

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA Nos. 2143 & 2142/MUM/2023**  
**Assessment Years: 2017-18 & 2018-19**

DCIT, CC-4(1),  
Room No. 1916,  
19<sup>th</sup> floor, Air India  
Building, Nariman Point,  
Mumbai-400021.

**Appellant**

**Vs.** Mr. Rashmin Girdharlal Rughani,  
7, Rughani Villa, Khandelwal CHS  
Ltd., Shankar Lane, Kandivili (W),  
Mumbai-400067.

**PAN No. AABPR 0302 D**  
**Respondent**

**CO Nos. 116 & 117/Mum/2023**  
**(Arising out of ITA Nos. 2143 & 2142/MUM/2023)**  
**Assessment Years: 2017-18 & 2018-19**

Mr. Rashmin Girdharlal Rughani,  
7, Rughani Villa, Khandelwal CHS  
Ltd., Shankar Lane, Kandivili (W),  
Mumbai-400067.

**PAN No. AABPR 0302 D**  
**Appellant**

**Vs.** DCIT, CC-4(1),  
Room No. 1916,  
19<sup>th</sup> floor, Air India Building,  
Nariman Point,  
Mumbai-400021.

**Respondent**

**Assessee by** : Mr. Gaurav Kabra  
**Revenue by** : Smt. Sanyogita Nagpal, CIT-DR

Date of Hearing : 16/11/2023  
Date of pronouncement : 29/11/2023



## **ORDER**

### **PER OM PRAKASH KANT, AM**

These appeals by the Revenue and cross-objections by the assessee are directed against two separate orders, both dated 08.03.2023 passed by the Ld. Commissioner of Income-tax (Appeals)-52, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2017-18 and 2018-19. Since, the issue in dispute involved in both these appeals and cross-objections, is are common therefore, same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. Firstly, we take up the appeal of the Revenue and cross-objections of the assessee for assessment year 2017-18. The relevant grounds raised by the Revenue are as under:

1. *"On the facts and in the circumstances of the case, the Ld.CIT(A) erred in restricting the addition of Rs.22,10,27,447/- made on account of suppression of cash receipts to Rs.2,51,85,790/-"*

2.1 The cross-objections raised by the assessee are as under:

1. *The Learned CIT(A) has erred in restricting the addition of alleged suppression of cash receipt to the extent of Rs.2,51,85,790/- on the basis of the peak balance, without considering the facts and circumstances of the case.*
2. *The Learned Assessing Officer as well as Learned CIT(A) has erred in not appreciating the that no addition can be made on the basis of the statements which was retracted later on.*
3. *The Learned Assessing Officer as well as Learned CIT(A) has erred in not appreciating the fact that during the course of cross examination of third person, he himself*



*categorically denied that the noting belongs to the appellant.*

4. Briefly stated facts of the case are that in the search/survey action u/s 132 and 133A of the Income-tax Act, 1961 (in short 'the Act') carried out on 06.10.2017 at the premises of 'Sunshine Group'/'Evergreen Group', it was observed that said group was engaged in undisclosed activity of money lending and unaccounted cash loan transactions. The main person of the 'Evergreen Group', Shri 'Nilesh Bharani', in his statement recorded u/s 132(4) of the Act on 11.10.2017 stated that he had been engaged in business of cash lending and borrowing with persons including promoters of the 'Ashray Group'. The assessee is one of the directors of the 'Ashray Group' of Companies. In view of the information gathered in the case of search of 'Sunshine/ Evergreen Group', a search action u/s 132 of the Act was also carried out at the premises of the 'Ashray Group' including the assessee on 18.12.2017 and certain incriminating material was seized.

4.1 In the case of the assessee original return of income was filed on 27.03.2018 declaring total income at Rs.46,98,430/-. In the course of search action u/s 132 of the Act carried out at the premises of the 'Ashray Group' on 18.12.2017, data of the mobile of Shri Dipak Padia, accountant of 'Ashray Group', was seized. In the said data certain excel sheets were found as sent from the official e-mail account of Mr. Dipak Padia to his personal e-mail account. The



printout of those excel sheets was taken out during search proceedings. On being questioned during search action, Shri Dipak Padia admitted that those excel sheets contain unaccounted cash transaction of the assessee which were not recorded in regular books of accounts. Consequent to search action, notice u/s 153A of the Act was issued to the assessee. In response, the assessee filed return of income on 13.02.2019 declaring total income at Rs.46,98,430/- i.e. the income which was declared in the original return of income. Subsequently statutory notices were issued and after taking into consideration submission of the assessee, the Assessing Officer passed assessment order on 29.12.2019, wherein he made addition for suppression of the cash receipts amounting to Rs.22,10,27,447/-. On further appeal, the Ld. CIT(A) noted that in the excel sheet unaccounted cash transaction of Rs.22,10,27,447/- are related to assessment year 2017-18 whereas transactions amounting to Rs.26,22,64,438/- are related to assessment year 2018-19. The Ld. CIT(A) after taking into consideration submission of the assessee, upheld peak credit of cash transactions at Rs.4,28,21,905/-, out of which peak of Rs. 2,51,85,790/- has been added in assessment year 2017-18 and balance amount has been upheld for assessment year 2018-19. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“12. I have considered the facts of the case, as also the submissions made before me and the material available on record.*



12.1. The only effective ground is regarding the addition of cash receipts of Rs. 22,10,27,447/-. All the grounds revolve around this singular issue. Since the issue is inter-linked, the grounds are taken up together and adjudicated.

12.2. One of the contentions of the appellant is that the data found in the personal mobile / e-mail of Shri Dipak Padia cannot be presumed to be belonging to the appellant group. It is also pointed out that Shri Dipak Padia has retracted his statement subsequently as having been recorded under pressure. I do not accept the above contention of the appellant. The statement of Shri Dipak Padia recorded on 18.12.2017 is very categorical and detailed.

12.3. The AO produced extracts of the statement in pages 5 to 10 of the assessment order. The contents of the excel sheet have been explained in detail by Shri Dipak Padia. He has explained various details about such documents. One such explanation is that 1.5 will mean 1.5 Lakhs. The repayment of installments has also been co-related with various cells of the excel sheets (Question No. 19). Column wise explanation of the excel sheet and the abbreviations used therein are explained (Question No. 20). The cash position details and its co-relation with various cells of excel sheet has been explained (Question No. 21). Similar co-relations and explanations have been given in respect to other questions.

12.4. Thus, it cannot be stated that the statement of Shri Dipak Padia has no basis or that the averments have been made therein simply based on certain conjunctures. Rather, there is a very heavy onus on the appellant to demonstrate and prove that such cash transactions did not belong to him. It is not denied by the appellant that Shri Dipak Padia was an employee of the appellant and worked in the accounts department during the relevant period. It is noted that Shri Dipak Padia has confirmed the contents of the excel sheets not just once on 18.12.2017 but also on 20.12.2017. In this regard the following judicial precedences are very relevant:-

a. The decision of Hon'ble Apex Court in the case of Surjeet Singh Chhabra AIR 1197 SC 2560 (doj: 25.10.1996), wherein it was held as follows: "Since the dispute concerns the confiscation of the jewellery, whether at conveyor belt or at the green channel, perhaps the witnesses were required to be called. But in view of confession made by him, it binds him and, therefore, in the facts and circumstances of this case the failure to give him the opportunity to cross-examine the witnesses is not violative of principle of natural justice. It is contended that the petitioner had retracted within six days from the confession. Therefore, he is entitled to cross-examine the panch witnesses before the authority takes a decision on proof of the offence. We find no force in this contention. The Customs officials are not police officers. The confession, though retracted, is an admission



and binds the petitioner." In this case, the retraction filed within 6 days was rejected by the Hon'ble Apex Court.

b. As held in *T S Kumarasmy vs ACIT*, 65 ITD 188, by the Hon'ble Madras ITAT, "It is well known that the Income-tax Officers are not Police Officers and they do not use or resort to unfair means or third degree methods in recording oath statements and therefore whatever is confessed and admitted before them during the course of search operations or during the course of any proceedings before them then we think such statements, admissions and confessions are binding and cannot be retracted, unless and until, we repeat, unless and until it is proved by legally acceptable evidence that such admission, confession or oath statement was involuntary or tendered under coercion or duress. No such circumstances existed or proved to have existed." No such evidence of statement having been recorded under duress has been brought on record.

c. In the case of *Manharlal Kasturchand Choksi*, 61 ITD 55 (ITAT Ahd), it has been held that "6... It is well-settled in law that as admission by a party is the best evidence of the point in issue and, though not conclusive is decisive of the matter unless successfully withdrawn or proved erroneous.... Further, there is nothing on record that the said disclosure was made by the assessee under duress, pressure and/or coercion. The retraction after a lapse of over two months from the date of disclosure by the assessee was an afterthought and the affidavit filed by the assessee on which much reliance has been placed by the assessee's counsel, was a self-serving statement. We can, therefore, say that the assessee has failed to prove and establish that he was tortured by searching party but nonetheless it cannot be ignored that the assessee retracted from the earlier statement made on search date and upon retraction he rendered himself untrustworthy and unreliable in the eyes of law and accordingly the addition of Rs. 7 lacs to the income declared is fully justified."

d. In the case of *CIT vs Hukum Chand Jain*, 337 ITR 238; 236 CTR 92 (doj: 10.08.2009), the Hon'ble Chattisgarh HC has held as follows:

"27. From the principles of law laid down in the aforesaid judgments, it may be deduced that, admission is one important piece of evidence but it cannot be said that it is conclusive. It is rebuttable. It is open to the assessee who made admission to establish that confession was involuntary and the same was extracted under duress and coercion. The burden of proving that the statement was obtained by coercion or intimidation lies upon the assessee. Where the assessee claims that he made the statement under the mistaken belief of fact



or law, he should have applied for rectification to the authority who passed the order based upon his statement. The retraction should be made at the earliest opportunity and the same should be established by producing any contemporaneous record or evidence, oral or documentary, to substantiate the allegation that he was forced to make the statement in question involuntarily.

29. From perusal of the order of the CIT(A) as also the Tribunal, we find that none of the forums have recorded a finding that the statement under section 132(4) was obtained under duress. The assessee has totally failed to discharge the burden of proving that the statement was obtained under coercion or intimidation. He did not make any complaint to the Higher Authorities alleging intimidation or coercion for retracting the statement under section 132(4). The Tribunal has confirmed the order of the CIT(A) by observing that surrender was made under bona fide mistake though it was never the case of the assessee before any of the forums that the surrender was on account of bona fide mistake. The Appellate Forums while reversing the orders of the Assessing Officer are legally bound to dwell upon specific reasons assigned by the Assessing Officer for not accepting the explanation of the assessee."

e. In the case of *Sudarshan P Amin vs ACT*, 35 taxmann.com 370 ( Gujarat HC; (doj: 08.01.2013), the Hon'ble HC has held that where assessee has disclosed a sum as undeclared income in two Statements, and both were recorded in presence of CA, addition stands confirmed.

f. 234 Taxman 771 (SC), *B Kishore Kumar vs DCIT* [2015] (doj: 02.07.2015) - since assessee himself had stated in sworn statement during search and seizure about his undisclosed income, tax was to be levied on the basis of admission without scrutinizing documents.

g. 351 ITR 143 (Delhi HC); *Bhagirath Aggarwal vs CIT* (doj: 22.01.2013); addition in assessee's income relying on statements recorded during search operations cannot be deleted without proving statements to be incorrect. SLP dismissed by SC vide CA no.16170/2013.

h. [2019] 106 taxmann.com 128 (SC) / [2019] 264 Taxman 5 (SC), *BannalalJat Constructions (P.) Ltd. vs ACIT* - Burden lay on assessee to show that admission made by director in his statement was wrong and such retraction had to be supported by a strong evidence showing that earlier statement was recorded under duress and coercion.



*i. In the case of 142 ITR 618 (Allahabad), Ram Ratan vs CIT, it has been held that "Ordinarily, in the absence of denial, the statements may be accepted as true but if there are circumstances which suggest that the statements on affidavit should not be accepted as true, the absence of denial by the other side, would not by itself be sufficient to clothe the statements on affidavit with truthfulness and reliability."*

*Hence, this contention of the appellant is rejected.*

*13. Another contention of the appellant is that Shri Dipak Padia in the first place has no reason to provide the search party to access his personal mobile phone and e-mail, hence it has been contended that this is a proof good enough to show that there was coercion. I do not agree with this argument either. The provisions of section 133A make it clear that the appellant is legally required to offer the necessary facility for inspection of such books of account or other documents which are available at such place. Similarly more stringent provisions are laid down in section 132 of the Act. Section 2(12A) of the Act includes definitions of books of account to mean to include ledgers, day-books, cash books, account books and other books whether kept in written form or in electric form or in digital form or in print-outs. The specific presumptions as to such books of account are laid down in section 292C of the Act. Thus, it is evident that Shri Dipak Padia was duty bound to produce such documents and evidences and this by no means indicate coercion as claimed by the appellant.*

*14. Another contention of the appellant is that the retraction affidavit of Shri Dipak Padia ought to have been looked into. It is also contended that the cross-examination of Shri Dipak Padia on 28.11.2019 shows that the statements recorded in December, 2017 do not have much evidentiary value, hence, should be discarded. I am afraid that such contentions cannot be accepted. In this respect, I agree with the findings of the AO which are reproduced below:-*

*"The cross examination sought by the assessee with his employee Mr. Dipak Padia was provided to the assessee on 28.11.2019. It was observed from cross examination that the assessee and Mr. Dipak Padia have asked very standard questions mostly in the nature of affirmation and denial. They have not discussed anything about the seized material, explanation of multiple excel sheets explained by him in detail at the time of initial statements. There are multiple evidences, documents, specific explanations made which were discussed in the above para can't be denied in the absence of any evidence.*

*The result of cross examination is merely a self-serving statement to save the assessee from its certain tax liability. Since assessee and Mr. Dipak Padia shares employee and employer relationship for quite a long time and it was not difficult to convince Mr. Dipak Padia to retract his initial*



*statement and deny the detailed and specific explanation provided in the cross examination in order to safeguard the interest of assessee. They are, therefore prone to prevaricate and tried to extricate from trouble in order to save further proceedings against assessee. It is well known that evidence of interested witness can be biased. The pre-planning of outcome of cross examination cannot be ruled out since there is huge tax implication on the assessee.*

*The denial of the transaction is mutually beneficial and they connived together to cause injury to the Revenue.*

*It is well established that the witness who has interest in the proceedings would always try to save their own skin prompting them to give self-serving statements.*

*In the case of M/s Unique Shanti Developers Pvt. Ltd., the ITAT Bombay Bench H' Mumbai in ITA No. 533/Mum/2005 observed that one-sided statement made by some interested witnesses were self-serving."*

14.1. *In the case of CIT vs Krishnaveni, Ammal, 158 ITR 826, the Hon'ble Madras High Court held as under:-*

*'It might be that any judicial authority can accept any statement of an assessee, when that is the only piece of evidence available in that particular case, and order assessment on such sole evidence. But when, even according to the assessee, there is other documentary evidence of corroborative value and the same is within the reach of the assessee, in such a case, we are of the opinion that a judicial body cannot act on such interested testimony of the assessee alone. Here, admittedly, some crossed cheques were issued to the alleged multani bankers by the assessee; yet the assessee did not care to summon those cheques. Hence, the isolated statement of the assessee has no evidentiary value at all. Any finding on such unworthy evidence deserves to be characterised as perverse and has to be set aside."*

*"We have pointed out that in this case, the Tribunal acted on unworthy evidence and, therefore, such a finding has to be rejected as perverse. As a matter of fact, the law of evidence mandates that if the best evidence is not placed before the court, an adverse inference can be drawn as against the person who ought to have produced it. "*

14.2. *In view of the above and considering the date wise elaborate entries in the excel sheet and in a methodical manner cannot be discarded in a perfunctory manner as is sought to be made by the appellant. This part of the appellant's contention stands rejected.*



15. The appellant himself has vide online letter submitted as under:-

*"As regards Shri Dipak Padia his official duties for executing for the Ashray Group, he was responsible for handling cash in hand which was withdrawn from the bank and this cash in hand is maintained in the regular books of accounts of the respective group concerns / individuals."*

*Thus, there is a credible linkage with the evidences found in the possession of Shri Dipak Padia and they cannot be said to be dumb documents. The appellant's contention that the Doctor's certificate also substantiates coercion is not acceptable as it merely states that his blood pressure is high which is very common these days.*

15.1. *The appellant's contention that the AO has made addition only in respect of 2 out of 7 years whereas for other 5 years the returned income reflects its actual income cannot be accepted, If at all, the AO has been fair enough in making additions only on the basis of tangible material and evidences. In view of the above, I am unable to agree with the contentions of the appellant.*

16. *At the same time, there is merit in the claim of the appellant that where there is inflow and outflow of funds, addition has to be restricted to a peak cash balance. In my view, such a benefit has to be given to the appellant unless a finding is given that such cash outflow was not available to be considered for subsequent inflow. The case of CIT vs Krishnaveni Ammal, 158 ITR 826 by the Hon'ble Madras High Court also supports the view of this office that it is the difference of the peak credit transactions which can be eventually considered for addition. The appellant has also pointed out that the peak working for AY 2017-18 and 2018-19 works out to Rs. 4,28,21,905/-. According to the appellant, a copy of the working has already been submitted before the AO during the course of assessment proceedings.*

17. *On perusal of the sheet summarizing the daily inflow and outflows, it is seen that the maximum cash balance available with the appellant on any day is Rs. 4,04,91,440/- (on 12.12.2017). It is also seen that there is negative cash balance on few days indicating that temporary adjustments of such cash has been managed by the appellant. The highest of such negative cash balance is recorded on Rs. 23,30,465/- (on 19.11.2016). Thus, the peak balance of the complete period relevant to AY 2017-18 and AY 2018-19 is arrived at Rs. 4,28,21,905/-.*

18. *Now the question arises as to how much disallowances can be made for AY 2017-18. The peak positive balance is Rs. 2,28,55,325/- (on 17.11.2016). The peak negative balance is Rs. 23,30,465/- (on 19.11.2016). Thus, the peak balance of Rs. 2,51,85,790/- is brought to tax for AY 2017-18 as against the addition of Rs. 22,10,27,447/- made by the AO. The addition of Rs. 2,51,85,790/- is sustained. The balance of Rs. 19,58,41,657/- is deleted."*



5. Before us, the Ld. Departmental Representative (DR) submitted that entire transactions of unaccounted cash should have been added as income of the assessee rather than only peak balance upheld by the Ld. CIT(A).

6. On the other hand, the Id Counsel for assessee submitted that addition for unaccounted cash transaction has been made by the Assessing Officer on the basis of statement of Shri Dipak Padia and not on any material seized from the premises from the assessee. He submitted that there is no corroborative evidence for making addition other than the statement of Shri Dipak Padia, which has been subsequently retracted by him. He further submitted that during the course of search action, the assessee denied of existence of any cash transaction as stated by Shri Dipak Padia. According to the Ld. Counsel, when the assessee refuted the allegation of the cash transaction during the course of search action, the authorized officers should have confronted Shri Dipak Padia immediately to him, rather than keeping his statement under carpet and used for making an addition against the assessee despite no admission by the assessee or corroborative evidence of those transactions. The Ld. Counsel further referred to cross-objection of Shri Dipak Padiya wherein he admitted that the transaction and the excel sheets were mere imaginary figures and not related to the assessee. The Ld. Counsel for the assessee filed typed copy of the statement made by the assessee u/s 132(4) of the Act as well as statement of Shri



Dipak Padia. The Ld. Counsel further relied on the submissions made before the Ld. CIT(A) and submitted that no addition, even the peak amount, can be added in the hands of the assessee.

7. We have heard rival submission of the parties and perused the relevant material on record. As far as contention of the assessee that addition has been made on the basis of personal mobile/e-mail of Shri Dipak Padia and same cannot be presumed to be belonging to the assessee group, we are of opinion that search on sh Dipak Padia has been carried out as part of the search of the assessee only and not an independent search, and contention that assessment is based on material not found from the assessee is devoid of merit. According to the Ld. Counsel, the said data recovered from Shi Dipak Padia was not concerned to the assessee and the assessee had denied since beginning i.e. since the recording of statement u/s 132(4) of the Act. It is contended on behalf of the assessee that Shri Dipak Padia filed affidavit retracting his statement recorded before the search parties, stating that said statement was recorded under 'threat' and 'coercion'. During the course of the hearing before us, the Ld. Counsel for the assessee could not file any evidence in support of said claim that statement u/s 132(4) of the Act of sh Dipak Padia was recorded under 'threat' or any 'coercion'. We find that statement of Shri Dipak Padia was recorded u/s 131 of the Act on 18.12.2017 wherein in response to question No. 13 he explained that the recording of the data related



to cash transactions in the form of excel sheets. The relevant question and answer are reproduced as under:

*“Q.13. I am showing you email received on your email id d\_padia@hotmail.com, on Thursday, 25th May 2017 from accounts@ashraygroup.com The said mail is located in the dipak folder mentioned in the previous question and has the subject "ashray documents". Kindly confirm the same and describe its contents.*

*Ans. Yes sir, I confirm that the mail with the subject "ashray documents" in the "dipak" folder of my email id d\_padida@hotmail.com has been shown to me. The email contains three excel sheets as attachments. The 3 excel sheets are titled:*

- 1. DJP.xlsx*
- 2. OUTSIDER APR\_17\_28042017.xlsx*
- 3. Ashray Neev P Ltd\_FY-15-16.xlsx*

*All the three excel sheets were made by me. Further I emailed the excel sheet from the email-id accounts@ashraygroup.com to my personal email id d\_padia@hotmail.com to maintain a backup of the data contained in the excel sheets. I deleted the mail from the sent mail folder of the email id accounts@ashraygroup.com after sending the email to my personal email id d\_padia@hotmail.com.”*

7.1 Further, in answer to question No. 27 and question No. 30, Sh Dipak Padia explained the entire detail of those cash transactions and even stated that part of transactions recorded in excel sheet were related to the parties which were appearing as purchase party in regular books of accounts of the assessee. The said statement was further affirmed by him during the course of statement recorded u/s 132(4) of the Act on 20.12.2017. The said statement was recorded in presence of two witnesses who have duly signed on



the statement. If the assessee was of the opinion that statement of Shri Dipak Padiya was recorded under 'threat' and 'coercion', then the onus was on the assessee to produce those witnesses for cross-examination before the Assessing Officer. Therefore, in absence of any such cross-examination of those witnesses, mere affidavit of Shri Dipak Padiya of recording statement u/s 132(4) of the Act under 'threat' and 'coercion' can't be relied upon and discarded. Moreover, the Hon'ble Supreme Court in the case of **Bannalal Jat Constructions (P.) Ltd. v. ACIT [2019] 106 taxmann.com 128 (SC)** held that *burden lies on the assessee to show that admission made by the director in his statement was wrong and such retraction had to be supported by a strong evidence showing that earlier statement was recorded under duress and coercion*. Further, the **Hon'ble Rajasthan High Court in the case of PCIT v. Roshan Lal Sansheti in Division Bench Appeal No. 47/2018** held that *retraction of statement recorded u/s 132(4) of the Act has to be made within a reasonable time or immediately after statement of assessee is recorded and hence where retraction of a statement, which is recorded u/s 132(4) of the Act and later confirmed in his statement recorded u/s 131 of the Act, had been made by the assessee after almost 8 month, same was to be discarded*. A SLP filed by the assessee against the said decision has been dismissed by the Hon'ble Supreme Court in **(2023) 150 taxmann.com 228 (SC)**. In view of the above, we do not find any infirmity in the finding of the



Ld. CIT(A) that there is a enough tangible material and evidence to make additions in the case of the assessee in respect of the unaccounted cash transactions. Accordingly the cross-objections raised by the assessee are dismissed.

7.2 As far as ground of appeal of the Revenue is concerned, we find that the assessee has filed a complete detail of cash loan transactions given as well as received back and filed a peak credit statement. In our opinion, where the money received back from loans given earlier has been rotated for giving further loans, in that case addition cannot be made for the entire amount of the loans given and benefit of the money which has been returned back and further utilized for giving loans has to be considered. As far as quantum of peak computed by the assessee and filed before the Assessing Officer, same has not been disputed either by the Assessing Officer or by the Ld. CIT(A). The ld DR has also not disputed computation of peak credit amount. Therefore, we do not find any infirmity in the order of the of the Ld. CIT(A) in upholding the addition of the peak credit which has been further split in two assessment years. Accordingly, the grounds of appeal of the Revenue are dismissed.

8. The ground raised in the appeal of the Revenue and cross objections raised by the assessee for AY 2018-19 are identical to AY



2017-18, and thus following our finding in AY 2017-18, the respective grounds are decided *mutasis mutandis*.

9. In the result, both the appeal of the Revenue and cross-objections of the assessee are dismissed.

**Order pronounced in the open Court on 29/11/2023.**

**Sd/-**  
**(RAHUL CHAUDHARY)**  
**JUDICIAL MEMBER**

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

Mumbai;

Dated: 29/11/2023

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)  
**ITAT, Mumbai**