

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"E" BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.932/Mum./2022**  
(Assessment Year : 2010-11)

**ITA no.1503/Mum./2022**  
(Assessment Year : 2011-12)

Sanjib Sudhir Pradhan  
Flat no.2108, Meet Niketan Tower  
Thakur Complex, Kandivali (East)  
Mumbai 400 101 PAN – AKIPP8300J

..... Appellant

v/s

Income Tax Officer  
Ward-15(1)(1), Mumbai

..... Respondent

Assessee by : Mrs. Rituja Pawar Deswal a/w  
Ms. Hetal Laghave  
Revenue by : Shri P.D. Chogule

Date of Hearing – 30/08/2023

Date of Order – 24/11/2023

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeals have been filed by the assessee challenging the separate impugned orders of even date 29/03/2022, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment years 2010-11 and 2011-12.

**ITA no.932/Mum./2022**  
**Assessee's Appeal – A.Y. 2010-11**

2. In its appeal, the assessee has raised the following grounds:-

*"The appellant prefers an appeal against an order passed by Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi dated 29/3/2022 on following amongst other grounds each of which are without prejudice to any other :-*

*1.0 On fact and circumstances of the case and in law, Ld. CIT(A), erred in deciding the appeal without considering the rebuttal to remand report filed by the appellant before Ld. CIT(A) and finding of Ld. AO provided in the remand report;*

*2.0 On fact and circumstances of the case and in law, Ld. CIT(A) erred in sustaining the addition of Rs.1,48,902/- on estimating the additional income @5% of sale turnover of cloth and fabrics;*

*3.0 On fact and circumstances of the case and in law, Ld. CIT(A), erred in sustaining the addition u/s.68 of Rs.14,15,620/- of entire turnover disclosed in hotel management business, though at page-33 of CIT(A) order, the addition under hotel management had been estimated of Rs.1,50,000/-;*

*4.0 The Ld. CIT(A), before sustaining the addition u/s.68 of entire turnover of hotel management of Rs.14,15,620/-, erred seriously in ignoring the understated vital facts, being;*

*a) In original assessment u/s.143(3), the business of hotel management had been accepted as genuine and profit thereon had been assessed at Rs.4,52,182/- [@33.86% on turnover];*

*b) The Ld. CIT(A), in A.Y-2008-09, 2009-10 and 2013-14, had determined the addition on hotel management business on estimation basis, not disputed by Ld AO before Hon'ble ITAT;*

*c) The entire turnover cannot be brought to tax and only the real income embedded thereon could be held as suppressed income;*

*d) No contrary material had been brought on record to disprove the bonafide transactions of the appellant.*

*5.0 On fact and circumstances of the case and in law, Ld. CIT(A), erred in making the addition u/s.68 of Rs.12,34,980/- of gross turnover/receipts of agriculture activity;*

*6.0 The Ld. CIT(A), before sustaining the addition u/s.68 of entire turnover/receipts of agriculture produce of Rs.12,34,980/-, ought to have considered the vital facts, being :-*

*a) The appellant, in return of income, had disclosed the turnover of agriculture income of Rs.12,34,980/- and expenses thereto of Rs.5,78,780/-, thereby had disclosed the net agriculture income of Rs.6,56,200/-;*

*b) In original assessment u/s.143(3), the agriculture income disclosed by the appellant of Rs.6,56,200/- had been accepted as genuine;*

*c) The exhaustive documentary evidences such as 7/12 certificate, agriculture lands held and cultivated by appellant, bills of seeds, fertilizers, etc and other documents to prove the genuineness of agricultural activities is filed on record:*

*7.0 On facts and circumstances of the case and in law, Ld. CIT(A), erred in making the addition u/s.68 of Rs.1,65,000/- in respect of the gift received from the appellant's mother Smt. Renukabala Pradhan.*

*The appellant craves leave to add, amend, alter, and/or withdraw any of the grounds of appeal at the time of hearing."*

3. The issue arising in ground no. 1 is general in nature and therefore need no separate adjudication.
4. Ground no. 2 was not pressed during the hearing. Therefore, the same is dismissed as not pressed.
5. The issue arising in grounds no.3 and 4, raised in assessee's appeal, pertains to the addition under section 68 of the Act in respect of Hotel Management Charges.
6. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case pertaining to this issue are that for the year under consideration, the original assessment under section 143(3) read with section 147 of the Act was completed on 18/10/2011 assessing total income at Rs.4,12,590. Subsequently, notice dated 07/05/2012 under section 148 of the Act was issued and served on the assessee. In response thereto, the assessee filed a letter enclosing a copy of the return for the year on 29/08/2011. However, the same was not treated as compliance with the said notice as no return of income was filed by the assessee in response to the notice issued under section 148 of the Act. In the reasons

recorded for reopening the assessment, it was observed that the assessee is filing two separate returns of income on two different names and PANs. It was further observed that he has claimed a deduction under Chapter VI-A of more than Rs. 1 lakh, a lower rate of taxes and basic exemption twice in the same year, by filing two different returns. It was further observed that in one return of income the assessee has used the name Shri Sanjib Sudhir Pradhan, having PAN AKIPP8300J, while in the return filed with ITO-25(2)(4), the assessee has used his name Shri Rajiv Rama Pattanayak, and used the PAN AVSPP 7197H. It was further observed that the assessee has made huge cash deposits in the bank account with Axis Bank operated in the name of Shri Rajiv Rama Pattanayak. Further, his other bank account was with the United Bank of India in the name of Shri Sanjib Sudhir Pradhan. During the reassessment proceedings, the assessee filed an affidavit cum declaration stating that Shri Sanjib Sudhir Pradhan and Shri Rajiv Rama Pattanayak are his two names, and the person in both the name is the same.

7. During the reassessment proceedings, it was observed that the assessee has shown Hotel Management Business in the case of Shri Sanjib Sudhir Pradhan in his individual capacity. Further, it was observed that the assessee has not disclosed the place from where he has conducted this business. The balance sheet also does not show any fixed asset that can be used as a hotel and the profit and loss account does not show payment of rent against use of rented premises. It was also observed that no TDS was made on the Hotel Management Charges. Considering these facts, the assessee was asked to produce documentary evidence in support of his business. The assessee was

also asked to produce the bills/vouchers, documentary evidence for payment of VAT, service tax, other statutory dues, payments, and books of accounts in support of his claim. Since the assessee failed to produce any documentary evidence in respect of conducting Hotel Management Business in spite of various opportunities, the Assessing Officer ("AO") vide order dated 28/03/2014 held that the assessee has not carried out any genuine business transaction during the year under consideration. The AO treated the amount of Rs. 14,15,620 appearing in the books of account under the head Hotel Management Charges as unexplained cash credit and added the same to the total income of the assessee under section 68 of the Act.

8. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that though the assessee has claimed that he is running a catering business but has even failed to provide the address of the service receiver, as in the common practice in catering business, the name, address, and phone numbers of the parties are necessary to be maintained. The relevant findings of the learned CIT(A), in this regard, are as under:-

"6.3 .....

*In support of its claimed assessee has submitted P&L account, Balance Sheet, copies of sale bills of Pradhan Enterprises of the assessee from where assessee declared profit of Rs. 4,79,297/-. The AO has held that the assessee not carried out any genuine business transaction during the year under consideration to gain hotel management charges on the ground that bills issued by the assessee were not genuine and the Balance Sheet does not show any fixed asset as required to carry out such type of business, therefore, the total amount appearing in books of account under the head hotel management services treated as unexplained cash credit u/s 68 of the Act. On the basis of the material on record, it is noticed that the assessee simply stated that he is running catering business as third party brokers. In this condition. the assessee should have provided the name, address and telephone numbers of the broker who has supplied the labourers/staff. However, he failed to provide the same.*

*As per remand report, it is noticed that the assessee submitted various receipts and these receipts are mostly shown as services for hall and hall decoration, services for serving food and beverage, services for bringing all utensils etc. The bill issued by "The assessee does not contain (1) Serial number (ii) Name, address and registration of the service provider (assessee) (iii) Address of the service receiver (iv) The amount of service tax payable etc. The assessee did not disclose the place at which the services were provided. However, in common practice, in catering business, the name, address and phone numbers of the parties are necessarily to be maintained because the nature of such services is that the orders are placed well in advance sometime 6 to 7 months in advance. There is always a probability that it may get canceled as any unfortunate incident can happen any time. However, the assessee failed to produce any details of his customers. Hence, considering the defects in the bill and the assessee's failure to furnish complete details relating to his alleged hotel management business, the addition made by the AO of Rs. 14,15,620/- u/s 68 of the I.T. Act, 1961 is, therefore, sustained as the genuineness of the catering business is not proved. Accordingly, this ground of appeal is dismissed."*

9. It is the plea of the assessee that he was running a catering business and the income declared in the profit and loss account as Hotel Management Charges arises from the same. It was further submitted that vide original assessment order dated 18/10/2011 no addition was made in respect of Hotel Management Charges. The learned Authorised Representative ("*learned AR*") also referred to the copy of invoices related to Hotel Management Charges.

10. From the perusal of aforesaid invoices, forming part of the paper book from pages 92-94, we find that these invoices were raised by M/s Pradhan Enterprises, which is a proprietorship of the assessee, on the Hotel R.K.Premier. It is further evident that these invoices are dated 05/04/2010, 08/09/2010 and 07/04/2011. Thus, none of these invoices pertain to the year under consideration. Further, no details are available on record as to whether TDS was deducted from the Hotel Management Charges. There are also no details regarding the purchase of raw materials for running the catering business during the year under consideration. Further, there is no breakup of various expenses charged to the profit and loss account against the income of

Rs. 14,15,620 from Hotel Management Charges. Thus, we agree with the findings of the AO that the balance sheet does not show any fixed asset that can be used as a hotel, and the profit and loss account does not show payment of rent against the use of rented premises. It is evident from the record that sufficient opportunity was granted to the assessee during the reassessment proceedings to produce the documentary evidence in support of the submission that the income is earned from the Hotel Management Business. However, the assessee neither before the lower authorities nor before us produced any evidence to substantiate its claim beyond doubt. Therefore, in the absence of satisfactory documentary evidence, we do not find any merit in the plea of the assessee that the income of Rs. 14,15,620 is on account of Hotel Management Business. It is further the plea of the assessee that the entire turnover cannot be brought to tax and only the real income embedded therein would be held as suppressed income. In this regard, it is pertinent to note that the assessee has not discharged its onus to satisfactorily prove the incurring of expenditure for running the alleged Hotel Management Business. Further, the ledger account of the Hotel Management receipts and salary paid to the staff is also not furnished by the assessee in the year under consideration. Therefore, in the absence of satisfactory documentary evidence, the plea of the assessee is rejected and the addition made by the AO under section 68 of the Act is upheld. As a result, grounds no. 3 and 4 raised in assessee's appeal are dismissed.

11. The issue arising in grounds no. 5 and 6, raised in assessee's appeal, pertains to the addition under section 68 of the Act in receipts of agricultural activity.

12. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee has shown agricultural income of Rs. 6,25,200. During the reassessment proceedings, the AO observed that the assessee has stated that the sale of agricultural produce of Rs. 8,52,800 whereas during the reassessment proceedings, the same is shown at Rs. 12,84,980. It was further observed that the bills produced in the separate proceedings were issued on different dates and none of the bills is matching with the bills as submitted in earlier proceedings in respect of design, contains, rate, quantity, etc. It was also found that the purchaser, i.e. Mahalaxmi Enterprises, in the original proceedings, had its office in Orissa, while as per the bills produced in the current assessment proceedings, had its office in West Bengal. Accordingly, the AO did not agree with the genuineness of the agricultural income earned by the assessee and treated the same as unexplained cash credit.

13. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that the genuineness of the receipts from the agricultural produce is not proved and therefore it cannot be assumed that the assessee has carried out agricultural activity or earned any income thereof. The relevant findings of the learned CIT(A), in this regard, are reproduced as under:-

"7.2 I have gone through the assessment order, submissions made by the assessee and the remand report of the AO in this regard. It is noted that during the course of assessment proceedings the assessee submitted that he has agricultural land in his native place and furnished details of agriculture land holding. According to this land holding, the land admeasuring 10 acres was found to be in the name of his late father Shri Sudhir Pradhan and 3 acres in the name of his mother Smt. Renukabala Pradhan. The AO observed that since his mother is legal heir of his late father, agricultural income, if any, arising out of this land pertains to her mother and not to him. In view of the above, the AO held that the agricultural income shown in his hands is not his income.

In order to prove that assessee has earned agricultural income, assessee produced bill for sale of agricultural produce issued by M/s Mahalaxmi Enterprises. The assessee's claim of agricultural income was denied by the AO due to the following reasons:-

- i The assessee had mentioned different amounts as receipts from agricultural produce during the course of original assessment and re-assessment proceedings.
- ii The bills produced in these separate proceedings were issued on different dates and none of the bills were matching with those submitted earlier.
- iii This is the first year during which agricultural income was declared.
- iv The bills issued by M/s Mahalaxmi Enterprises produced by the assessee during the course of reassessment proceedings mentioned the state as West Bengal whereas in the original assessment the state mentioned was Orissa. Further receipt of payment from M/s Mahalaxmi Enterprises is shown on five dates in the reassessment proceedings whereas in the original assessment the receipts are shown only on two dates.
- v The format of the bills filed during the course of two proceedings also varied.
- vi The reply to notice u/s 133(6) in the case of Mahalaxmi Enterprises was

In view of the above observation, the AO held that the contents of the bills of M/s Mahalaxmi Enterprises were fake and that assessee managed to get the letter to his associates and prepared replies with forged signature. From the records available, it is seen that assessee has signed various documents including bank account opening form, D'mat account opening form, property registration papers, etc. by making signatures of different style. In the above backdrop, the entire receipt of Rs.12,34,980/- from agricultural activities was treated as unexplained cash credit and added to the total income of the assessee u/s 68 of the I.T. Act, 1961. Further during the remand proceedings, after considering submission of the assessee such as will drawn by assessee's father, copy of gift deed from assessee's mother, the AO held that the assessee had never owned any agricultural land. After considering the facts and circumstances, the above action of the AO is found acceptable. The appellant has not maintained or submitted any income and expenditure account from agricultural produce. In order to substantiate its claim of sale of agricultural

*produce the assess has only filed simple bills of M/s Mahalaxmi Enterprises and offered gross receipts from sale of paddy as agricultural income.*

*7.3. It is well known fact that in every agricultural operation, there must be some expenses such as cost of fertilizers, seeds, manure, labour charges etc. Neither agricultural equipment are shown nor the hiring cost of such equipment is shown as expenditure. It appears that the gross receipts are shown as agriculture income, which is not the case in practice. Thus, the appellant has failed to prove that the total agricultural income is genuine. Further, it is seen that appellant has produce bills from M/s Mahalaxmi Enterprises since A.Y. 2010-11, however, the bills do not bear serial number, registration number, the Logo and seal and stamp of the seller but all are paper bills. The appellee has produced four bills dated 10.04.2009, 15.07.2009, 18.09.2009 and 28.11.2009 of Rs.2,62,500/-, Rs.2,92,500/, Rs.3,75,000/- and Rs.3,04,980/- respectively. However, in this respect also appellant has failed to substantial that the payments were accepted through account payee cheque or demand draft or the other banking channel and the same had been credited in assessee's account. On the other hand, it is also found that during the assessment proceedings, the appellant had mentioned different amounts as receipts from agricultural produce during the course of original assessment and re-assessment proceedings. The bills produced in original assessment and re-assessment proceedings were issued on different dates and none of the bills were matching with those submitted earlier. The format of the bills filed during the course of these two proceedings also varied. The other major discrepancy in the bill is signature of the proprietor varies from bill to bill. Therefore, the genuineness of the receipts from agricultural produce is not proved. Therefore, in this case it cannot be assume that assessee owns any agricultural land and carry out any agricultural activity or earned any income thereof. The addition made by the AO of Rs.12,34,980/- u/s 68 of the I.T. Act, 1961 is, therefore, sustained as the assessee failed to prove the genuineness of agricultural receipt. Accordingly, this ground of appeal is dismissed."*

Being aggrieved, the assessee is in appeal before us.

14. We have considered the submissions of both sides and perused the material available on record. In his return of income, the assessee disclosed agricultural income of Rs. 6,56,200. As per the assessee, he does not hold any agricultural land. However, land admeasuring 10 acres is in the name of his late father and 3 acres in the name of his mother, which was used for agriculture operations. In support of his submission that the agricultural income is earned from the sale of agricultural produce, the assessee has placed on record the invoices raised by Mahalaxmi Enterprises, forming part of

the paper book from pages 43-46. From the perusal of the aforesaid invoices, it is evident that during the year under consideration, the assessee received a total of Rs. 12,34,980 from the sale of paddy to Mahalaxmi Enterprises. It is the claim of the Revenue that the sale of agricultural produce was shown as Rs. 8,52,800, during the original assessment proceedings, whereas during the current reassessment proceedings, the same is shown as Rs. 12,34,980. Further, the Revenue has pointed out various discrepancies in the aforesaid invoices as noted in the orders passed by the lower authorities. It is evident from the record that in order to examine the genuineness of the claim of the assessee, notice under section 133(6) of the Act was issued to Mahalaxmi Enterprises. The aforesaid notice was responded to by Mahalaxmi Enterprises vide letter dated 09/03/2014, wherein it was submitted that Mahalaxmi Enterprises is a trader and has purchased the agricultural product in cash from the assessee. It was also submitted that goods were purchased from the assessee during the period 2009-10 and 2010-11. It is evident from the record that the AO only issued notice under section 133(6) of the Act and did not issue any summons to examine the proprietor of Mahalaxmi Enterprises. Thus, it is evident from the record that without examining various discrepancies in invoices were noted by the AO, such as differences in address, non-mentioning of invoice no., the difference in the design of invoice, rate of paddy, and variation in the signature of the proprietor. Therefore, on the aforesaid basis, the AO came to the conclusion that the reply to the notice issued under section 133(6) of the Act was not received from the genuine trader of the paddy but the assessee has managed to get the letter to his associates and prepared reply to it himself with forged signatures. In view of the facts and

circumstances, we are of the considered view that if the Revenue doubts the genuineness of the documents submitted by the assessee then it is either required to direct the assessee to produce the person who has executed such document or issue summons to such person in this regard. The documents cannot be doubted without completing the enquiry in all respects. During the hearing, the learned AR placed on record the copy of the order passed by the learned CIT(A) for the assessment year 2013-14, wherein it was accepted that the assessee was involved in agricultural activity. However, from the record, it is evident that in the present case, the Revenue has doubted this aspect. Therefore, we deem it appropriate to restore this issue to the file of the AO for *de novo* adjudication after examination of all the details filed by the assessee. In this regard, we also direct the AO to conduct thorough verification/examination of all the aspects pertaining to the claim of income as agricultural income. Needless to mention the AO shall have the liberty to call for/summon any party to whom the assessee has claimed to have sold agricultural products in respect of its agricultural activity. Needless to mention no order shall be passed without affording reasonable opportunity of being heard to the assessee. The assessee is also directed to furnish all the information/details as may be sought by the AO. With the above directions, we remand this issue to the file of the jurisdictional AO and set aside the findings in the impugned order on this ground. As a result, for statistical purposes, grounds no. 5 and 6 raised in assessee's appeal are allowed.

15. The issue arising in ground No. 7, raised in assessee's appeal, pertains to the addition in respect of the gift received from assessee's mother.

16. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee received a gift in cash of Rs. 1,65,000 from his mother. In support of this gift, the assessee filed a copy of the gift deed dated 04/03/2010. During the assessment proceedings, upon perusal of the bank statement of Mrs. Renukabala Pradhan, mother of the assessee, held with SBI, Datan, West Midnapur, West Bengal, it was observed that she had a cash deposit of Rs. 1000 on 20/10/2008. The balance as on 04/03/2010 in her account was Rs. 1024 only. Subsequently, there is no transaction upto September 2010. It was further alleged that the bank statement shows meagre deposits of Rs. 1000, Rs. 500, Rs. 40,000, etc. Therefore, it was noted that the fund for the gift of Rs. 1,65,000 is not supported by her bank account, as the mother of the assessee had no funds to transfer as a gift to her son. It was also observed that assessee's mother has signed in English on this gift deed, however, in all the documents including registration papers of immovable property and letter, she has signed in Bengali. The AO vide order dated 28/03/2014 did not agree with the submissions of the assessee and treated the amount of Rs. 1,65,000 as unexplained cash credit and added the same to the total income of the assessee under section 68 of the Act. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

17. We have considered the submissions of both sides and perused the material available on record. From the perusal of the paper book filed by the assessee, we find that notice dated 30/06/2015 under section 133(6) of the

Act was issued to assessee's mother calling for various information. In response thereto, vide letter dated 14/07/2015, assessee's mother submitted that she had given a gift in cash of Rs. 16,65,000 to her son, i.e. the assessee. It was further submitted that the gift of Rs. 15,00,000 was pursuant to the gift deed dated 08/05/2010, while vide gift deed dated 04/03/2010 gift of Rs. 1,65,000 was given to the assessee. It was further submitted that the assessee settled with his family in Mumbai and he was in need of funds for purchasing a residential house in Mumbai. Therefore, a sum of Rs. 16,65,000 was given as a gift to the assessee. As regards the source of the aforesaid gift, assessee's mother submitted that she is an owner of agricultural land and in this regard furnished a copy of the 7/12 extract of the land owned by her. Further, it was submitted that part of the agricultural land was sold on 30/01/2009 at a price of Rs. 14,00,000. Along with the aforesaid letter, assessee's mother also furnished a Memorandum of Understanding dated 30/01/2009 confirming the receipt of Rs. 7,00,000 and a registered sale deed dated 25/03/2013 of Rs. 14,00,000. It is evident from the record that without doubting various documents submitted by the assessee's mother along with the reply to the notice issued under section 133(6) of the Act, the AO proceeded to make the addition after examining the bank statement of assessee's mother and mismatch in her handwriting. It is further the allegation of the Revenue that assessee's mother has signed in English on the gift deed, while in all the documents including registration papers of immovable property and letter she has signed in Bengali. In this regard, the assessee has placed on record the copy of the registered gift deed from pages 220-341 of the paper book. From the perusal of the aforesaid gift deed, we find that the assessee's

mother has signed the same in English and therefore the allegation of the Revenue that only the gift deed dated 04/03/2010 has been signed by assessee's mother in English has no merits. We are of the view that the learned AO is not an expert in handwriting and if there was any doubt regarding the mismatching of the handwriting of assessee's mother then the opinion of the expert in this field could have been taken. Once the AO has chosen not to do so, rejecting the plea of the assessee on this basis appears to be merely a pretext. Further, it is undisputed that the amount of Rs. 1,65,000 was given as a gift to the assessee in cash, and assessee's mother has already furnished documents in terms of a registered sale deed of Rs. 14,00,000 along with the reply to the notice issued under section 133(6) of the Act which was not disputed by the Revenue. Accordingly, we find no merits in placing reliance on the bank statement of the assessee's mother particularly when aforesaid evidence is not doubted by the Revenue. Further, the Revenue has also not doubted the genuineness of the 7/12 extract furnished by assessee's mother in respect of agricultural land owned by her and the certificate issued by the Gram Panchayat confirming the fact that she is a farmer. Therefore, when sufficient source i.e. receipt of Rs. 7,00,000 pursuant to the Memorandum of Understanding dated 30/01/2009, was furnished by assessee's mother, we find no basis in doubting the payment of Rs. 1,65,000 in cash as a gift to the assessee. Accordingly, the addition made by the AO on this aspect is deleted, and ground no. 7 raised in assessee's appeal is allowed.

18. Vide application dated 12/09/2022, the assessee sought admission of additional grounds of appeal challenging the reopening of assessment under

section 147 of the Act. However, we find that on 17/03/2023 the learned AR chose not to press the aforesaid application. The endorsement in this regard by the learned AR forms part of the record. Accordingly, the aforesaid application seeking admission of additional grounds of appeal is dismissed as not pressed.

19. In the result, the appeal by the assessee is partly allowed for statistical purposes.

**ITA no.1503/Mum./2022**  
**Assessee's Appeal – A.Y. 2011-12**

20. In its appeal, the assessee has raised the following grounds:-

*"The appellant prefers an appeal against an order passed by Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi dated 29/3/2022 on following amongst other grounds each of which are without prejudice to any other :-*

- 1.0 *On fact and circumstances of the case and in law, Ld. CIT(A) erred in deciding the appeal without considering the rebuttal to remand report filed by the appellant before Ld. CIT(A) and on ignoring the finding of Ld. AO provided in the remand report;*
- 2.0 *On fact and circumstances of the case and in law, Ld. CIT(A) erred in sustaining the addition u/s.69 of Rs.2,00,000/- of capital contribution made by the appellant in partnership firm M/s. A.K. Associates;*
- 3.0 *On fact and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition of remuneration from partnership firm M/s. A.K. Associates of Rs. 60,000/- and interest from such firm of Rs. 22,488/-;*
- 4.0 *On fact and circumstances of the case and in law, Ld. CIT(A) erred in sustaining the addition u/s.68 of Rs.24,86,743/- of entire turnover disclosed in Hotel Management business;*
- 5.0 *The Ld. CIT(A), before sustaining the addition u/s.68 of entire turnover of hotel management of Rs.24,86,743/-, erred seriously in ignoring the understated vital facts, being;*
  - a) *In original assessment u/s.143(3) for A.Y-2010-11, the business of hotel management had been accepted as genuine;*

- b) *The Ld. CIT(A), in A.Y-2008-09, 2009-10 and 2013-14, had sustained the addition on hotel management business on estimation basis, not disputed by Ld. AO before Hon'ble ITAT;*
- c) *The entire turnover cannot be brought to tax and only the real income embedded thereon could be held as suppressed income;*
- 6.0 *On fact and circumstances of the case and in law, Ld. CIT(A) erred in making the addition u/s.68 of Rs. 15,52,730/- of gross turnover / receipts of agriculture activities;*
- 7.0 *The Ld. CIT(A), before sustaining the addition u/s.68 of entire turnover/receipts of agriculture produce of Rs.15,52,730/-, ought to have considered the vital facts, being :-*
- a) *The appellant, in return of income, had disclosed the turnover of agriculture activities of Rs.15,52,730/- and expenses of Rs.6,77,730/-, thereby had disclosed the net exempt agriculture income of Rs.8,75,000/-;*
- b) *In original assessment u/s.143(3) for A.Y-2011-12, the agriculture income disclosed by appellant of Rs.6,56,200/- had been accepted as genuine;*
- c) *The documentary evidences such as 7/12 certificates, agriculture lands cultivated by appellant, bills of seeds, fertilizers and other documents to prove the genuineness of agricultural activities is filed on record.*
- 8.0 *On facts and circumstances of the case and in law, Ld. CIT(A) erred in sustaining the addition u/s.68 of Rs.40,38,300/- of Gifts received from appellant's mother, wife and relatives covered under Expl. (e) to Sec. 56(2)(vii) on holding that credit-worthiness of donors is not proven;*
- 9.0 *The Ld. CIT(A), before sustaining the addition u/s.68 of gifts received of Rs.40,38,000/- from relatives, ought to have considered the understated vital facts, being;*
- a) *The identity and genuineness of the gifts have been proven on filing notarised gifts deeds, PAN card, Aadhar Card, Voter ID, etc;*
- b) *The credit-worthiness of donors had been proven on filing the agriculture lands, properties, assets, income, etc on record;*
- c) *The notices u/s.133(6) issued to the donors have been served and respective replies along with documentary evidences had been filed on record:*
- 10.0 *On facts and circumstances of the case and in law, Ld. CIT(A), erred in sustaining the addition u/s.68 of Rs.8,91,548/- on sale of ornaments and on ignoring the settled law that only the profit embedded on disputed transactions could be brought to tax.*

*The appellant craves leave to add, amend, alter, and/or withdraw any of the grounds of appeal at the time of hearing.”*

21. In the larger interest of justice, the slight delay of 4 days in filing the appeal by the assessee is condoned.

22. Ground No. 1, raised in assessee's appeal, is general in nature and therefore, needs no separate adjudication.

23. Grounds no. 2 and 3 were not pressed during the hearing, therefore these grounds are dismissed as not pressed.

24. The issue arising in grounds no. 4 and 5, raised in assessee's appeal, pertains to the addition under section 68 of the Act in respect of Hotel Management charges.

25. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that for the year under consideration, the assessee filed his return of income on 14/07/2011 declaring a total income of Rs. 1,69,758. The assessee subsequently revised his return of income on 19/10/2011 declaring a total income of Rs. 14,10,660. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, it was observed that the assessee has shown Hotel Management charges in his individual capacity. It was further observed that the assessee had not disclosed the place from where he had conducted this business. Further, the balance sheet also does not show any fixed asset that can be used as a hotel, and the profit and

loss account also does not show payment of rent against the use of rented premises. Further, it was observed that no TDS has been made under Hotel Management charges. Accordingly, the assessee was asked to produce documentary evidence in support of its claim of running the Hotel Management business. The assessee was asked to produce the bills/vouchers, documentary evidence for payment of VAT, service tax, other statutory dues, payments, and books of accounts in support of its claim. In the absence of documentary evidence in respect of conducting hotel management business, the AO vide order dated 28/03/2014 passed under section 143(3) of the Act held that the assessee has not carried out any genuine business transaction during the year under consideration to gain Hotel Management charges. Accordingly, the amount appearing in the books of account under the head Hotel Management charges was treated as unexplained cash credit and an addition of Rs. 24,86,743 was made to the total income of the assessee under section 68 of the Act.

26. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue, by observing as under:-

"6.2 .....

*In support of its claimed assessee has submitted P&L account, Balance Sheet, copies of sale bills of Pradhan Enterprises of the assessee from where assessee declared profit of Rs.10,44,433/-. The AO has held that the assessee not carried out any genuine business transaction during the year under consideration to gain hotel management charges on the ground that bills issued by the assessee were not genuine and the Balance Sheet does not show any fixed asset as required to carry out such type of business, therefore, the total amount appearing in books of account under the head hotel management services treated as unexplained cash credit u/s 68 of the Act. On the basis of the material on record, it is noticed that the assessee simply stated that he is running catering business as third party brokers. In this condition, the assessee should have provided the name, address and telephone numbers of the broker who has supplied the labourers/staff. However, he failed to provide the same.*

*As per remand report, it is noticed that the assessee submitted various receipts and these receipts are mostly shown as services for hall and lawn decoration, services for serving food and beverage, services for bringing all utensils etc. The bill issued by the assessee does not contain (i) Serial number (ii) Name, address and registration of the service provider (assessee) (iii) Address of the service receiver (iv) The amount of service tax payable etc. The assessee did not disclose the place at which the services were provided. However, in common practice, in catering business, the name, address and phone numbers of the parties are necessarily to be maintained because the nature of such services is that the orders are placed well in advance sometime 6 to 7 months in advance. There is always a probability that it may get canceled as any unfortunate incident can happen any time. However, the assessee failed to produce any details of his customers. Hence, considering the defects in the bill and the assessee's failure to furnish complete details relating to his alleged hotel management business, the addition made by the AO of Rs. 24,86,743/- u/s 68 of the I.T. Act, 1961 is, therefore, sustained as the genuineness of the catering business is not proved. Accordingly, this ground of appeal is dismissed."*

27. As per the assessee, he received Hotel Management charges of Rs. 24,86,743 for undertaking the catering and decoration in hotels/restaurants. It is further submitted that the assessee has incurred salary and other expenses for providing such services. In support of this submission, reliance was placed on the profit and loss account, forming part of the paper book on page no. 5, wherein the assessee has declared salary expenses of Rs. 8,08,600 and staff welfare expenses of Rs. 59,835. By referring to the schedule of fixed assets, on page no. 8 of the paper book, it was submitted that the assessee had three flats from where he carried out the business of catering and decoration. Further, reliance was also placed on ledger accounts of Hotel Management receipts and salary expenses, forming part of the paper book from pages 151-154. The assessee has also placed on record the copy of bills of Hotel Management receipts from pages 159-177 of the paper book. From the perusal of these bills, it is evident that the same have been raised in respect of services for Hall and lawn decoration, serving food and beverages, bringing utensils, services of waiters and waitresses, and services for attendants.

However, it is also evident that none of these invoices mentioned the complete address of the service recipient. Further, not even the location of rendering of services is mentioned in these invoices, except mentioning the name of the city, i.e. Mumbai. Further, from the perusal of aforesaid ledger accounts, it is evident that the name of the person, from whom the payment is received and to whom the salary is paid, is not mentioned. Similar to the assessment year 2010-11 this year also there are no details regarding the purchase of raw materials for running the catering business during the year under consideration. It is evident from the record that the address of the service receiver was neither provided by the assessee nor called for by the AO during the assessment proceedings. It is further evident that the AO rejected the plea of the assessee on the basis that the balance sheet does not show any fixed asset that can be used as a hotel. However, before us by referring to the schedule of fixed assets, the assessee has submitted that it has three flats from where the business of Hotel Management was conducted by the assessee. Further, the cash vouchers forming part of the paper book from pages 9-17, relied upon by the assessee, pertain to the financial year 2011-12. Therefore, we are of the view that this issue requires reconsideration as neither the assessee has furnished complete documentation before the AO for proper examination nor AO conducted a thorough investigation by summoning the service recipients or issuing notice under section 133(6) of the Act, least seeking their complete address. Accordingly, we restore this issue to the file of AO for *de novo* adjudication after the necessary examination of all facts and documents relied upon by the assessee. Needless to mention the AO shall be at liberty to call for any further information from the assessee or issue

summons for examination of any person. The assessee can also file any further documents in support of his claim. As a result, for statistical purposes, grounds no. 4 and 5 are allowed.

28. The issue arising in grounds no. 6 and 7, raised in assessee's appeal, pertains to the addition under section 68 of the Act in receipts of agricultural activity. We find that a similar issue has already been considered in assessee's own case for the assessment year 2010-11. We further find that even the AO as well as the learned CIT(A) noted that the facts of the year under consideration are similar to the assessment year 2010-11. Therefore, our findings/conclusion reached in assessee's appeal for the assessment year 2010-11 shall apply mutatis mutandis. Accordingly, with similar directions as rendered in assessee's appeal being ITA No. 932/Mum./2022, this issue is restored to the file of the AO for *de novo* adjudication. As a result, for statistical purposes, grounds no. 6 and 7 raised in assessee's appeal are allowed.

29. The issue arising in ground No. 7, raised in assessee's appeal, pertains to the addition in respect of gifts received from the mother, wife, and relatives.

30. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case pertaining to this issue are that the assessee has claimed to have received the gift of Rs.4,038,300, during the year, from various relatives in cash. The details of the same are as under:-

<i>Sl. No.</i>	<i>Name of the Donor</i>	<i>Relationship with the assessee</i>	<i>Amount (in Rs.)</i>
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1.	<i>Renukabala Pradhan</i>	<i>Mother</i>	<i>15,00,000</i>
2.	<i>Suresh Chandra Shee</i>	<i>Father-in-law</i>	<i>2,51,000</i>
3.	<i>Rashmi Sanjib Pradhan</i>	<i>Wife</i>	<i>11,95,000</i>
4.	<i>Mihir Kumar Pradhan</i>	<i>Uncle (father's brother)</i>	<i>1,51,000</i>
5.	<i>Bikash Chandra Shee</i>	<i>Brother-in-law</i>	<i>9,41,300</i>
<i>Total</i>			<i>40,38,300</i>

31. As regards the gift of Rs. 9,41,300 received from Mr. Bikash Chandra Shee in cash, the assessee could not furnish the name of the relative, the identity, creditworthiness, and capacity during the assessment proceedings. Accordingly, the AO treated the gift of Rs. 9,41,300 as unexplained cash credit and added the same to the total income of the assessee under section 68 of the Act. However, during the appellate proceedings before the learned CIT(A), the assessee submitted that he received the sum of Rs. 9,41,300 as a gift from Mr. Bikash Chandra Shee (assessee's brother-in-law) and also submitted a reply under section 133(6) furnished by Mr. Bikash Chandra Shee along with PAN card, deed of gift and ITR acknowledgement for the assessment year 2010-11. The learned CIT(A), vide impugned order, noted that the declared income as per the ITR acknowledgement of Mr. Bikash Chandra Shee is Rs. 1,64,857. The learned CIT(A) in the absence of bank account statement for the year under consideration of Mr. Bikash Chandra Shee doubted the genuineness of the transaction and capacity of the donor and accordingly, dismissed the ground raised by the assessee on this issue.

32. In the appeal before us, the assessee has only placed on record the deed of gift dated 24/04/2010 entered into between the assessee and Mr. Bikash Chandra Shee for the gift of Rs. 3,00,000 and the gift deed dated 30/09/2010

for the gift of a sum of Rs. 9,41,300. The assessee has also filed the ITR acknowledgement for the assessment year 2010-11, wherein the gross total income of the assessee is computed at Rs. 164,857. Thus in the proceedings before us also the assessee did not furnish the bank statement of Mr. Bikash Chandra Shee or any other document to substantiate the creditworthiness of the donor. The ITR acknowledgement and gift deeds may prove the genuineness of the transaction and the identity of the donor, however, the creditworthiness of the donor is still not satisfactorily proved by the assessee. Accordingly, we find no infirmity in the findings of the learned CIT(A) in upholding the addition of Rs. 9,41,300 under section 68 of the Act in respect of gift in cash received from Mr. Bikash Chandra Shee.

33. As regards the gift in cash of Rs. 15,00,000 received from his mother, the assessee filed a gift deed dated 08/05/2010 during the assessment proceedings. Upon perusal of the bank statement of Mrs. Renukabala Pradhan, assessee's mother, the AO vide assessment order held that the fund for the gift is not supported by her bank account. It was further held that the bank statement shows meagre deposits of Rs. 1000, Rs. 500, Rs. 40,000, etc., which are actual surplus earnings. Accordingly, it was held that from these surplus funds assessee's mother cannot afford to donate Rs. 15,00,000 to the assessee. Accordingly, the AO proceeded to treat the amount of Rs. 15,00,000 as unexplained cash credit and added the same to the total income of the assessee under section 68 of the Act. The learned CIT(A), vide impugned order, after considering the Memorandum of Understanding dated 30/01/2009 and copy of the sale deed of land made on 25/03/2013 came to the conclusion

that assessee's mother had not sold the land instead she had gifted the land to a trust and accordingly source of gift to the assessee is not the sale of land. Accordingly, the learned CIT(A) dismissed the ground raised by the assessee on this issue.

34. It is pertinent to note that the Memorandum of Understanding dated 30/01/2009 and registered sale deed dated 25/03/2013 were relied upon by assessee's mother in her reply to the notice issued under section 133(6) of the Act to substantiate the source of gifts given to the assessee in cash. In the present case, the learned CIT(A) has treated the sale deed as a deed for the gift of land to the trust. However, even if it is considered as a sale deed, as claimed by the assessee, the entire consideration of Rs. 14,00,000 cannot be held to have been received by assessee's mother in the year under consideration, as the deed is dated 25/03/2013. Therefore, without going into the issue whether the deed entered on 25/03/2013 is a gift deed or sale deed and whether assessee's mother ultimately received the total consideration of Rs. 14,00,000, it is pertinent to note that as per the Memorandum of Understanding dated 30/01/2009, forming part of the paper book from pages 34-36, assessee's mother received an amount of Rs. 7,00,000 as an advance for sale of the agricultural land. Though it has been alleged by the Revenue that there is no proof or evidence for receipt of Rs. 7,00,000, at the same time the Revenue has not brought any evidence to deny the authenticity of the Memorandum of Understanding dated 30/01/2009. Therefore, the source of the gift to the extent of Rs. 7,00,000 is proved in the hands of assessee's mother, even though the receipt of the entire consideration of Rs. 14,00,000 is

in doubt. We find that a similar plea was taken by the assessee in its appeal for the assessment year 2010-11 to substantiate the gift of Rs. 1,65,000 received in cash from his mother. Further, in the appeal for the assessment year 2010-11, the addition on account of a gift of Rs. 1,65,000 received in cash by the assessee from his mother has been deleted by considering Rs. 7,00,000 received pursuant to the aforesaid Memorandum of Understanding dated 30/01/2009 as the source for making the aforesaid payment. In these circumstances, we are of the considered view that since the relief of Rs. 1,65,000 has already been granted in the year 2010-11, the balance amount of Rs. 5,35,000 can be said to have been paid by the assessee's mother from the aforesaid sum of Rs. 7,00,000 in the year under consideration. Accordingly, the addition to an extent of Rs. 5,35,000 received as a gift in cash from the mother is deleted. Regarding the balance amount of the gift received by the assessee in cash from his mother, we deem it appropriate to grant one more opportunity to the assessee, in the interest of justice, to substantiate its claim before the AO. Accordingly, in respect of the balance sum of gifts received in cash from the mother, the issue is restored to the file of the AO for *de novo* adjudication. The assessee is directed to furnish all the documents/evidence in support of his submission. Further, needless to mention the AO shall have the liberty to call for any information from the assessee. As a result, to this extent, partial relief is granted to the assessee in respect of gift in cash received from the mother.

35. As regards the gift in cash of Rs. 1,51,000 received from Mr. Mihir Kumar Pradhan (assessee's uncle), the assessee filed a gift deed dated

02/05/2010 during the assessment proceedings. In reply to the notice issued under section 133(6) of the Act, this party enclosed a copy of documents of holding of agricultural land. Since the assessee could not furnish any documentary evidence to prove the creditworthiness of the donor and the ownership of the agricultural land does not prove the capacity of the donor to make the gift, the AO vide assessment order made an addition of Rs. 1,51,000 received from Mr. Mihir Kumar Pradhan as unexplained cash credit and added the same to the total income of the assessee under section 68 of the Act. The learned CIT(A), vide impugned order, observed that Mr. Mihir Kumar Pradhan does not have a PAN and is also not filing the income tax return. Further, it was observed that the assessee has not submitted any bank account statement for the year under consideration to prove the genuineness of the transaction and the capacity of the donor. Accordingly, the learned CIT(A) dismissed the ground raised by the assessee on this issue. We find that even before us the documents as sought by the lower authorities have not been furnished by the assessee. Accordingly, we find no infirmity in the findings of the learned CIT(A) in upholding the addition of Rs. 1,51,000 under section 68 of the Act in respect of gift in cash received from Mr. Mihir Kumar Pradhan.

36. As regards the gift in cash of Rs. 2,51,000 received from Mr. Suresh Chandra Shee (assessee's father-in-law), the assessee furnished the copy of the gift deed dated 04/05/2010 and also the copy of the bank statement of Mr. Suresh Chandra Shee during the assessment proceedings. Upon perusal of the bank statement of Mr. Suresh Chandra Shee, the AO vide assessment order observed that the donor had an opening balance of Rs. 15,00,699 as on

24/04/2010 and he has withdrawn Rs. 14,000 on 21/05/2010. It was held that the donor had no capacity to gift the amount of Rs. 2,51,000 on 04/05/2010 to the assessee. It was further observed that Mr. Suresh Chandra Shee was a school teacher and was getting a meagre salary of Rs. 14,000-16,000 per month and there was immediate withdrawal, which proves that he was totally dependent on his salary for his routine expenses thus leaving no surplus fund. Accordingly, the AO made an addition of Rs. 2,51,000 as unexplained cash credit under section 68 of the Act in respect of gift in cash received from Mr. Suresh Chandra Shee. The learned CIT(A), vide impugned order, upheld the findings of the AO in respect of this issue and dismissed the ground raised by the assessee.

37. In the present appeal, the assessee has furnished the PAN card and voter ID of Mr. Suresh Chandra Shee. Further, the gift deed dated 04/05/2010 entered into between the assessee and Mr. Suresh Chandra Shee is also placed on record, whereunder the donor has decided to make a gift of Rs. 2,51,000 to the assessee. The assessee had on page 120 of the paper book also placed on record the reply to the notice issued under section 133(6) of the Act of Mr. Suresh Chandra Shee, wherein he agreed to have given a gift in cash of Rs. 2,51,000 to the assessee out of his past savings. Further, it is submitted that upon his retirement on 04/11/2012, Mr. Suresh Chandra Shee received an amount of Rs. 3,50,000. It is pertinent to note that the date of retirement is after the relevant financial year and thus any amount received on the retirement cannot be considered to be the source of gifting cash of Rs. 2,51,000 to the assessee. Further, apart from the aforesaid documents no

other document has been placed on record which could prove the creditworthiness of the donor. The assessee has also not brought any evidence on record to controvert the detailed factual findings of the AO which have been upheld by the learned CIT(A). Accordingly, we find no infirmity in the findings of the learned CIT(A) in upholding the addition of Rs. 2,51,000 under section 68 of the Act in respect of gift in cash received from Mr. Suresh Chandra Shee.

38. As regards the gift in cash of Rs. 11,95,000 received from Smt. Rashmi Sanjib Pradhan (assessee's wife), the source of funds was shown as agricultural income. During the assessment proceedings, upon perusal of the capital account of assessee's wife for the period 01/04/2009 to 31/03/2010, it was observed that her closing Balance is Rs. 9,72,550. It was further observed that she has filed a return of income for the assessment year 2010-11 of Rs. 1,68,695. Further, the balance as on 31/03/2011 was Rs. 8,26,193. It was also noted that in the last 5 years the donor has never shown any agricultural income. Since the creditworthiness of the donor was not proved, the AO treated the transaction as non-genuine and added the sum of Rs. 11,95,000 to the total income of the assessee as unexplained cash credit. During the appellate proceedings before the learned CIT(A), the assessee submitted that his wife received a cash gift amounting to Rs. 6,41,300 from his father Mr. Suresh Chandra Shee. As the AO had found that Mr. Suresh Chandra Shee was getting meagre salary of Rs. 14,000-16,000 per month and there was immediate withdrawal of money from his salary, therefore the learned CIT(A) held that Mr. Suresh Chandra Shee had no capacity of gifting Rs. 6,41,300 to his daughter during the financial year 2010-11. Further, the assessee

submitted that his wife received a cash gift amounting to Rs. 3,00,000 from his brother Mr. Bikash Chandra Shee. As the AO had found that Mr. Bikash Chandra Shee was not having the capacity to gift Rs. 3,00,000 to his sister upon perusal of his ITR acknowledgement, accordingly this plea of the assessee was also rejected. Further, the assessee has not submitted bank account statement for the year under consideration to prove the genuineness of the transaction and creditworthiness of Mr. Bikash Chandra Shee, the addition made by the AO of Rs. 11,95,000 under section 68 of the Act was upheld and the ground of the assessee in this regard was dismissed.

39. In the appeal before us, the assessee has placed on record the PAN card, and copy of Aadhaar Card of his wife to prove the identity of the donor. The assessee has also placed on record the gift deed dated 02/05/2010 entered between the assessee and his wife whereby the donor agreed to make a gift of Rs. 11,95,000 to the assessee. Further, the assessee on page no. 127 of the paper book filed a copy of ITR acknowledgement of the assessee for the assessment year 2011-12 wherein a gross total income of Rs. 2,79,038 has been disclosed. On pages 128-130 of the paper book, the assessee has placed on record invoices of purchase of jewellery by his wife, however the same also does not prove the availability of funds with the assessee's wife at the time of the gift of Rs. 11,95,000 in cash. Apart from the above, the assessee has not placed on record any other document to controvert the findings of the AO and the learned CIT(A). Accordingly, we find no infirmity in the findings of the learned CIT(A) in upholding the addition of Rs. 11,95,000 under section 68 of the Act in respect of gift in cash received from assessee's wife.

40. The assessee has also submitted that the gifts are received from the mother, wife, and other relatives which are covered under Explanation (e) to section 56(2)(vii) of the Act, and thus the same is not taxable. However, it is pertinent to note that as per section 68 of the Act the assessee is required to offer an explanation about the nature and source of any sum credited to his books to the satisfaction of the AO, and in this regard, the assessee is not only required to prove the identity of the creditor and genuineness of the transaction but also the creditworthiness of the creditor, which the assessee has failed to prove in case of certain transactions as noted above. Accordingly, mere reliance on Explanation (e) to section 56(2)(vii) of the Act would not absolve the assessee from the onus cast on him under section 68 of the Act. As a result, grounds no. 8 and 9 raised in assessee's appeal are partly allowed for statistical purposes.

41. The issue arising in ground No. 10, raised in assessee's appeal, pertains to an addition under section 68 of the Act on the sale of ornaments.

42. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case pertaining to this issue are that during the year under consideration, the assessee has claimed the sale of gold ornaments and shown receipt of Rs. 8,91,548 in cash. The assessee claimed that the said ornaments were sold to M/s Motaba & Sons Jewellers, Colaba, Mumbai. In support of his claim, the assessee has submitted the sale bill of the said jeweller dated 10/04/2010. The AO vide assessment order did not agree with the submissions of the assessee and held that the

aforesaid bill produced by the assessee was fake. During the assessment proceedings, the AO also issued summons under section 131 of the Act to the jeweller. In a statement of the proprietor of the aforesaid jeweller recorded under section 131 of the Act, it was submitted that his firm was not in existence on 10/04/2010. In the aforesaid statement, it was also submitted that no ornament was purchased from the assessee during the financial year 2010-11 and the claim of the assessee is false. After considering the aforesaid statement and providing the opportunity to the assessee, the AO made an addition of Rs. 8,91,548 to the total income of the assessee section 68 of the Act as unexplained cash credit. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee on this issue and upheld the findings of the AO. The relevant findings of the learned CIT(A) are reproduced as under:-

*"9.3 On perusal of the bill No. 1000 & 1115, it is noticed that the bill bears VAT no. and date of issue of VAT no. w.e.f 12.01.2011. Therefore, it is clear that these bills were printed on or after 12.01.2011. Further, the assessee was given opportunity to produce the party to before the AO for the verification of his claim; however, the assessee expressed his inability to produce the party. However, the AO recorded statement u/s 131 of the I.T. Act, 1961 of the party i.e. Sh. Dimpesh Jain. In his statement, he clearly stated that the both invoices are written and signed by him, but, the original date of bill No. 1000 is dated 10.04.2009 instead of 10.04.2010 and the original date of bill No. 1115 is dated 05.11.2009 instead of 05.11.2010. He stated that the original bills were tampered and dates were manipulated. During the oath statement u/s 131 of the I.T. Act, Sh. Dimpesh Jain has stated that Sh. Sanjib Pradhan was asked him to give back dated invoice bill mentioning value of 7 items as per his description for the rate as on 10.04.2009. Sh. Sanjib Pradhan informed to Sh. Dimpesh Jain that he wants this invoice for his record only. However, during the assessment proceedings, Sh. Dimpesh Jain has submitted copy of the invoice dated 10.04.2009 wherein it is mentioned that this invoice is for only 'valuation purpose', no purchase has to be linked with this rough estimate and this is counter signed by Mr. Sanjib Pradhan. Therefore, it is clear that no transaction was carried out vide bill no. 1000. Further, regarding the bill No. 1115, Sh. Dimpesh Jain has again stated in his oath statement u/s 131 of the I.T. Act, 1961 that Sh. Sanjib Pradhan was asked him to give back dated invoice bill. Since, the business of the jeweller was started on 09.02.2011 and received TIN No. 12.01.2011, therefore, it is not possible that the above*

*mentioned sale/purchase will be carried out in the prior to 09.02.2011. Therefore, the addition made by the AO on account of sale/purchase of Gold ornaments of Rs. 8,91,548/- are, therefore, sustained. Accordingly, this ground of appeal is dismissed."*

43. It is the plea of the assessee that he had sold gold ornaments to M/s Motaba & Sons Jewellers, Colaba, Mumbai, and Mahavir Jewellers, Dahisar (West), Mumbai during the year and the sale consideration was received in cash. As evident from the record, in order to determine the genuineness of the transaction, the assessee was given an opportunity to produce the party for verification of the claim. However, due to the inability on the part of the assessee to produce the party, summons under section 131 of the Act was issued to M/s Motaba & Sons Jewellers, Colaba, Mumbai, and in response thereto, the proprietor of the aforesaid jeweller recorded his statement under section 131 of the Act. As evident from the aforesaid statement recorded under section 131 of the Act, duly noted by the AO on pages 13-14 of the assessment order, the proprietor of M/s Motaba & Sons Jewellers, Colaba, Mumbai submitted that the invoice dated 10/04/2010 has been manipulated by the assessee as the original invoice in his record is dated 10/04/2009. It was further submitted that his business was started on 09/02/2011 and accordingly, he received the TIN no. on 12/01/2011, which has also been quoted on the invoice. Thus any transaction prior to 09/02/2011 does not pertain to M/s Motaba & Sons Jewellers, Colaba, Mumbai. The proprietor of M/s Motaba & Sons Jewellers, Colaba, Mumbai also submitted that he has not purchased any ornament from the assessee during the financial year 2010-11 or sold any ornament to him in the financial year 2009-10. From the record, it is evident that apart from M/s Motaba & Sons Jewellers, Colaba, Mumbai the assessee has claimed that it has sold the jewellery to Mahavir Jewellers.

However, as evident from the record, neither notice under section 133(6) of the Act nor summons under section 131 of the Act were issued to Mahavir Jewellers. Further, the assessee claimed that the aforesaid statement of the proprietor of M/s Motaba & Sons Jewellers has been recorded at his back and no opportunity of cross-examination was granted to the assessee. Therefore, in view of the facts and circumstances as noted above, we deem it appropriate to restore this issue to the file of the AO for *de novo* adjudication. The AO is directed to grant the opportunity to cross-examine the proprietor of M/s Motaba & Sons Jewellers, Colaba, Mumbai to the assessee. Further, the AO is directed to verify the claim of the assessee in respect of the sale made to Mahavir Jewellers and if required to also issue necessary summons/notice under the Act for complete verification. The assessee is directed to comply with all the directions of the AO and participate in the proper investigation of all the facts pertaining to this issue. Accordingly, the findings of the learned CIT(A) in respect of this issue are set aside, and ground No. 10 raised in assessee's appeal is allowed for statistical purposes.

44. In the result, the appeal by the assessee is partly allowed for statistical purposes.

45. To sum up, both appeals by the assessee are partly allowed for statistical purposes.

Order pronounced in the open Court on 24/11/2023

**Sd/-**  
**OM PRAKASH KANT**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 24/11/2023**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai