

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA Nos.1511 to 1517/M/2023  
Assessment Years: 2012-13 to 2018-19**

Dy. Commissioner Of Income Tax, Central Circle-4(1). Room No. 1918, 19 <sup>th</sup> Floor, Air Indi Building, Nariman Point, Mumbai-400 021	Vs.	Shri Bharat Girdharlal Rughani, 7 X Rughani Villa, Khandelwal CHS Ltd, Shankar Lane, Kandivali(W), Mumbai- 400 067 <b>PAN: AAAPR8087N</b>
(Appellant)		(Respondent)

**CO No.84/Mum/2023  
(Arising Out of I.T.A. No.1512/Mum/2023)  
Assessment Year 2013-14**

**CO No.85/Mum/2023  
(Arising Out of I.T.A. No.1513/Mum/2023)  
Assessment Year 2014-15**

**CO No.86/Mum/2023  
(Arising Out of I.T.A. No.1514/Mum/2023)  
Assessment Year 2015-16**

**CO No.87/Mum/2023  
(Arising Out of I.T.A. No.1515/Mum/2023)  
Assessment Year 2016-17**

ShriBharat Girdharlal Rughani, 1302, Rughani Villa, Nr. Kandivali Recreation Club, Bhogilal Fadiya Road, Kandivali West, Mumbai – 400 067 <b>PAN: AAAPR8087N</b>	Vs.	Dy. Commissioner Of Income Tax, Central Circle-4(1). Room No. 1918, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400 021
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Rakesh Joshi, A.R.  
Revenue by : Shri S Srinivasu, CIT DR

Date of Hearing : 11 . 10 . 2023  
Date of Pronouncement : 31 . 10 . 2023

**O R D E R****Per Bench:**

Aforesaid appeals filed by the Deputy Commissioner of Income Tax, Central Circle-4(1), Mumbai (hereinafter referred to as the Revenue) and cross objections filed by Shri Bharat Girdharlal Rughani (hereinafter referred to as the assessee) challenging the impugned orders having identical question of facts and law are taken up for disposal by way of composite order to avoid repetition of discussion.

2. Appellant-the Revenue by filing the present appeals sought to set aside the impugned orders all dated 14.02.2023 on the identically worded grounds except the difference in amounts of addition/disallowance (for the sake of brevity grounds of appeal for A.Y. 2013-14 are taken) inter-alia that:

*“1. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was justified in deleting the addition of unexplained investment of Rs.15,00,00,000/- without appreciating the fact that statements recorded from Shri Nilesh Shamji Bharani and others and the incriminating documents seized during the course of search prove that the cash loan transactions are unexplained investment of the assessee.*

*2. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was justified in deleting the addition of undisclosed interest of Rs.2,47,38,333/- without appreciating the fact that assessee has given cash loans to Shri Nilesh Bharani and received undisclosed interest on unexplained investments made.*

*3. The appellant craves to leave, to add, to amend and / or to alter any of the ground of appeal, if need be.”*

3. The cross objector Shri Girdharlal (the assessee) by filing the cross objections for A.Y. 2013-14 to 2016-17 sought to challenge the impugned orders all dated 14.02.2023 passed by the Ld. CIT(A) by raising identically worded grounds except the difference in amounts of addition/disallowance (for the sake of brevity grounds of appeal for A.Y. 2013-14 are taken) inter-alia that:

*“1. The Learned Assessing Officer as well as Learned CIT(A) has erred in not appreciating the fact that in the assessment proceeding initiated U/s. 153A of the Income Tax Act, 1961, no addition can be made in absence of incriminating documents found during the course of search at the premises of the assessee.*

*2. The Learned Assessing Officer as well as Learned CIT(A) has erred in not appreciating the fact that no addition in the assessment framed U/s 143(3) read with section 153A can be made on the basis of statement of third party and documents found at the premises of third party.*

*3. The respondent craves leave to add, amend, alter or delete the said ground of appeal.”*

4. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : original assessment for A.Y. **2012-13 to 2017-18** was framed under section 143(3) of the Income Tax Act, 1961 (for short ‘the Act’) at an assessed income. Subsequently assessment under section 143(3) read with section 147 of the Act was completed. Thereafter search and survey operation was carried out on 06.10.2017 in case of M/s. Sunshine Group, M/s. Sabari Developers LLP and M/s. Evergreen Enterprises and other entities at their offices and branches and residences, out of which some entities were also covered under section 133A of the Act. In the search operation evidence was unearthed showing the involvement of this group in providing

accommodation entries in the form of unsecured loan, bogus purchases and bogus Long Term Capital Gains (LTCG) in penny stocks. It was also found that M/s. Sunshine group has taken huge unsecured loans, bogus purchases and bogus LTCG from Kolkata based concerns, all of them are found to be paper companies not doing any business and most of the entities are managed by entry provider namely Jagdish Purohit, Pravin Agarwal, Pankaj Agarwal, Rajkumar Thakkar. The Assessing Officer (AO) after declining the contentions raised by the assessee made addition under section 69 of the Act for unexplained investment for A.Y. 2012-13 to 2017-18 as under:

Sl. No	A.Y	Addition u/s.69
1	2012-13	9,00,00,000/-
2	2013-14	15,00,00,000/-
3	2014-15	5,50,00,000/-
4	2015-16	5,00,00,000/-
5	2016-17	50,00,000/-
6	2017-18	15,25,00,000/-
7	2018-19	---

5. The AO also made addition under section 56 of the Act on account of undisclosed interest income for A.Y. 2012-13 to A.Y. 2018-19 as under:

Sl. No	A.Y	Addition u/s.69
1	2012-13	84,73,333/-
2	2013-14	2,47,38,333/-
3	2014-15	3,18,76,458/-
4	2015-16	4,01,43,125/-
5	2016-17	4,22,62,292/-
6	2017-18	3,90,14,063/-
7	2018-19	3,92,75,521/-

6. The AO accordingly framed the assessment under section 143(3) read with section 147 of the Act for A.Y. 2012-13 to A.Y. 2017-18 and under section 143(3) for A.Y. 2018-19.

7. The assessee carried the matter before the Ld. CIT(A) by way of filing appeals who has deleted the addition by allowing the appeals filed by the assessee. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the Revenue as well as the assessee have come up before the Tribunal by way of filing present appeals and cross objections respectively.

8. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

9. We have perused the order passed by the Ld. CIT(A) who has deleted the addition by returning following findings:

*“7.10. In the light of above discussion, the following are seen:*

*a. The assessment for AY 2012-13 to AY 2017-18 is made u/s.153A and not u/s. 153C. So, this is not a case where assessment is made solely on the basis of search conducted in another party. Rather, a search action has been conducted in the case of appellant itself.*

*b. Apart from the excel sheet stated to be in the possession of Shri. Dipak Padia and his statement, no other incriminating material has been referred by the AO.*

*c. From the excel sheet, it is seen that Shri Dipak Padia refers to transactions during the period 31.03.2017 to 19.05.2017, (para 5.21 of assessment order). In the reply to question no.26, Shri. Nilesh Bharani has stated that all the accounts are updated till 02.10.2017 and the transactions reflected till 05.10.2017 have been seized by the department (para 5.11 of assessment order). Seen in the context of excel file referred in the statement of Shri Dipak Padia (31.03.2017 to 19.05.2017), this lack of overlap of entries appears to support the contentions of the appellant that the transactions referred in the seized documents of Shri Nilesh Bharant do not refer to the appellant.*

*d. The outstanding loan as on 31.03.2017 based on the documents seized at the premises of Shri. Nilesh Bharani is Rs.27.00 crores as per*

*the AO. As against this, the sums referred to in reply to qn.no.15 of the statement of Shri. Dipak Padia (para 5.21 of assessment order) are of much smaller quantum. In other words, no correlation between the material found at the premises of Shri. Nilesh Bharani and the appellant emerges.*

*e. The statement of the appellant during the search has not been referred anywhere in the assessment order. It is also seen from the statement of Shri. Dipak Padia (para 5.21 of assessment order) that he has taken the name of Shri. Rashmin Rughani and not that of the appellant as the one who gave directions or who his boss was.*

*f. As regards the finding of telephone numbers and name in the diary of Shri. Nilesh Bharani (para 5.19 of assessment order), it is seen that the appellant himself in the written submissions has admitted to banking transactions with the "Bharanis and that transactions have been made by cheques and TDS has been deducted for brokerage. This fact is also borne out from qn.6 of the statement recorded by the AO on 28.11.2019 wherein the appellant cross- examined Shri. Nilesh Bharani, and the parties have confirmed before the AO that they had banking relations and loan transactions by cheque.*

*g. No other evidence to corroborate any of the entries found in the search of Shri. Nilesh Bharani (either with respect to receipt or repayment of cash) is shown to have been found from the premises of the appellant at the time of his search on 18.12.2017*

*h. As regards the AO's observation that one of the parties named in the sheet has accepted the cash loans and offered the income before the Hon'ble ITSC no comparison can be drawn on automatic basis. While that party may have been identified correctly, it necessarily need not be the case for the appellant. Facts have to be seen in each case independently and the cross-verifiability of evidences has indeed been discussed above.*

*i. Seen in this background, it can be concluded that there is no clinching evidence in the case of the appellant to link up the material seized in the case of Shri. Nilesh Bharani to that of the appellant. At the cost of repetition, it is reiterated that no opinion is being passed on the adequacy of material found and seized from Shri Nilesh Bharani, but only on whether it can be concluded that the transactions recorded therein are adequate enough for addition to be sustained in the hands of the appellant given the specific facts of the case.*

*j. Besides, it is noted that the AQ had given an opportunity to the appellant to cross-examine Shri. Nilesh Bharani on 28.11.2019, which goes in favour of the appellant. Similarly, the AO has also given an opportunity to Shri. Rashmin Rughani to cross-examine Shri. Dipak Padia on 28.11.2019 and no further counter has been given by the AO.*

*7.11. In view of the above and in the absence of any clinching evidence to conclusively show that the transactions are unrecorded cash transactions pertaining to the appellant, in my view, the additions made by the AO cannot be sustained. The additions made u/s.69 and 56 stand deleted. The appeal for AY 2012-13 stands allowed.*

*8. On the same lines as above, the grounds raised by the appellant for AY 2013- 14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 are also allowed, the issues being similar in nature (except for AY 2018-19 where no addition u/s.69 exists).”*

10. The Ld. D.R. for the Revenue challenging the impugned orders passed by the Ld. CIT(A) relied upon the orders passed by the AO and contended inter-alia that the assessee is one of the entry providers of the Kolkata based entities namely M/s. Sunshine Group, M/s. Sabari Developers LLP and M/s. Evergreen Enterprises etc. and provided unsecured loans, bogus purchase and bogus LTCG in penny stocks etc.; that the assessee himself has admitted the modus operandi of running the business of entry provider during the search and; that the telephone diary and data seized at the time of search shows that the assessee has been coded as R/08/B and prayed for accepting the appeals.

11. However, on the other hand, the Ld. A.R. for the assessee by filing the cross objections supported the deletion made by the Ld. CIT(A) qua the addition made by the AO and contended inter-alia that the entire addition has been made by the AO on the basis of assumptions and presumptions; that no incriminating material has been found nor referred to by the AO while making the addition; that there is no correlation between the material found at the premises of Mr. Nilesh Bharani and the assessee of this case that Mr. Nilesh Bharani himself disclosed before the AO that they had banking relations and loan transactions by way of cheque; that

even during the cross examination of Mr. Nilesh Bharani evidence has come on record in favour of the assessee.

12. First of all we have noticed that there is no incriminating material in order to fasten the liability of the assessee. The AO has proceeded against the assessee under section 153A of the Act. When there is no incriminating material then how the assessee can be proceeded against under section 153A of the Act. For argument sake even if it is assumed that there is incriminating material against the assessee then assessment ought to be framed under section 153C of the Act. Furthermore, it is admitted fact on record that the evidence relied upon by the AO in this case was collected in case of search of a third party.

13. No doubt subsequent search was conducted at the premises of the assessee on 18.12.2017 but no material was found or seized. Para 5.14 of the assessment order apparently proves that the alleged incriminating materials viz. promissory note etc. brought on record as Annexure A-16 and A-17 was seized in case of search on a third party and not the assessee and in these circumstances assessment proceedings were required to be initiated under section 153C and not 153A as has been done in this case.

13. Furthermore, when we examine para 5.18 of the assessment order the AO has discussed the documentary evidence seized and statement obtained during search at the premises of one Mr. Nilesh Bharani on 06.10.2017 wherein one document showing Bharani was coded as R/08/B, which is assessee. Mr. Nilesh Bharani has stated that “the list of lenders consisting the details of code, name,

outstanding amount, contact person and contact number, address which belongs to the assessee” and is extracted as under:

*Statement of Sh. Nilesh Bharani*

ANNEXURE-1 LIST OF LENDER									
S.No.	Sl No	Code	Name	Outstanding Amount (In '000)	CONTACT PERSON	CONTACT NUMBER	ADDRESS	REMARKS	
1	678	R/08/B	SHARAT RUGHANI	117500	SHARAT RUGHANI	9322595202	MANAS, LEVEL 2, ARVOR LORD KRISHNA BANK, LINK ROAD, MALAD WEST		

14. Aforesaid extract is prepared during the statement of Mr. Nilesh Bharani on the basis of coded Number R/08/B. We fail to crack the code R/08/B even with the assistance of the Ld. D.R. if it refers to the assessee.

15. Copy of ledger extracted in para 5.18 of the assessment order also does not bear any name. Moreover, these documents were seized from the premises of one Mr. Nilesh Bharani. For argument sake even if it belongs to the assessee then assessment under section 153C was required to be initiated.

16. So we are of the considered view that when the assessment in this case has been framed on the basis of search conducted at the premises of assessee himself wherein no incriminating material was found/seized rather the entire evidence discussed in this case was seized in the case of search on the third party and in these circumstances assessment was required to be framed under section 143C and not under section 153A of the Act and as such not sustainable in the eyes of law.

17. Moreover, the entire assessment order has been framed by the AO on the basis of one excel sheet found in possession of Mr. Dipak Padia and his statement who has referred to the transaction as discussed by the Ld. CIT(A) by thrashing the facts which further support the case of the assessee that these transactions referred to by the assessee belong to Mr. Nilesh Bharani and not the assessee. Moreover, Mr. Dipak Padia whose statement has been referred in para 5.19 of the assessment order has named one Mr. Rashmin Rughani and has not named assessee as his boss. Moreover, liability of addition cannot be fasten on the basis of statement only without any corroborative evidence.

18. Furthermore, when the AO has provided an opportunity of cross examination of one Mr. Nilesh Bharani to the assessee it has proved on record in the cross examination that the transactions between them (Mr. Nilesh Bharani and the assessee) were through banking channel and TDS and brokerage were deducted as is evident from question No.6 of the statement of Mr. Nilesh Bharani recorded by the AO. Moreover, during the recording of statement and cross examination of Mr. Nilesh Bharani parties have confirmed that they had transactions with banking channel only.

19. In view of what has been discussed above there is no incriminating evidence against the assessee from the material seized from the premises of Mr. Nilesh Bharani and in these circumstances the Ld. CIT(A) has validly and legally deleted the addition made by the AO under section 69 & 56 of the Act. So the appeals filed by the Revenue for A.Y. 2012-13 to 2017-18 are dismissed.

20. So far as addition made by the AO in A.Y. 2018-19 is concerned, facts and evidence relied upon by the AO are same but in A.Y. 2018-19 the AO has made the addition on account of interest earned/received by the assessee to the tune of Rs.22,57,83,125/- from A.Y. 2012-13 to A.Y. 2018-19 on the undisclosed investment in loans amounting to Rs.50,25,00,000/- which is consequential, because when the addition made by the AO under section 69 of the Act for A.Y. 2012-13 to A.Y. 2017-18 is not sustainable the consequential addition on account of interest in A.Y. 2018-19 is also not sustainable, hence rightly deleted by the Ld. CIT(A). So appeal filed by the Revenue for A.Y. 2018-19 is also not sustainable, hence ordered to be dismissed.

21. In view of what has been discussed above, appeals filed by the Revenue for A.Y. 2012-13 to A.Y. 2018-19 are hereby dismissed.

22. Since the assessee has filed the cross objections just to support the findings returned by the Ld. CIT(A) cross objections filed by the assessee for A.Y. 2013-14, 2014-15, 2015-16 & 2016-17 are also dismissed.

**Order pronounced in the open court on 31.10.2023.**

**Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 31.10.2023.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.