

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

BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER

&

SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

**ITA NOS. 77, 108 & 109/MUM/2022
(A.Ys. 2014-15, 2016-17 & 2015-16)**

M/s. Jet Speed Realtors Unit No. 111/7, Udyog Nagar S.V. Road, Goregaon (W) Mumbai - 400062 PAN: AAGFJ0291C	v.	ACIT – Circle - 32(1) Bandra Kurla Complex Mumbai - 400051
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Shreyas Shah & Shri Kunal Shah
Department Represented by	:	Shri Ujjawal Kumar Chavan
Date of Conclusion of Hearing	:	08.11.2023
Date of Pronouncement	:	03.01.2024

ORDER

PER S. RIFAUR RAHMAN (AM)

1. These appeals are filed by the assessee against different orders of the Learned Commissioner of Income Tax (Appeals)-49, Mumbai [hereinafter in short "Ld. CIT(A)"] dated 22.11.2021 for the A.Ys. 2014-15, 2015-16 & 2016-17.

2. Since the issues raised in all these appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeal in ITA No.77/MUM/2022 relating to Assessment Year 2014-15 as a lead case for adjudication.

ITA No. 77/MUM/2022 (A.Y. 2014-15)

3. Brief facts of the case are, assessee filed its return of income for the A.Y. 2014-15 on 30.11.2014 declaring total income at ₹.3,93,170/-. The assessee is a partnership firm and engaged in the business of construction and development of property. Subsequently, the case was selected under CASS and assessment was completed under section 143(3) of Income-tax Act, 1961 (in short "Act") on 29.12.2016 assessing income at ₹.4,88,620/-.

4. A survey was conducted under section 133A of the Act on 24.03.2017 in JPV Group involved in building and construction activities. The assessee is one of the entity of JPV group. As per survey reports and various enquiries conducted had revealed that the entities of the JPV group are involved in acceptance of bogus unsecured loans from

fictitious companies having no genuine activities. During the survey, statements of key persons were recorded and it was observed that JPV group concerns had accepted unsecured loans and paid interest in their books of account from certain other suspicious parties including M/s Dev Darshan Diamond Pvt. Ltd., M/s Madan Impex Pvt. Ltd., M/s Mangal Murti Impex Pvt. Ltd., M/s. Om Sai Stone Ltd., M/s Frontline Diamond Pvt. Ltd., M/s. Rajat Diamond Exim Pvt. Ltd. and M/s. Nikhil Gems Pvt. Ltd. Summons under section 131 of the Act were issued to the above said parties to verify their identity, creditworthiness and the genuineness of the transactions. The promoters and Directors of the JPV Group were asked to present the suspicious parties for verification of the transactions, but they were unable to present any of the person related to suspicious parties. The Assessing Officer observed that all the above said parties were found non-existent at the locations and no traces could be found of their actual existence. The Assessing Officer observed that the above said findings clearly prove that these parties mentioned above have provided bogus unsecured loans to the JPV Group of companies. In order to verify, the Assessing Officer verified books of accounts and return of income filed by the assessee. The Assessing Officer observed that during the year, the assessee had taken loan from M/s.Dev Darshan

Diamond Pvt. Ltd., M/s.Frontline Diamond Pvt. Ltd., and M/s. Rajat Diamond Exim Pvt., and paid interest to M/s Dev Darshan Diamond Pvt. Ltd., M/s Madan Impex Pvt. Ltd., M/s.Mangal Murti Impex Pvt. Ltd., M/s.Om Sai Stone Ltd., M/s.Frontline Diamond Pvt. Ltd., M/s. Rajat Diamond Exim Pvt. Ltd. and M/s Nikhil Gems Pvt. Ltd.

5. With the above observations, Assessing Officer held that the assessee has taken bogus loans from the above said parties and the interest shown in the books of accounts relating to unsecured loans which is nothing but a colorable devise. Accordingly, with the above observations the case of the assessee was reopened by issue of notice under section 148 of the Act on 28.03.2019 under a reasonable belief that the income chargeable to tax for the current assessment year has escaped assessment of ₹.1,51,73,751/- within the meaning of section 147 of the Act.

6. In response, Ld.AR of the assessee filed the return of income and accordingly, notices under section 143(2) and 142(1) of the Act were issued and served on the assessee along with questionnaire. In response, Authorised Representative of the assessee attended and submitted the relevant information as called for.

7. During re-assessment proceedings, Assessing Officer observed that assessee has taken unsecured loan of ₹.5,93,00,000/- from various parties mentioned in the above said paragraphs. In order to verify the creditworthiness of the above said parties, notices under section 133(6) of the Act were issued to all the above said parties. The assessee also produced confirmations from all the above said parties during the course of assessment proceedings. After considering the above submissions, Assessing Officer reproduced the loan amount, interest paid and return of income of the above said parties in the assessment order at Page No.3, for the sake of clarity it is reproduced below: -

Name of leaner and PAN	Loan amount	Interest paid	Returned Income of the leaner as per Rol
Dev Darshan Diamond Pvt. Ltd. AADCD8917F	54,00,000/-	7,06,475/-	1,72,840/-
Frontline Diamond Pvt. Ltd. AABCF5034H	34,00,000/-	1,26,404/-	4,14,680/-
Rajat Diamond Exim Pvt. Ltd AAECR0706R	5,05,00,000/-	1,50,444/-	3,84,780/-
Madan Impex Pvt. Ltd. AAHCM3262A		9,00,000/-	3,73,060/-
Mangal Murti Impex Pvt. Ltd. AAGCM5940C		10,35,000/-	1,91,730/-
Om Sai Stone Ltd. AAFCS2403R		10,80,000/-	4,65,380/-
Nikhil Gems Pvt. Ltd. AADCN4423G		1,17,370/-	25,130/-
Total	5,93,00,000	₹.41,15,693/-	

8. By referring to the above chart, Assessing Officer observed that none of the parties has declared sizeable profit to match the loan give to the assessee. It clearly shows that the above said parties does not have creditworthiness and it is mere accommodation entry providers. With

the above observation, Assessing Officer has disallowed ₹.5,93,00,000/- as undisclosed income of the assessee under section 68 of the Act and disallowed interest expenditure claimed by the assessee.

9. Aggrieved, assessee preferred appeal before the Ld. CIT(A) and raised the issue of reopening of the assessment and filed detailed submissions before him, for the sake of clarity, submissions of the assessee are reproduced below: -

"7.3 SUBMISSIONS OF THE APPELLANT:

7.3.1 In these grounds, the appellant has contested the additions made by the AO in its hands, as per the provisions of Sections 68 and 69C of the Act. The assessee has made following submissions in this regard:

"The Appellant loans received from the parties were genuine and it had not escaped income. The Appellant submits as under.

1. The payment was made through normal banking channel by cross account payee cheque.

b. There is no cash involvement in the either of the books i.e. Appellant and the lender

C. The loan confirmation and all the details were obtained and filed before the Ld AO during the course of assessment

d. The loans were re-paid in the current year and the subsequent years

e. The interest was paid and TDS deducted thereon, during the year

f. The Appellant had also taken loan from other parties and the parties mentioned above were not only the parties from whole the the loan was received.

g. During the course of ding u/s 147 of the Act, the Ld AO had issued notices to the above, parities u/s 133(6) of the Act and the above parities had also replied to notice of the Ld AO

h. The Ld AO has not established any link between any alleged report or information and Appellant's transaction.

i Relying on the third party statement and without confronting the Appellant with the same, renders the assessment bad in law.

j. The Appellant was not being provided any statement recorded against it, so that it cannot be examined, rebutted and also cross examined. If any withdrawal or retraction of such statement is made then the same was also not Intimated to Appellant.

4.1. The payment was made through normal banking channel by cross account payee cheque and no cash involvement in the either of the books i.e. Appellant and the lender

The Appellant submits that loan was received through the banking channels and the source of amount received from the banking channel cannot not be doubted.

The Ld AO has not gathered any additional/independent evidence to show that the transaction with the Appellant Firm was sham, fictitious or artificial except believing the statements given by some group members.

The Ld AO has failed to give any evidence to show that the unaccounted cash of the appellant had changed hands.

The Appellant states that no addition could be made on mere presumption that the Appellant routed its own cash in the form of unsecured loans without any iota of evidence to this effect.

4.2. All the details of the loan were filed during the course of the scrutiny assessment

During the course of scrutiny assessment too, the Appellant had filed all the details before the Ld AO. The Appellant had furnished the following details before the Id AO for all the loan creditors

1. Copies of ledger extracts
2. The copies of confirmations
3. The extracts of bank statement showing the amount received
4. The copies of ITR
5. Status of the lender Companies at ROC

All these documents clearly prove the identity of the loan creditors, creditworthiness of the loan creditors and genuineness of transactions. As such the loan, loans taken by the Appellant from the lender parties were genuine loans taken for commercial expediency for business purposes and not accommodation entries.

4.3. The loans were re-paid in the current year and the subsequent years

a. The Appellant submits that above loans were re-paid as under in the subsequent years as under, as such the parties were in existence at the time of

Name of the party	Amount of loan accepted in AY 2014-15	Amount repaid	Date of repayment
<i>Dev Darshan Diamond Pvt Ltd.,</i>	<i>49,50,000</i>	<i>20,00,000,</i>	<i>10.03.2016</i>
		<i>24,50,000,</i>	<i>28.03.2016</i>
		<i>5,00,000</i>	<i>16.04.2016</i>
		<i>49,50,000</i>	<i>49,50,000</i>
<i>Ratjat Diamond Exim Pvt . Ltd.,</i>	<i>31,50,000</i>	<i>11,00,000</i>	<i>23.12.2016</i>
		<i>4,50,000</i>	<i>15.01.2014</i>
		<i>16,00,000</i>	<i>21.01.2016</i>
		<i>3,150,000</i>	<i>3,150,000</i>
<i>Frontline Diamonds Pvt. Ltd</i>	<i>34,00,000</i>	<i>18,00,000</i>	<i>23.12.2013</i>
		<i>16,00,000</i>	<i>10.11.2014</i>
	<i>3,400,000</i>	<i>3,400,000</i>	

1. The loan taken from M/s Mangal Murti Impex Pvt Ltd., M/s Madan Impex Pvt Ltd., M/s Om Sai Stone Ltd. and M/s Nikhil Gems Pvt Ltd. in earlier years on which interest of Rs.31,32,370/- was paid during the year was also repaid in subsequent years as under

Name of the party	Amount of loan accepted in AY 2014-15	Amount repaid	Date of repayment
Mangal Murti Impex penalty levied	1,15,00,000	25,00,000	06.10.2015
		20,00,000	06.03.2016
		70,00,000	10.03.2016
	1,15,00,000	1,15,00,000	
Mandan Impex Pvt Ltd.,	1,00,00,000	25,00,000	28.03.2016
		18,00,000	16.04.2016
		10,00,000	20.04.2016
		20,00,000	28.07.2016
		8,00,000	19.07.2016
		10,00,000	30.05.2017
		9,00,000	31.05.2017
	1,00,00,000	1,00,00,000	
Om Sai Stone Ltd.,	70,00,000	32,00,000	05.08.2015
	20,00,000	31,00,000	06.08.2015
	-	27,00,000	07.08.2015
	90,00,000	90,00,000	
M/s. Nikil Gems Pvt Ltd.,	10,00,000	10,00,000	24.03.2014
	10,00,000	10,00,000	

1. The Ld AO had added amount of Rs. 5,05,00,000/- in case of loan received from M/s Rajat Diamonds Impex Pvt Ltd and Rs. 54,00,000 in case of loan received from M/s Dev Darshan Diamonds Pvt Ltd instead of actual amount received from Rajat Diamonds Impex Pvt Ltd Rs. 31,50,000 and M/s Dev Darshan Diamonds Pvt Ltd Rs.49,50,000/-.

2. From the above, your Honours will observe as under.

The above loans were re-paid in the current year itself or in the next year/s as such the parties were in existence at the time of acceptance and repayment of the loan The accommodation entry is one time entry taken by any person which continues to exist in the

books whereas in case of the assessee the loan was repaid to the lender in the same year or next year, this does not make the loan as bogus or mere an accommodation entry in the books.

e. As such the loan taken by the Appellant from the lender parties were genuine loans taken for commercial expediency for business purposes and repaid with Interest and were not accommodation entries, alleged by the Ld AO.

4.4. The interest paid and TDS deducted on the loan taken in the year and earlier years.

a. The interest paid and TDS deducted thereon during the year to M/s Devdarshan Diamond Pvt Ltd., M/s Om Sai Stone Ltd., M/s. Madan Impex Pvt Ltd., M/s Nikhil Gems Pvt Ltd., M/s Rajat Diamond Exim Pvt Ltd. and M/s. Mangal Murti Impex Pvt Ltd of Rs. 4,400,823/- shows the existence and genuineness of the Company.

a. The Appellant states that it had paid interest through banking channels to the creditor by duly deducting the TDS and the loan amount was returned along with interest on which tax was deducted. It shows the existence and Genuineness of the Company.

4.5. Loan taken from other parties

The Appellant submits that it had also taken loan from other parties and the parties mentioned above were not only the parties from whom the loan was received. The Assesse took loan from other parties too As such, the loan taken by the alleged loan creditor are not the accommodation entries but a loan taken for commercial expediency for business purposes.

4.6. Replies to the notices issued u/s 133(6) of the Act

a. During the course of assessment proceeding u/s 147 of the Act, the Ld AO had issued notices to the above parties u/s 133(6) of the Act and the above parties had also replied to notice of the Ld AO. The Ld AO had duly mentioned in the order that the replies were filed by the loan creditors in response to the notice u/s 133(6) of the Act.

b. The Appellant further contended that in response to notices u/s 133(6) issued by AO, the above parties replied along with documents mentioned in the notice, therefore, there is no reason for the AO to doubt the transactions only on the basis of information shares by other officer.

C The Appellant submits that the Ld AO had mentioned that one of the lenders had not filed copy of ITR in that respect the Appellant submits non filing of the copy of ITR does not render the party to be not in existence, when the party had filed all the other details asked in notice u/s 133(6) of the Act.

4.7. No direct evidence against the Appellant

The Appellant submits it had filled all the details and explanation and the Ld AO too obtained the information from the lender Creditors by issue of section 133(6) of the Act. The Ld AO had not brought on record any evidence to prove that said sum was undisclosed income of assessee

The Appellant pleads that the Ld AO had not b pointing that the are not genuine transactions of brought out any material or live-link Appellant with the aforementioned loan parties

The Ld AO had made addition on the basis of suspicion, presumptions and probability of preponderance without any direct evidence to prove the transactions as non-genuine or sham or demonstrating Appellant's involvement and cannot sustain.

There was no evidence brought out by the Ld AO of any unaccounted money from the Appellant or that third party received or utilized the unaccounted money received from the Appellant with reference to the loan received and amount paid for the interest expenditure.

4.8. Denied access to any Cross examination or Retraction, if any:

1. The Appellant was not being provided any statement recorded against it, so that it cannot be examined, rebutted and also cross examined. If any withdrawal or retraction of such statement is made then the same was also not intimated to Appellant.

The Appellant had objected to the notice that in the recording the reason, the Ld AO have not given any statement from JPV Group, in respect of the above parties stating that they are bogus and the amount has been received through the accommodation entries. Even during the assessment proceedings also, even after requesting for the same, the alleged statement or material was not provided to the Appellant, so that cross-examination with respect to the same could be done. Therefore, it is violation of principle of natural justice.

III. The Appellant submits that there is no reason for the Ld AO to doubt the transactions only on the basis of information received from other income tax range, without providing any opportunity for the cross examination of the parties.

4.9. Without considering the above, the Ld AO had treated loan received as Cash Credit u/s 68 of the Act and interest payment as unexplained expenditure u/s 69C of the on the assumptions that creditworthiness of the parties are not provided and it is a mere accommodation entry provider. Hence the entire addition is to be deleted to restore justice & equity.

5.0. Legal Jurisprudence

In support of the above contentions of ns of the Appellant, the Appellant relies on various the decision of the Jurisdictional Mumbai Tribunal which interalia includes following:

a. In the latest decision of Jurisdictional Mumbai Tribunal in case of M/s. Nisarg Lifespace LLP ITA No.629/Mum/2020 dated 24 May 2021 it was held as under.

3.7.1. It is pertinent to note assessee hay relevant details (as listed supra) that ad duly discharged its onus by submitting all the are at are available with it before the Id AO. All these documents clearly prove the identity of the loan creditors, creditworthiness of the loan creditors and genuineness of transactions. We find that the Id AO had not even bothered to issue notice u/s 133(6) of the Act to the loan creditors to verify the veracity of the documents submitted by the assessee. In other words, the Id AO simply remained silent after receiving all the documentary evidences from the assessee. It is settled law that when documentary evidences are submitted by the assessee, the Id AO is duty bound to examine its veracity by making further enquiries in the manner known to law. Without testing such documents by making proper enquiries, no adverse inference could be drawn by the Id AO on those documents. We hold that once all the relevant documents are submitted by the assessee regarding the loan creditors together with the latest addresses available with it supported by confirmations from them, the onus cast on the assessee u/s 68 of the Act stands duly discharged and no addition could be made in its hands. Reliance in this regard is placed on the decision of Hon'ble Jurisdictional High Court in the case of CIT vs Orchid Industries P Ltd reported in 397 ITR 136 (Bom). We further hold that no addition could be made on mere presumption that the assessee routed its own cash in the form of unsecured loans without any concrete evidence to this effect. Reliance in this regard is placed on the decision of Hon'ble Jurisdictional High Court in the case of PCIT vs Aquatic Remedies P Ltd in ITA No. 83 of 2016 affirming the tribunal decision in ITA No. 6356/Mum/2014. We further find that all the loans were duly repaid by the assessee either in the same assessment year or in the immediately

succeeding assessment year with interest after subjecting the interest to due deduction of tax at source. These facts are not controverted by the revenue before us. Hence the addition made u/s 68 of the Act deserve to be deleted on merits also. Correspondingly, the interest paid on such loans would become allowable expenditure u/s 36(1)(iii) of the Act as there is no dispute that the monies received in the form of loans had been utilised by the assessee LLP for its business purposes."

b. In case of M/s Shree Laxmi Developers I.T.A No.5954/Mum/2016, the jurisdictional Tribunal has held as under.

"..... The assessee also furnished evidences to prove that the parties have responded to the notices issued u/s 133(6) by AO by filing various details. The assessee also filed bank statements to prove that the said unsecured loans have been repaid in the subsequent financial years. Therefore, we are of the view that there is no reason for the AO to doubt the genuineness of transactions despite furnishing necessary evidences including their financial statements, bank statements and IT returns."

c. The Bombay High Court in H.R. Mehta vs ACIT (2016) 387 ITR 561 (Bom.)(HC) has held that while making addition under s 68, the AO. had relied upon some evidence collected in that behalf including statement on oath said to have been made on behalf of persons whose identity was not disclosed. It was held that assessee was bound to be provided with the material used against him apart from being permitting him to cross-examine the deponents by the department.

Further, in the decision of Hon'ble Bombay High Court in the case of Andaman Timber Industries 281 CTR 241 and decision of Hon'ble Supreme Court in case of Kishanchand Chellaram 185 ITR 713 wherein it was held that the department is bound to give the Assessee an opportunity to controvert evidence and cross examine the evidence on which the department places its reliance."

10. After considering the submissions of the assessee, Ld. CIT(A) dismissed the appeal of the assessee by relying on the findings in survey proceedings and non-existence of the above said parties in the address provided by the assessee. He held that onus to prove the genuineness of the transaction lies only with the assessee. Since assessee has not fulfilled the conditions prescribed under section 68 of the Act and he

distinguished the facts submitted by the assessee in their submissions and relying on the various decisions, he dismissed the appeal filed by the assessee.

11. Aggrieved assessee is in appeal before us raising following grounds in its appeal: -

"1.0. The Ex-Parte order passed by Learned Commissioner of Income (Appeals) [CIT(A)] under section 250 of the Income tax Act, 1961 (the Act") without providing reasonable opportunity is opposed to principles of natural justice & needs to be set aside.

2.1. Without Prejudice, the CIT(A) erred in upholding of the re-opening of the assessment after the 4 (four) years in as much as the necessary ingredients under the first Proviso to section 147, for reopening the assessment, are absent

2.2. Without Prejudice, the Notice issued u/s 148 of the Act is invalid and void ab initio as the reason recorded amounts to Reason to Suspect and do not amount to Reason to Believe.

2.3. Without Prejudice, the Notice issued u/s 148 the Act is invalid and void ab initio as the Notice was issued without mentioning the correct limb ie. whether to assess' or 'reassess the income of the Appellant

2.4. Without Prejudice, the Reason Recorded for re-opening the assessment is based on borrowed satisfaction and hence not valid in law.

3.0. Without prejudice, the Ld CIT(A) erred in upholding the addition of Rs. 5,93,00,000/- in in respect of loan received, both on the facts and circumstances of the case and in law.

4.0. Without prejudice to the above, the Ld CIT(A) erred in upholding the addition Rs. 41,15,693/- in respect of interest paid on loan, both on the facts and circumstances of the case and in law.

5.0. The Appellant prays that it may be allowed to add, alter or amend the above grounds of appeal and to make detailed submissions at the time of appeal."

12. With regard to Ground Nos. 1 and 2 which are relating to the reopening of the assessment, as no submissions were made before us at the time of hearing, these grounds are dismissed.

13. On merits, with regard to Ground Nos. 3 & 4, Ld.AR of the assessee brought to our notice relevant facts of the case and filed his written submissions, for the sake of clarity it is reproduced below: -

"Proposition 2 Merits (Ground 3 and 4) -

a. The parties from whom the Appellant has taken loan (namely Rajat Diamond Exim Pvt. Ltd., Dev Darshan Diamond Pvt. Ltd., Mangal Murti Impex Pvt. Ltd, Om Sai Stone Limited., Nikhil Gems Pvt. Ltd., and Madan Impex Put. Ltd.) have already been examined during the assessment/reassessment proceedings for AY 2011-12, AY 2012-13 and AY 2013-14. Further, this Hon'ble Bench of the Tribunal was pleased to quash the reopening proceedings initiated for the said Assessment Years. For the impugned assessment years AY 2014-15 and AY 2015-16 before this Hon'ble bench, the additions made do not survive in light of no change in circumstances since the aforesaid parties were examined in detail and no additions were made in the previous years pertaining to aforesaid parties.

Refer Para 14 to 17 of the order dated 18.08.2023 passed by this Hon'ble bench of the Tribunal in M/s Jet Speed Realtors vs. ACIT Circle 32(1) in ITA No. 23,24 and 63/Mum/2022.

b. The learned Assessing Officer has made addition with respect to the loan taken from Frontline Diamonds Pvt. Ltd. merely on the basis of surmises and conjectures despite the Appellant having furnished all details including bank statements of the Appellant, bank statement of the party from whom loan was taken, ledger, loan confirmation, ITR, MCA status, and further, the said loan was also paid back in the immediately next financial year (i.e., short span of time) with interest after deducting TDS thereon. Further, the lender had responded to the notice issued u/s 133(6) by the learned Assessing Officer confirming the transaction with relevant details. Thereby, the Appellant had discharged the onus to establish the identity of the lender, creditworthiness of the lender and the genuineness of the transaction.

- *The list of details and documents produced by the Appellant has been detailed out in Annexure A for AY 2014-15 and Annexure - B for AY 2015-16.*
- *The learned Assessing Officer issued notice u/s 133(6) to the lenders. The lenders replied to the said notice u/s 133(6). The learned Assessing Officer has not pointed out any discrepancy in the details submitted by the Appellant vis a vis details received in response to notice u/s 133(6) of the Act nor there is whisper in the Assessment Order that complete details as sought for was not provided by the Appellant and lender. Therefore, had the learned Assessing Officer taken little pain to appreciate the details submitted by the Appellant as well as the lender, the learned Assessing Officer would not have concluded the loan as bogus.*
- *The entire fulcrum of the Assessment Order is derived from Para. 9.1. (page 3 of the Assessment Order) which clearly affirms that the learned Assessing Officer conducted the reassessment merely on the basis of surmises and conjectures.*
- *Thus, to prove genuineness of the transaction, the Appellant demonstrated that it has received the loans through banking channel, recorded the same in books of accounts, and also repaid back the same in the immediately next financial year (i.e., short span of time). Further, the Appellant furnished bank statements of the lender and its own bank statement, ROC details, ITR copy of the lender, loan confirmations. To prove the creditworthiness, the Appellant submitted the bank statements of lender company as well as balance sheets and the lender also responded to the notice issued u/s 133(6). To prove the identity of the lender, the learned Assessing Officer had sent notice u/s 133(6) and also received response from the lender against the notice issued u/s 133(6) of the Act.*
- *The loans were repaid by the Appellant in the immediately next financial year (i.e., short span of time), as such lenders were in existence both at the time of acceptance and repayment. To demonstrate the repayment of the loans, the Appellant also filed the copy of bank statements of the Appellant (page 63, 268 of PB for AY 2014-15) as well as the lender (page 180, 181 and 267 of PB for AY 2014-15) during the course of reassessment proceedings.*

AY 2014-15

Name of the party	Amount of loan accepted in AY 2014-15	Amount repaid	Date of repayment	Remark
Frontline Diamonds Pvt. Ltd	34,00,000	18,00,000	23.12.2013	Page 62-64/266-268 of Paper Book
		16,00,000	10.11.2014	

14. Further, Ld.AR of the assessee in support of his contentions relied on the following case law: -

- i. ITO vs. Kayathwal Estate (P.) Ltd [2022] 442 ITR 507 (SC) and (2022] 139 taxmann.com 316 (Guj.) Para 15 to Para 17*
- ii. Rajhans Construction (P.) Ltd vs. ACIT [2022] 140 taxmann.com 370 (Surat-Trib.) Para 21 to 22*
- iii. CIT vs. Ayachi Chandrashekhar Narsangji [2014] 42 taxmann.com 251 (Gujarat) Para 6*
- iv. M/s. Nisarg Lifespace LLP vs. ITO ITA No.629/Mum/2020 - Para 3.7.1. to 3.9*
- v. M/s. Talisman Securities Pvt. Ltd. vs. DCIT ITA No.2303/Mum/2021- Para 3.1. to 3.3*
- vi. M/s Shree Laxmi Estate Pvt Ltd vs. ITO ITA No.5954/Mum/2016 Para 5 and 6*
- vii. Abhijavala Developers (P.) Ltd vs. ITO [2021] 124 taxmann.com 72 (Mumbai Trib.) Para. 5*
- viii. Shri Naresh Hiran vs. ITO ITA No. 1236/Mum/2017 Para 7 and 8*
- ix. Mr. Lokesh Devilal Jain vs. ITO ITA No. 4674/Mum/2019 Para 4 and 5*
- c. As a consequence to the above issues, the learned Assessing Officer erred in making addition with respect to interest paid on loan."*

15. On the other hand, Ld. DR heavily relied on the findings of the Ld.CIT(A). He brought to our notice Page No. 32 of the Appellate Order and he is of the view that Ld. CIT(A) has given a reasonable finding in his order. Further he submitted that assessee has not produced any of the parties before the lower authorities.

16. Considered the rival submissions and material placed on record, it was submitted before us that in assessee's own case relating to A.Ys.2011-12, 2012-13 and 2013-14, the Coordinate Bench has decided the issue in favour of assessee by quashing the reopening of the assessment in the above said order. It was submitted that in the above said period the assessee has taken loan from M/s. Rajat Diamond Exim Pvt. Ltd., M/s Dev Darshan Diamond Pvt. Ltd., M/s Mangal Murti Impex Pvt. Ltd., M/s. Om Sai Stone Ltd., M/s. Nikhil Gems Pvt. Ltd. and M/s.Madan Impex Pvt. Ltd., therefore since the facts remain the same the loan taken from the above said parties cannot be treated differently in this assessment year. Therefore, the transaction with the above said parties should be treated as genuine and the additions proposed by the Assessing Officer should be deleted. After careful consideration of the facts on record, we observe that in the A.Ys. 2011-12, 2012-13 and 2013-14 the Coordinate Bench has decided the issue on technical ground of reopening of assessment as bad in law and they have not gone into the fact or merits of the issue involved. Therefore, we cannot blindly follow the above decision in the current assessment year under consideration.

17. Coming to the facts of this case, we observe that except M/s.Frontline Diamond Pvt. Ltd., all other loans taken from other parties are continued from earlier assessment years. Therefore, the addition can be made only to the extent of loan taken by the assessee during the current assessment year. On careful consideration of the informations submitted before us, we observe that assessee has taken fresh loan during A.Y. 2014-15 from the following parties: -

- a. *M/s Frontline Diamond Pvt. Ltd.,* ₹.34,00,000/-
- b. *M/s. Rajat Diamond Exim Pvt. Ltd.* ₹.31,50,000/-
- c. *M/s Dev Darshan Diamond Pvt. Ltd.,* ₹.49,50,000/-
- d. *In rest of all the parties all the loans are pre-existing and brought forward from earlier assessment years.*

18. Therefore, the other continuing loans which are brought forward from earlier assessment years has no relevance to the current assessment year considering the fact that the Assessing Officer in those assessment years is already proceeded to make the additions in those assessment years. The assessee has to prove genuineness of the transactions under section 68 of the Act only to the extent of credit recorded during the current assessment year.

19. Let us focus on the new loans taken by the assessee during the current assessment year. The First party being, M/s Frontline Diamond Pvt. Ltd., we observe that the assessee has taken loan of ₹.34,00,000/- during the current assessment year under consideration from this party and it is submitted before us by filing copy of bank statement that assessee has repaid the above said loan in two installments ₹.18,00,000/- on 23.12.2013 i.e., within the same assessment year and ₹.16,00,000/- on 10.11.2014 i.e. in the subsequent assessment year. It clearly shows that assessee has taken the loan through banking channels and repaid the same by banking channels. Therefore, when the assessee repays the loan which was taken from this party, this itself shows that assessee has demonstrated the genuineness of the transaction.

20. Second party i.e, M/s. Rajat Diamond Exim Pvt. Ltd., we observe that the assessee has taken loan of ₹.31,50,000/- during the current assessment year under consideration from this party and it is submitted before us by filing copy of bank statement that assessee has repaid the above said loan in three installments ₹.11,00,000/- on 23.12.2013 i.e., within the same assessment year and ₹.4,50,000/- on 15.01.2014 i.e., within the same assessment year and ₹.16,00,000/- on 21.01.2016 i.e.,

in the subsequent assessment year. It clearly shows that assessee has taken the loan through banking channels and repaid the same by banking channels. Therefore, when the assessee repays the loan which was taken from this party, therefore, this itself shows that assessee has demonstrated the genuineness of the transaction.

21. Third party i.e, M/s Dev Darshan Diamond Pvt. Ltd., we observe that the assessee has taken loan of ₹.49,50,000/- during the current assessment year under consideration from this party and it is submitted before us by filing copy of bank statement that assessee has repaid the above said loan in three installments ₹.20,00,000/- on 10.03.2016 i.e., in the subsequent assessment year and ₹.24,50,000/- on 28.03.2016 i.e. in the subsequent assessment year and ₹5,00,000 on 16.04.2016 i.e., in the subsequent assessment year. It clearly shows that assessee has taken the loan through banking channels and repaid the same by banking channels. Therefore, when the assessee repays the loan which was taken from this party, therefore, this itself shows that assessee has demonstrated the genuineness of the transaction.

22. With regard to observations of the Assessing Officer that assessee has not proved the creditworthiness of the parties, we observe that he

has considered only the profit generated by these companies and he has not discussed anything on availability of the funds to make the above said loans. Therefore, the creditworthiness does not determined merely on the basis of earning capacity of the companies. Therefore, the addition proposed by the Assessing Officer relating to the above said parties i.e., M/s Frontline Diamond Pvt. Ltd., M/s. Rajat Diamond Exim Pvt. Ltd., and M/s Dev Darshan Diamond Pvt. Ltd., is not proper. Accordingly, we delete the above said additions. With regard to other parties assessee has given a schedule of repayment in its submissions.

23. Therefore, in our considered view assessee has submitted all the relevant documents relating to above transactions before the Tax Authorities and Assessing Officer merely relying on the survey report and analyses the creditworthiness of the parties on the basis of earning capacity of the parties, the Assessing Officer has made the above said additions. Therefore, in our considered view the assessee has taken the loan from all the above said parties through banking channels and repaid the same as discussed above. The addition can be made during the current assessment year only to the extent of the loan taken by the assessee during the current assessment year can be considered for discussion. As discussed above, the assessee has submitted the

relevant documents and proved the genuineness of the transactions and repaid all the loans taken by the assessee partly during the current assessment year and balance in the subsequent assessment years. Therefore, the additions proposed by the Assessing Officer is not proper, Accordingly, we direct the Assessing Officer to delete the addition proposed in this case. Accordingly, Ground No. 3 raised by the assessee is allowed.

24. Coming to Ground No. 4 which is in respect of making addition with respect to interest paid on loan, as we have adjudicated and decided the issue of addition proposed by the Assessing Officer in respect of unsecured loans and deleted the same. This ground being consequential in nature, this ground is allowed.

25. In the result, appeal filed by the assessee is partly allowed.

ITA No. 109 & 108/MUM/2022 (A.Y. 2015-16 & 2016-17)

26. Coming to the appeals relating to A.Ys. 2015-16 & 2016-17, since facts in these cases are mutatis mutandis, therefore the decision taken in A.Y. 2014-15 are applicable to these assessment years also. The

addition can be restricted only to the extent of advances still outstanding in the books of the assessee at the end of A.Y. 2017-18. Accordingly, appeals filed by the assessee are partly allowed.

27. To sum-up, Appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 03rd January, 2024.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai / Dated 03.01.2024
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

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

(Asstt. Registrar)
ITAT, Mum