs. RMG Polyvinyl (I) Ltd., 396 ITR 5 (Del.), Pr. CIT vs. G&G Pharma India Ltd. [2016] 384 ITR 147 (Del.) and Signature Hotels P. Ltd. Vs. ITO (supra) squarely apply to the facts and circumstances of the case. Considering the facts and circumstances of the case, in the light of the above discussion, and decisions referred to in the order, we are of the view that reopening of the assessment is invalid and bad in law and that sanction/approval granted is also without any application of mind. Therefore, the reopening of the assessment cannot be sustained in law. We, accordingly, set aside the orders of the authorities below and quash the reopening of the assessment. Resultantly all the additions stand deleted.”*

It is undisputed fact that during the year under consideration the assessee has not obtained unsecured loan to the amount of Rs.64,00,000/-. The submission of the assessee supported with relevant evidences demonstrate that he has only obtained unsecured loan of Rs.12,00,000/- during the year under consideration it show that assessing officer has not brought relevant existing facts in the reasons recorded on the basis of which the case was reopened.

Therefore, following the decision of Hon'ble High Courts and ITAT as discussed supra in this order, we consider that proceeding u/s 148 of the Act is not valid, therefore, we quash the notice issued u/s 148 of the Act. Since, we have quashed the reopening of assessment therefore, other ground of appeal are not required any adjudication and the same left open, therefore, the appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is allowed.

**ITA No. 976/Mum/2022**

11. Since, the fact and issue involved in this ground of appeal are similar to the fact and issue involved in the appeal vide ITA No. 975/Mum/2022 as adjudicated supra in this order, therefore, applying the finding of ITA No. 975/Mum/2022 the additional ground filed by the assessee regarding validity of the reassessment proceedings is allowed, therefore, appeal of the assessee is allowed.

**ITA No. 977/Mum/2022**

12. Since the facts and the issue involved in this appeal are similar to the facts and issue involved in the appeal vide ITA No. 975/Mum/2022 as adjudicated supra in this order, therefore, applying the finding of ITA No. 975/Mum/2022 as mutatis mutandis this appeal of the assessee is also allowed.

**ITA No. 979/Mum/2022**

13. The fact in brief is that return of income declaring total income of Rs.95,314/- was filed on 29.09.2012. The return of income was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 06.08.2013. During the course of assessment the assessing officer stated that as per the information received from the office of DGIT(Investigation) Mumbai, the assessee has obtained

accommodation entries of loan from the entities managed by Shri Bhanwarlal Jain and his associates. On query the assessee furnished the details of unsecured loan along with confirmation from the parties from whom the loan taken, the bank statement of the person who have given the loan and detail of repayment of loan, their bank statement, I.T. acknowledgement. The assessee has filed the details during the course of assessment proceedings. In the assessment order the assessing officer has reproduced the facts about search action taken place in the case of Shri Bhanwarlal Jain & Group. The AO stated that in their statement Shri Bhanwarlal Jain has admitted that they were indulged in providing accommodation entries from the various entities managed and controlled by them. The assessing officer has discussed the modus operandi of giving accommodation entry as per the facts gathered from the search action taken placed in the case of Shri Bhanwarlal Jain & Group. The AO has added the amount of Rs.106,48,164/- u/s 68 of the Act to the total income of the assessee.

14. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has deleted the addition after taking into consideration the detail filed by the assessee before the assessing officer i.e bank statement retracted receipt of land and interest payment, loan confirmation statement, profit and loss of the parties from whom the loan was obtained balance sheet of the parties from whom the loan was obtained, PAN and I.T. acknowledgment of the return filed and other financial statement of the lenders etc.

15. Thereafter the revenue has filed the appeal before the ITAT. The ITAT vide ITA No. 6850/Mum/2016 dated 08.08.2018 has deleted the addition of Rs.79,00,000/- holding that such unsecured loans were not obtained by the assessee during the period relevant to the assessment year under consideration. However, regarding fresh loan of Rs.20.50 lac obtained by the assessee during the year under

consideration the ITAT has restored the issue to the file of the assessing officer for deciding afresh with the direction that the assessee to substantiate the same with documentary evidences etc. Thereafter, the assessing officer has passed the order u/s 143(3) r.w.s 254 of the Act on 20.12.2019 and added the amount of Rs.20,50,000/- mainly on the reason that Shri Bhanwarlal Jain has admitted in their statement that they were providing accommodation entries.

16. During the course of appellate proceedings the ld. Counsel submitted that in accordance with the direction of the ITAT given vide order dated 08.08.2018 the assessee has furnished the relevant supporting evidences i.e. confirmation from the lender parties, copies of bank statement, copies of I.T. acknowledgment etc. to prove the genuineness of the transactions. However, the AO has not disproved the supporting material furnished by the assessee. He also submitted that AO has added the amount of loan simply on the basis of statement of Shri Bhanwarlal Jain which was retracted subsequently.

On the other hand, the ld. D.R supported the order of lower authorities.

17. Heard both the sides and perused the material on record. The ITAT vide ITA No. 6850/Mum/2016 dated 08.08.2016 restored this issue of unsecured loan of Rs.20.50 lac obtained by the assessee during the year under consideration to the file of the assessing officer to decide afresh as per the law after taking into consideration the documentary evidences to be furnished by the assessee. During the course of set aside proceedings the assessee claimed that identity of the creditors has been established on the basis of PAN Card, return of income, account confirmation and genuineness of the transactions have been established on the basis of account confirmation and bank

statement where all loan were taken by account payee cheques, creditworthiness of creditors was established on the basis of balance sheet and bank statement of the parties. However, the AO has not controverted these material with any relevant evidences. The AO has solely relied upon the retracted statement of Shri Bhanwarlal 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 on identical issue in the case of NemichandJain Vs. DCIT, CC-1(3), Mumbai ITA No. 2641/Mum/2018 after taking into consideration similar details furnished by the assessee held that assessee has discharged initial burden by filing various documents to prove identity genuineness of the transaction and creditworthiness of the parties and held that the AO was erred in making additions towards unsecured loan u/s 68 of the Act. Therefore, following the decision of the coordinate bench we consider that the assessing officer has failed to point out any lacunae in the evidences submitted by the assessee, therefore, ground of appeal no. 1 of the assessee is allowed. Since we have deleted the quantum addition, therefore, disallowance of interest payment amounting to Rs.89,580/- become infructuous. Accordingly, ground no. 2 of the assessee is also allowed.

### **ITA No. 980/Mum/2022**

18. The fact in brief is that assessment u/s 143(3) of the Act was finalised on 18.03.2016. The assessing officer has disallowed the amount of interest payment of Rs.590,436/- paid to the following parties:

<i>Sr. No.</i>	<i>Name of the party</i>	<i>Claimed Interest</i>
1.	<i>Meenakshi Exports</i>	<i>2,10,600</i>
2.	<i>Mayur Enterprise</i>	<i>2,58,336</i>
3.	<i>Mukti Exports</i>	<i>1,21,500</i>

	<i>Total</i>	5,90,436
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The AO has stated that assessee has claimed interest payment pertaining to unsecured loan obtained from the concerns of Shri Bhanwarlal Jain & group during the financial year 2006-07 to 2011-12. On query the assessee explained that all the loan was genuine and Shri Bhanwarlal Jain has already retracted his statement and also referred the corresponding relevant evidences i.e. confirmation from the lender parties, copies of bank statement, copies of I.T. acknowledgment etc. however, the AO has not agreed with the submission of the assessee and disallowed the interest expenses of Rs.590,436/-.

19. During the course of appellate proceedings the ld. Counsel submitted that the assessee has furnished the relevant supporting material similar to the other cases as discussed supra in this order, therefore, the disallowance of interest on the loan obtained in the earlier years is not justified.

On the other hand, the ld. D.R supported the order of lower authorities.

20. Heard both the sides and perused the material on record. As discussed supra the quantum addition pertaining to the various year on which this interest amount was claimed have been deleted, therefore, the disallowance of interest payment pertaining to earlier years is not justified. Therefore, ground of appeal of appeal is allowed.

**ITA No. 981/Mum/2022**

21. Since the facts and the issue involved in this appeal are similar to the facts and issue involved in the appeal vide ITA No. 980/Mum/2022 as adjudicated supra in this order, therefore,

applying the finding of ITA No. 980/Mum/2022 as mutatis mutandis this appeal of the assessee is also allowed.

22. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on 23.10.2023

Sd/-  
(KuldipSingh)  
Judicial Member

Sd/-  
(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 23.10.2023

Rohit: PS

**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.