

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "सी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" C " BENCH, AHMEDABAD

श्री सिद्धार्थ नौटियाल, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

Sl. No(s)	आयकर अपील सं/ IT(SS)A No(s)/ ITA No(s)/ CO No(s)	निर्धारण वर्ष/ Assessment Year(s)	Appeal(s)/ CO by :	
			अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
1.	IT(SS)A No. 2/Ahd/2021	2009-10	The ACIT Central Circle-2(3) Ahmedabad -380009 (Revenue)	Shri Arvindbhai Amulakh Tanna Bungalow No.6 'Ghanshyam Park Society' Opp. Petrol Pump Shivranjini Char Rasta Satellite Ahmedabad-380 015 PAN:AAHPT8437F (Assessee)
2.	IT(SS)A No. 4/Ahd/2021	2010-11	-do- Revenue	-do- Assessee
3.	IT(SS)A No. 3/Ahd/2021	2011-12	-do- Revenue	-do- Assessee
4.	IT(SS)A No. 5/Ahd/2021	2012-13	-do- Revenue	-do- Assessee
5.	IT(SS)A No. 6/Ahd/2021	2013-14	-do- Revenue	-do- Assessee
6.	IT(SS)A No. 7/Ahd/2021	2014-15	-do- Revenue	-do- Assessee
7.	IT(SS)A No. 66/Ahd/2020	2014-15	By Assessee PAN:AAHPT 8437F	By Revenue
8.	ITA No. 577/Ahd/2020	2015-16	By Assessee	By Revenue
9.	CO No.14/Ahd/2021 (in IT(ss)A	2009-10	By Assessee	By Revenue

	No.2/Ahd/2021)			
10.	CO No.15/ Ahd/2021 (in IT(ss)A No.4/Ahd/2021)	2010-11	By Assessee	By Revenue
11.	CO No.16/ Ahd/2021 (in IT(ss)A No.3/Ahd/2021)	2011-12	By Assessee	By Revenue
12.	CO No.17/ Ahd/2021 (in IT(ss)A No.5/Ahd/2021)	2012-13	By Assessee	By revenue
13.	CO No.18/ Ahd/2021 (in IT(ss)A No.6/ Ahd/2021)	2013-14	By Assessee	By Revenue
14.	CO No.19/ Ahd/2021 (in IT(ss)A No.7/Ahd/2021)	2014-15	By Assessee	By Revenue

Assessee by :	Shri Dhiren Shah, AR Ms.Nupur Shah, AR
Revenue by :	Shri Kamlesh Makwana, CIT-DR

सुनवाई की तारीख/Date of Hearing : 10/07/2024
घोषणा की तारीख /Date of Pronouncement: 31/07/2024

आदेश/ORDER

PER BENCH:

This bunch of appeals by the Revenue and the Assessee are directed against the common order of the Commissioner of Income Tax (Appeals)-13, Ahmedabad, dated 09/11/2020 [hereinafter referred to as " the CIT(A)"] for the Assessment Years (AYs) 2009-10 to 2014-15 (by Revenue) and AYs 2014-15 and 2015-16 (by Assessee) arising out of the assessment orders

dated 30/12/2016 passed by the Assessing Officer (AO) under section 143(3) / 143(3) r.w.s. 153A(1)(b) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") and the Assessee is in Cross Objections for AYs 2009-10 to 2014-15.

2. At the outset, Id.AR submitted that though these appeals belong to different assessment years but the issues are identical except for the assessment years and amounts and, therefore, all these appeals heard together. Ld.CIT-DR did not object to the aforesaid submission made by the Id.AR. We, therefore, for the sake of convenience, proceed to dispose of all these appeals of the Revenue and Assessee as well as Cross Objections of the assessee by a consolidated order and for reference, we proceed with the facts for AY 2009-10 in Revenue's appeals.

Facts of the case:

3. The assessee filed his original returns of income for respective years and the same were processed u/s 143(1) of the Act. A search u/s 132 of the Act was conducted in Ahmedabad Commodity Traders Group on 18-12-2014. The assessee was also covered u/s 132 of the Act. Therefore, notices u/s 153A were issued to the assessee for the A.Y. 2009-10 to A.Y. 2014-15 on 15-7-2015. The assessee furnished the return of income in response to the notice on 13-8-2015. The summary of all returns, addition by the AO and relief granted by the CIT(A) is given below:

Sr	A.Y.	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
1	Original Returned Income in Rs.	50,060	1,55,950	1,42,950	4,50,740	9,34,360	6,21,210	4,80,870
2	Returned Income in response to notice u/s 153A in Rs.	1,35,350	1,46,340	5,02,710	4,50,740	9,34,350	6,21,210	-
3	Date of Original Return	30/09/2009	15/10/2010	01/10/2011	30/09/2012	05/10/2013	30/11/2014	30/09/2015
4	Date of Return filed in response to notice u/s 153A	13/08/2015	13/08/2015	13/08/2015	13/08/2015	13/08/2015	13/08/2015	-
5	Status of Assessment	Unabated	Unabated	Unabated	Unabated	Unabated	Abated	Abated
6	Date of order u/s 143(3) r.w.s. 153A	30/12/2016	30/12/2016	30/12/2016	30/12/2016	30/12/2016	30/12/2016	30/12/2016
7	Addition on account of fictitious commodity losses in Rs.	3,25,18,059	1,78,58,352	10,94,40,574	2,87,05,829	2435387	4,43,10,925	-
	CIT(A) 's Decision	Deleted	Deleted	Deleted	Deleted	Deleted	Deleted	-
8	Addition u/s 68 in Rs.	71,50,000	53,00,000	-	-	23748985	3,23,55,968	3,14,72,077
	CIT(A) 's Decision	Deleted	Deleted	-	-	Deleted	Confirmed Addition of Rs. 1,09,52,204	Confirmed Addition of Rs. 36,80,676
9	Addition on account of treating LTCG as business income in Rs.	-	-	-	-	-	79,23,088	-

	CIT(A) 's Decision	-	-	-	-	-	Directed AO to verify the facts	-
10	Disallowance u/s 14A in Rs.	85291	1189915	-	578357	862736	-	2490730
	CIT(A) 's Decision	Deleted	Deleted	-	Deleted	Deleted	-	Restricted the disallowance to exempt income of Rs. 13,33,671
11	Disallowance of Interest Expenses in Rs.	1,00,529	2,54,547	-	-	-	-	25601
	CIT(A) 's Decision	Deleted	Deleted	-	-	-	-	Confirmed Addition of Rs.25,601
12	Assessed Income u/s 143(3) r.w.s. 153A in Rs.	3,99,89,229	2,47,49,154	10,99,43,284	2,97,34,926	2,79,81,468	8,52,11,191	3,44,69,278

Since the Ld.CIT(A) allowed the appeal in part, the Revenue is in appeal(s) before us, and the assessee filed two appeals and Cross Objections. Following are the grounds:

3. Grounds raised by the Revenue in its appeals are as under:

(a) In IT(SS)A No.2/Ahd/2021 for AY 2009-10

"1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in holding that any addition during the assessment u/s.153A has to be confined to the incriminating material found during the course of search u/s 132(1) of the Act, even though, there is no such stipulation in sec. 153A of the Act.

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that sec. 153A requires a notice to be issued requiring the assessee to furnish his return of income in respect of each assessment year falling within six assessment years and to assess or re-assess the total income of those six assessment years. This scheme of assessment or re-assessment of the total income of

a person searched will become frivolous if no addition is allowed to be made for those six assessment years in the absence of any seized incriminating material.

3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that while computation of undisclosed income of the block period u/s. 158BB was to be made on the basis of evidence found as a result of search or requisition of books of accounts, whereas, there is no such stipulation in sec. 153A and sec. 153C of the Act.

4. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that assessment in relation to certain issues not related to the search and seizure may arise in any of the said six assessment years after the search u/s.132 is conducted in the case of the assessee, and that if the interpretation of the Id. CIT(A) were to hold it will not be possible to assess such income in the 153A proceedings. Further, no other parallel proceedings can be initiated to assess such income which is not emanating from incriminating documents. It is incumbent upon to the AO to assess the correct and true income of the assessee.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that no incriminating documents were found relating to additions made overlooking the facts that the AO has taken into cognizance of seized material/statements of various persons recorded during search proceedings for making additions.

*5.1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of **Rs.3,25,18,059/-** made on account of disallowance of fictitious commodity losses in respect of transactions made through NMCE platform.*

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the material facts and evidences brought on record by the AO as mentioned in the assessment order that the assessee was continuously booking losses from a single platform i.e NMCE in the last quarter of each year and said fictitious losses are set off with the profits earned from trading from other platforms.

*7. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of **Rs.71,50,000/-** made on account of Unexplained Credits in the form of unsecured loan u/s 68 of the Act in-spite of the fact that there was no documentary evidence to prove genuineness of transactions and creditworthiness of lenders.*

8. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of **Rs.1,00,529/-** made on account of interest expenses claimed towards above said loan/advance.

9. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

10. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."

(b) In IT(SS)A No.4/Ahd/2021 for AY 2010-11

"1 On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in holding that any addition during the assessment u/s. 153A has to be confined to the incriminating material found during the course of search u/s. 132(1) of the Act, even though, there is no such stipulation in sec. 153A of the Act.

2 On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that sec. 153A requires a notice to be issued requiring the assessee to furnish his return of income in respect of each assessment year falling within six assessment years and to assess or re-assess the total income of those six assessment years. This scheme of assessment or re-assessment of the total income of a person searched will become frivolous if no addition is allowed to be made for those six assessment years in the absence of any seized incriminating material.

3, On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that while computation of undisclosed income of the block period u/s.158BB was to be made on the basis of evidence found as a result of search or requisition of books of accounts, whereas, there is no such stipulation in sec. 153A and sec. 153C of the Act.

4. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that assessment in relation to certain issues not related to the search and seizure may arise in any of the said six assessment years after the search u/s. 132 is conducted in the case of the assessee, and that if the interpretation of the Id. CIT(A) were to hold it will not be possible to assess such income in the 153A proceedings. Further, no other parallel proceedings can be initiated to assess such income which is not emanating from incriminating documents. It is incumbent upon to the AO to assess the correct and true income of the assessee.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that no incriminating documents were found relating to additions made overlooking the facts that the AO has taken into cognizance of seized

material/statements of various persons recorded during search proceedings for making additions.

5.1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of **Rs.1,78,58,352/-** made on account of disallowance of fictitious commodity losses in respect of transactions made through NMCE platform.

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the material facts and evidences brought on record by the AO as mentioned in the assessment order that the assessee was continuously booking losses from a single platform i.e NMCE in the last quarter of each year and said fictitious losses are set off with the profits earned from trading from other platforms.

7. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of **Rs.53,00,000/-** made on account of Unexplained Credits in the form of unsecured loan u/s 68 of the Act in-spite of the fact that there was no documentary evidence to prove genuineness of transactions and creditworthiness of lenders.

8. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of **Rs.2,54,547/-** made on account of interest expenses claimed towards above said loan/advance.

9. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of **Rs.11,89,915/-** made u/s 14A r.w. Rule 8D of the Act.

10. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

11. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."

(c) In IT(SS)A No.3/Ahd/2021 for AY 2011-12

"1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in holding that any addition during the assessment u/s.153A has to be confined to the incriminating material found during the course of search u/s,132(1) of the Act, even though, there is no such stipulation in sec. 153A of the Act.

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that sec. 153A requires a notice to be issued requiring the

assessee to furnish his return of income in respect of each assessment year falling within six assessment years and to assess or re-assess the total income of those six assessment years. This scheme of assessment or re-assessment of the total income of a person searched will become frivolous if no addition is allowed to be made for those six assessment years in the absence of any seized incriminating material.

3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that while computation of undisclosed income of the block period u/s.158BB was to be made on the basis of evidence found as a result of search or requisition of books of accounts, whereas, there is no such stipulation in sec. 153A and sec. 153C of the Act.

4. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that assessment in relation to certain issues not related to the search and seizure may arise in any of the said six assessment years after the search u/s. 132 is conducted in the case of the assessee, and that if the interpretation of the Id. CIT(A) were to hold it will not be possible to assess such income in the 153A proceedings. Further, no other parallel proceedings can be initiated to assess such income, which is not emanating from incriminating documents. It is incumbent upon to the AO to assess the correct and true income of the assessee.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that no incriminating documents were found relating to additions made overlooking the facts that the AO has taken into cognizance of seized material/statements of various persons recorded during search proceedings for making additions.

*5.1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of **Rs.10,94,40,574/-** made on account of disallowance of fictitious commodity losses in respect of transactions made through NMCE platform.*

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the material facts and evidences brought on record by the AO as mentioned in the assessment order that the assessee was continuously booking losses from a single platform i.e NMCE in the last quarter of each year and said fictitious losses are set off with the profits earned from trading through other platforms.

7. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

8. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."

(d) In IT(SS)A No.5/Ahd/2021 for AY 2012-13

"1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in holding that any addition during the assessment u/s.153A has to be confined to the incriminating material found during the course of search u/s.132(1) of the Act, even though, there is no such stipulation in sec. 153A of the Act.

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that sec. 153A requires a notice to be issued requiring the assessee to furnish his return of income in respect of each assessment year falling within six assessment years and to assess or re-assess the total income of those six assessment years. This scheme of assessment or re-assessment of the total income of a person searched will become frivolous if no addition is allowed to be made for those six assessment years in the absence of any seized Incriminating material.

3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that while computation of undisclosed income of the block period u/s.158BB was to be made on the basis of evidence found as a result of search or requisition of books of accounts, whereas, there is no such stipulation in sec. 153A and sec. 153C of the Act.

4. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that assessment in relation to certain issues not related to the search and seizure may arise in any of the said six assessment years after the search u/s. 132 is conducted in the case of the assessee, and that if the interpretation of the Id. CIT(A) were to hold it will not be possible to assess such Income in the 153A proceedings. Further, no other parallel proceedings can be initiated to assess such income which is not emanating from incriminating documents. It is incumbent upon to the AO to assess the correct and true income of the assessee.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that no incriminating documents were found relating to additions made overlooking the facts that the AO has taken into cognizance of seized material/statements of various persons recorded during search proceedings for making additions.

*5.1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of **Rs.2,87,05,829/-** made on account of disallowance of fictitious commodity losses in respect of transactions made through NMCE platform.*

6. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the material facts and evidences brought on record by the AO as mentioned in the assessment order that the assessee was continuously booking losses from a single platform ie NMCE in the last quarter of each year and said fictitious losses are set off with the profits earned from trading from other platforms.*

7. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.5,78,357/- made u/s 14A rw. Rule 8D of the Act.*

8. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.*

9. *It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."*

(e) In IT(SS)A No.6/Ahd/2021 for AY 2013-14

"1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in holding that any addition during the assessment u/s.153A has to be confined to the incriminating material found during the course of search u/s.132(1) of the Act, even though, there is no such stipulation in sec. 153A of the Act.

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that sec. 153A requires a notice to be issued requiring the assessee to furnish his return of income in respect of each assessment year falling within six assessment years and to assess or re-assess the total income of those six assessment years. This scheme of assessment or re-assessment of the total income of a person searched will become frivolous if no addition is allowed to be made for those six assessment years in the absence of any seized incriminating material.

3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that while computation of undisclosed income of the block period u/s. 158BB was to be made on the basis of evidence found as a result of search or requisition of books of accounts, whereas, there is no such stipulation in sec. 153A and sec. 153C of the Act.

4. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that assessment in relation to certain issues not related to the search and seizure may arise in any of the said six assessment years after the search u/s.132 is conducted in the case of the assessee, and that if the interpretation of the Id. CIT(A) were to hold it will not be possible to assess such income in the 153A proceedings. Further, no other parallel proceedings can be initiated to assess

such income which is not emanating from incriminating documents. It is incumbent upon to the AO to assess the correct and true income of the assessee.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that no incriminating documents were found relating to additions made overlooking the facts that the AO has taken into cognizance of seized material/statements of various persons recorded during search proceedings for making additions.

*5.1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of **Rs.24,35,387/-** made on account of disallowance of fictitious commodity losses in respect of transactions made through NMCE platform.*

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the material facts and evidences brought on record by the AO as mentioned in the assessment order that the assessee was continuously booking losses from a single platform i.e NMCE in the last quarter of each year and said fictitious losses are set off with the profits earned from trading from other platforms.

*7. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of **Rs.2,37,48,985/-** made on account of Unexplained Credits in the form of unsecured loan u/s 68 of the Act in-spice of the fact that there was no documentary evidence to prove genuineness of transactions and creditworthiness of lenders.*

*8. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of **Rs.8,62,736/-** made u/s 14A r.w. Rule 8D of the Act.*

9. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

10. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."

(f) In IT(SS)A No.7/Ahd/2021 for AY 2014-15

*"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of **Rs.4,43,10,925/-** made on account of disallowance of fictitious commodity losses in respect of transactions made through NMCE platform.*

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the material facts and evidences brought on record by the AO as mentioned in the assessment order that the assessee was continuously booking losses from a single platform i.e NMCE in the last quarter of each year and said fictitious losses are set off with the profits earned from trading from other platforms.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

4. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."

3.1. Grounds raised by the Assessee in his two-appeals are as under:

(a) In IT(SS)A No.66/Ahd/2020 for AY 2014-15

"The Ld. CIT (A) has grossly erred in law and on facts in partly allowing the appeal. He ought to have allowed the appeal fully in accordance with the grounds of appeal raised by the appellant before him.

1(i). The Ld. CIT (A) has erred in law and on facts in confirming the addition on account of alleged unexplained credit of **Rs.1,09,52,204/-** (after rectification order by the AO) by observing in Para 10.12 on Page 93 of the appellant order that "the AO to be appears be justified in holding that either these loans are sham / fictitious or mere accommodation entries and whatever be the actual facts, are hit by the provisions of section 68/69A of the Act because based on the investigations made and the findings therefrom the AO has the basis of to be not satisfied with the explanations furnished by the appellant. The satisfaction of the AO is not arbitrary and is not based on whims and fancy".

(ii) The Ld. CIT (A) has erred in law and on facts in failing to appreciate the fact that in fact the appellant had received the unsecured loan during the year from 5 parties namely (1) Riddhi Siddhi Enterprises, (ii) Kiranben Pineshbhal Panchiwala, (iii) Rekhaben Devchand Panchiwala, (iv) Pinesh Devchand Panchiwala HUF and (v) Devcahnd K. Panchiwala and appellant had already discharged primary onus to prove identity and capacity of lenders as well as genuineness of transaction by submitting the details in the form of Name, PAN & complete Address of all parties, copy of Contra Confirmation of the Lender Parties, Acknowledgement of Return filed by lender parties for the year under consideration, Bank Statement of the Lender Parties for the year under consideration.

(iii) The appellant humbly submits that the genuineness of the transaction has also been proved in the present case of the appellant as the appellant also paid the interest to the 5 lender parties after deducting tax at source as per the provision of Income Tax Act and said TDS has also been deposited to the respective government authority. The appellant also repaid the unsecured loan alongwith interest to the depositor parties in subsequent year. The appellant has received the unsecured loans by account payee cheques and has also repaid the unsecured loans back to the lenders companies by account payee cheques which establish the genuineness of the transactions. Hence the decision of **Hon'ble Jurisdictional Gujarat High Court in the case of Commissioner of Income-tax, Rajkot-1 vs. Ayachi Chandrashekhar Narsangji, [2014] 42 taxmann.com 251 (Gujarat) and Commissioner of Income-tax, Surat-1 v. Shri Mahavir Crimpers (2018) 95 taxmann.com 323 (Gujarat)**, is squarely applicable in the case of the appellant.

(iv) The appellant humbly submits that the Ld. CIT(A) has not considered the written submission filed by the appellant as well as various judicial pronouncements of Hon'ble Jurisdictional Gujarat High Court, other High Courts and Tribunals relied upon by the appellant in a proper perspective.

(v) The appellant humbly submits that the Ld. AO has not carried out any cross enquiry from 5 Parties and not examined them by recording the statements of 5 Parties u/s. 131 of the Act for alleged additions.

(vi) The appellant humbly submits that the Ld. AO has not carried out any cross enquiry from 5 Parties and not examined them by recording statements of 5 Parties for alleged additions.

(vii) The appellant humbly submit that the Ld. AO has not granted the opportunity of cross examination of 5 Parties and violated the principles of Natural Justice in view of Judicial Pronouncements of Hon'ble Supreme Court in the case of *Andaman Timber Industries vs. Commissioner of Central Excise, Kolkata - II* [2015] 62 taxmann.com 3 (SC), Hon'ble Jurisdictional Gujarat High Court decision in the case of *CIT vs. Ramanbhai B. Patel in Tax Appeal No. 207 to 210 of 2008, DCIT vs. Mahendra Ambalal Patel (2010) 40 DTR 243 (Guj.)*, *Prarthana Construction Pvt. Ltd., Tax Appeal No. 79 of 2000 (Guj.)*. The appellant company also relied upon the decision of the Hon'ble High Court of Judicature for Rajasthan Bench at Jaipur in the case of *CIT, Central, Jaipur vs. Smt. Sunita Dhadha and Others, Jaipur (Income tax Appeal No. 197/2012) dated 1.07.2017*. The SLP filed against the said judgment has been dismissed by the Hon'ble Supreme Court in *Special Leave Petition (CIVIL) Diary No (s). 9432/2018*. The Hon'ble Rajasthan High Court in Para 6 of the judgment took the cognizance of the decision of Hon'ble Supreme Court in the case of *Andaman Timber Industries vs. Commissioner of Central Excise Kolkata II (cited supra)* and also taken the cognizance of the Hon'ble Supreme Court in the case of *Common Cause (A*

Registered Society) and Ors vs. Union of India and Orsin 77 taxmann.com 245 (SC)(2017). The appellant has also relied upon the various other judicial pronouncements of the Hon'ble Supreme Court, jurisdictional Gujarat High Court and other High Courts.

(viii) The appellant humbly submits that in the search proceedings in the case of appellant, no incriminating material for payments of cash in lieu of cheque payments were found and seized.

2. The Ld. CIT(A) has erred in law and on facts in giving the direction to the AO to verify the facts and satisfy himself as to whether those shares sold during the year (and which were originally held as stock in trade were converted into investment at the then market value on 01.04.2012) as per law in respect of the addition of Rs. 79,23,088/- being held by the Ld. AO as business income instead of claim of Long Term Capital Gain (LTCG). On facts and circumstances of the case as well as various judicial pronouncements relied upon by the appellant, the Ld. CIT (A) ought to have deleted the addition of Rs. 79,23,088/- by treating the same as LTCG.

The appellant reserves its right to add, amend, alter or modify any of the grounds stated hereinabove either before or at the time of hearing."

PRAYER

"The appellant therefore respectfully prays that :-

- 1. The addition of Rs. 1,09,52,204/- on account of alleged unexplained credit of confirmed by the Ld. CIT (A) may kindly be deleted.*
- 2. The addition of **Rs.79,23,088/-** being held by the Ld. AO as business income instead of claim of Long Term Capital Gain (LTCG) may kindly be deleted and the direction given by the Ld. CIT (A) to the AO be quashed.*
- 3. Such and further relief as the nature and circumstances of the case may justify."*

(b) In ITA No.577/Ahd/2020 for AY 2015-16

"The Ld. CIT (A) has grossly erred in law and on facts in partly allowing the appeal. He ought to have allowed the appeal fully in accordance with the grounds of appeal raised by the appellant before him.

1(1). The Ld. CIT (A) has erred in law and on facts in confirming the addition on account of alleged unexplained credit of **Rs. 36,80,676/-** (after rectification order by the AO) by following the appellate order rendered for A.Y. 2014-15.

(ii). The Ld. CIT (A) has erred in law and on facts in failing to appreciate the fact that in fact the appellant had received the unsecured loan during the year from 5 parties namely (i) Riddhi Siddhi Enterprises, (ii) Kiranben Pineshbhai Panchiwala, (iii) Rekhaben Devchand Panchiwala, (iv) Pinesh Devchand Panchiwala - HUF and (v) Devchand K. Panchiwala and appellant had already discharged primary onus to prove identity and capacity of lenders as well as genuineness of transaction by submitting the details in the form of Name, PAN & complete Address of all parties, copy of Contra Confirmation of the Lender Parties, Acknowledgement of Return filed by lender parties for the year under consideration, Bank Statement of the Lender Parties for the year under consideration.

(iii) The appellant humbly submits that the genuineness of the transaction has also been proved in the present case of the appellant as the appellant also paid the interest to the 5 lender parties after deducting tax at source as per the provision of Income Tax Act and said TDS has also been deposited to the respective government authority. The appellant also repaid the unsecured loan alongwith interest to the depositor parties in subsequent year. The appellant has received the unsecured loans by account payee cheques and has also repaid the unsecured loans back to the lenders companies by account payee cheques which establish the genuineness of the transactions. Hence the decision of **Hon'ble Jurisdictional Gujarat High Court in the case of Commissioner of Income-tax, Rajkot-1 vs. Ayachi Chandrashekhar Narsangji, [2014] 42 taxmann.com 251 (Gujarat) and Commissioner of Income-tax, Surat-1 v. Shri Mahavir Crimpers (2018) 95 taxmann.com 323 (Gujarat)**, is squarely applicable in the case of the appellant.

(iv) The Ld. CIT(A) has not considered the written submission filed by the appellant as well as various judicial pronouncements of Hon'ble Jurisdictional Gujarat High Court, other High Courts and Tribunals relied upon by the appellant in a proper perspective.

(v) The appellant humbly submits that the Ld. AO has not carried out any cross enquiry from 5 Parties and not examined them by recording the statements of 5 Parties u/s. 131 of the Act for alleged additions.

(vi) The appellant humbly submit that the Ld. AO has not granted the opportunity of cross examination of 5 Parties and violated the principles of Natural Justice in view of Judicial Pronouncements of **Hon'ble Supreme Court in the case of Andaman Timber Industries vs. Commissioner of Central Excise, Kolkata - II [2015] 62 taxmann.com 3 (SC)**, **Hon'ble Jurisdictional Gujarat High Court**

decision in the case of CIT vs. Ramanbhai B. Patel in Tax Appeal No. 207 to 210 of 2008, DCIT vs. Mahendra Ambalal Patel (2010) 40 DTR 243 (Guj.), Prarthana Construction Pvt. Ltd., Tax Appeal No. 79 of 2000 (Guj.). The appellant company also relied upon the decision of the Hon'ble High Court of Judicature for Rajasthan Bench at Jaipur in the case of CIT, Central, Jaipur vs. Smt. Sunita Dhadda and Others, Jaipur (Income tax Appeal No. 197/2012) dated 1.07.2017. The SLP filed against the said judgment has been dismissed by the Hon'ble Supreme Court in Special Leave Petition (CIVIL) Diary No (s). 9432/2018. The Hon'ble Rajasthan High Court in Para 6 of the judgment took the cognizance of the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries vs. Commissioner of Central Excise Kolkata II (cited supra) and also taken the cognizance of the Hon'ble Supreme Court in the case of Common Cause (A Registered Society) and Ors vs. Union of India and Orsin 77 taxmann.com 245 (SC) (2017). The appellant has also relied upon the various other judicial pronouncements of the Hon'ble Supreme Court, jurisdictional Gujarat High Court and other High Courts.

(vii) The appellant humbly submits that in the search proceedings in the case of appellant, no incriminating material for payments of cash in lieu of cheque payments were found and seized.

2(1) The Ld. CIT(A) has erred in law and on facts in confirming the disallowance u/s. 14A of the Act of Rs.11,86,356/- out of total disallowance of Rs.24,90,730/- by observing in Para 11.7 on Page 101 of the order that However, it has been seen that the appellant is also holding shares as investments and has not made out a case that the investments in the shares were made out of own funds and not from interest bearing loans".

(ii) On facts and circumstances of the case as well as the judicial pronouncements relied upon by the appellant in his written submission before the Ld. CIT(A), the Ld. CIT(A) ought to have deleted the entire disallowance of Rs.24,90,730/- disallowance u/s. 14A of the Act.

The appellant reserves his right to add, amend, alter or modify any of the grounds stated hereinabove either before or at the time of hearing."

PRAYER

"The appellant therefore respectfully prays that:-

1. The addition of Rs.36,80,676/- on account of alleged unexplained confirmed by the Ld. CIT (A) may kindly be deleted.

2. The disallowance u/s. 14A of the Act of **Rs. 11,86,356/-** (out of total disallowance of **Rs.24,90,730/-**) confirmed by the Ld. CIT(A) may kindly be deleted.

3. Such and further relief as the nature and circumstances of the case may justify.”

3.2. Grounds raised by the Assessee in his Cross Objections are as under:

(a) In CO No.14/Ahd/2021 (in IT(SS)A No.2/Ahd/2021) for AY 2009-10

“All the grounds in this Cross Objections are mutually exclusive and without prejudice to each other:

1. The Ld. CIT (A) has rightly held in Para 5.3 on Page 54 of the appellate order that “I am of the considered view that the necessary requirement of the related incriminating materials found during the course of search for making additions during the reassessment u/s. 153A is for unabated assessment years (ie the assessment years for which either assessments u/s. 143(3)/144/147 have been completed or the time limits for issue of notices u/s. 143(2) have elapsed on the date of search). Accordingly with respect to the date of search in the case being 18.12.2014, the assessment years from A.Y.2009-10 to A.Y. 2013-14 are unabated years as the time limit for issue of Notice u/s. 143(2) had expired on 13.04.2014 (for A.Y. 2013-14). Thus for the AY 2009-10 to AY 2013-14, no addition can be made during the proceedings u/s. 153A if there is no related incriminating material found during the search in view of the decision of the Hon'ble jurisdictional Gujarat High Court in the case of **PCIT vs. Saumya Construction Pvt.Ltd 387 ITR 529** and Hon'ble Delhi High Court decision in the case of **Commissioner of Income Tax (Central)- III vs. Kabul Chawla, [2015] 61 taxmann.com 412 (Delhi)** as well as other judicial pronouncements relied upon by the appellant.

2. The Ld. CIT (A) has rightly held in Para 5.4 on Page 55 of the Appellate order that "from the perusal of the assessment order, it is seen that there is no specific mention of any incriminating material seized during the search in the case of the appellant and not even in the search of various concerns and individuals grouped as Ahmedabad Commodity Traders which might have been relied upon by the AO for the purpose of additions made including the additions on account of disallowance of loss claimed on the trading of commodities made on NMCE Platform, in the case of the appellant". The Ld.CIT(A) further observed in Par 5.7 of the appellate order that “It is seen in Para 2.4 of the assessment order that the AO has relied upon the statement of Shri Jamnalal R. Thakkar (Proprietor of Prime Commodities), Shri Ramavtar Dhoot (Director and key person of M/s. Jet Air Agency Pvt.Ltd of Kolkata) and Shri Darshan Thakkar for making the aforesaid addition. However, the AO neither provided the copy of their statements recorded nor the opportunity

of cross examination to the appellant even though their statements had been relied upon by the AO for making the addition in the case of appellant".

3. The Ld.CIT(A) after carefully considering the facts of the case, submission of the appellant as well as the various judicial pronouncements relied upon by the appellant has rightly held in Para 5.14 on Page 62 of the appellate order that Under the circumstances, it is seen that the addition by way of denying the claim of loss from trading on NMCE exchange holding it to be fictitious is not based on incriminating materials found during the search and **therefore the addition is illegal and void ab initio and has to be quashed.** In such a case the submission on the merits of facts and related law need not be gone through however as the allegation in the case is in the nature of scam, the facts and the arguments of the AO and counter arguments of the appellant have been critically looked into and it is seen that there was no basis by way of cogent evidences in spite of searches and surveys conducted, and thus the **addition does not stand on merits also.** While no incriminating material was found during the search to hold that the losses accrued to the appellant were bogus/fictitious or accommodation entries, it is also the fact that during the search no tangible assets in form of cash, jewellery or any other assets were found which could have been held to be representing the undisclosed/ unaccounted income arising out of the alleged fictitious/ contrived losses. If this was fictitious and contrived losses aggregating to Rs.23 crores during the period from FY 2008- 09 to FY.2013-14, it must have some manifestations by way of some tangible assets with somebody. In spite of search conducted not a shred of any evidence was found, not even terms of any rough jotting anywhere. Thus even if the alleged fictitious/contrived losses are conceded, there is no trace of any asset representing the same" and the Ld.CIT(A) has correctly deleted the disallowance of Rs.3,25,18,059/- made by the AO on account of alleged fictitious commodity losses in respect of transactions made through NMC Platform.

4. The Ld.CIT(A) has rightly held in Para 5.19 on Page 64 of the appellate order that "The AO has not mentioned as to how and why he was not satisfied about the nature and source of credit/loan as stipulated u/s.68. The AO could not have made the addition unless he had examined the sources of funds in the hands of the lender and had made a conclusive case that the lender had no capacity to advance a loan of Rs.71.05 Lakh to the appellant. Otherwise also in context of proceedings u/s. 153A and the AY being unabated the AO could not have made the addition without these being any related incriminating material found during the search. A general statement of the director of BCCL cannot be sole basis of denying the unsecured loan taken and treating it as undisclosed / deemed income. Under the circumstances the addition made by the AO does not stand the tests of law" and the Ld.CIT(A) has correctly deleted the addition of Rs.71,50,000/- made by the Ld.AO on account of unexplained credit u/s. 68 of the Act.

5. The Ld.CIT(A) after carefully considering the facts of the case, submission of the appellant has rightly held in Para 5.20 of the appellate order that "As the unsecured loan of Rs.75 lakh from Bhoomidev Credit Corporation Ltd. is held as not genuine, the payment of interest thereon of Rs.1,00,529/- is also held genuine and allowable" and the Ld.CIT(A) has rightly deleted the addition of Rs.1,00,529/- made by the AO on account of alleged unexplained expenditure.

6. The Respondent craves right to add, amend, alter, modify, substitute, delete or modify all or any of the above grounds of cross objection."

(b) In CO No.15/Ahd/2021 (in IT(SS)A No.4/Ahd/2021) for AY 2010-11

"All the grounds in this Cross Objections are mutually exclusive and without prejudice to each other:-

1. The Ld.CIT(A) has rightly held in Para 6.7 on Page 68 of the appellate order that "following the decision for AY 2009-10 before, it is held that legally those additions could not have been made by the AO during the reassessment proceedings u/s 153A for AY 2010-11 because there was no related incriminating material found during the course of the search and therefore the additions are void ab-initio and are to be quashed because the AY 2010-11 is also an unabated AY and the appellant is protected by various case laws including the decision of the jurisdictional ITAT of Ahmedabad and the jurisdictional HC of Gujarat in Saumaya Construction Pvt.Ltd and host of other cases. Under the circumstances, the submissions made on the merits of the issues made by the appellant become mere academic and are not required to be gone through. However as apparently there was an element/allegation of scam made by the FMC in the dealings on NMCE platform, the addition related to disallowance of "fictitious commodity losses of transactions made through NMCE platform" have been carefully looked into and in view of the facts brought out by the appellant and failure of the AO to bring on record direct & cogent evidences in relation there to and relying upon various case laws cited in its support by the appellant, the disallowance of such loss has not been found sustainable and the Ld.CIT(A) has rightly deleted the addition of **Rs.1,78,58,352/-** made by the AO on account of disallowance of alleged fictitious commodity losses of transactions made through NMCE Platform.

2. The Ld. CIT (A) following the appellate order rendered by him for A.Y. 2009-10 rightly held in Para 6.8 on Page 68 of the appellate order that the facts related to the additions of **Rs.53,00,000/-** being unsecured loan treated as unexplained cash credits and of **Rs.2,54,547/-** being disallowance of interest expenses thereon are same as those for AY 2009-10 and are not based on any incriminating material found during the search and following the decision made before", the Ld.CIT(A) has correctly deleted the additions of Rs.53,00,000/- being unsecured loan treated as

unexplained cash credits and addition of **Rs.2,54,547/-** being disallowance of interest expenses thereon made by the AO.

3. The Ld.CIT(A) has rightly held in Para 6.9 on Page 68 of the appellate order that "while under normal circumstances the AO should have been directed to restrict the disallowance u/s.14A to the extent of exempt income by way of dividend of **Rs.7,06,519/-**, but as the assessment is related to unabated AY and there is no incriminating material related to the issue, on legality the entire addition of **Rs.11,89,915/-** made in the assessment order has to be deleted and the Ld.CIT(A) has rightly deleted the addition of **Rs. 11,89,915/-** made by the AO.

4. The Respondent craves right to add, amend, alter, modify, substitute, delete or modify all or any of the above grounds of cross objection."

(c) In CO No.16/Ahd/2021 (in IT(SS)A No.3/Ahd/2021) for AY 2011-12

"All the grounds in this Cross Objections are mutually exclusive and without prejudice to each other:

1. The Ld.CIT(A) has rightly held in Para 7.5 of the Appellate order that "following the decision for AY 2009-10 before, it is held that legally those additions could not have been made by the AO during the reassessment proceedings u/s.153A for Assessment Year 2011-12 because there was no related incriminating material found during the course of search and therefore the additions is void ab-initio and are to be quashed because the AY 2011-12 is also an unabated AY and the appellant is protected by various case laws including the decision of the jurisdictional ITAT of Ahmedabad and the jurisdictional HC of Gujarat in Saumaya Construction Pvt. Ltd. and host of other cases. Under the circumstances the submissions made on the merits of the issues made by the appellant become mere academic and are not required to be gone through. However as apparently there was an element / allegation of scam made by the FMC in the dealings on NMCE platform, the addition related to disallowance of "fictitious commodity losses of transactions made through NMCE platform" have been carefully looked into and in view of the facts brought out by the appellant and failure of the AO to bring on record direct & cogent evidence in relation thereto and relying upon various case laws cited in its support by the appellant, the disallowance of such loss has not been found sustainable" and the Ld.CIT(A) has rightly deleted the addition of **Rs.10,94,40,574/-** made by the AO on account of disallowance of alleged fictitious commodity losses of transactions made through NMCE Platform.

2. The Respondent craves right to add, amend, alter, modify, substitute, delete or modify all or any of the above grounds of cross objection."

(d) In CO No.17/Ahd/2021 (in IT(SS)A No.5/Ahd/2021) for AY 2012-13

"All the grounds in this Gross Objections are mutually exclusive and without prejudice to each other:-

1. The Ld.CIT(A) has rightly held in Para 8.6 on Page 72 of the Appellate order that "Following the decision for AY 2009-10 before, it is held that legally those additions could not have been made by the AO during the reassessment proceedings u/s.153A because there was no related incriminating material found during the course of the search and therefore the additions are void ab-initio and are to be quashed because the AY 2012-13 is also an unabated AY and the appellant is protected by various case laws including the decision of the jurisdictional ITAT of Ahmedabad and the jurisdictional HC of Gujarat in Saumaya Construction Pvt.Ltd. and host of other cases. Under the circumstances, the submissions made on the merits of the issues made by the appellate become mere academic and are not required to be gone through. However as apparently there was an element/allegation of scam made by the FMC in the dealings on NMCE platform, the addition related to disallowance of "fictitious commodity losses of transactions made through NMCE platform" have been carefully looked into and in view of the facts brought out by the appellant and failure of the AO to bring on record direct & cogent evidences in relation there to and relying upon various case laws cited in its support by the appellant, the disallowance of such loss has not been found sustainable" and the Ld.CIT(A) has correctly deleted the addition of **Rs.2,87,05,829/-** made by the AO on account of disallowance of alleged fictitious commodity losses of transactions made through NMCE Platform.

2. The Ld.CIT(A) after carefully considering the facts of the case, submission of the appellant as well as the various judicial pronouncements relied upon by the appellant has rightly held in Para 8.7 on Page 72 of the appellate that "While under normal circumstances the AO should have been directed to restrict the disallowance u/s.14A to the extent of exempt income by way of dividend of **Rs.23,695/-**, but as the assessments is related to unabated AY and there is incriminating material related to the issue, on legality the entire addition of **Rs.5,78,357/-** made in the assessment order has to be deleted" and the Ld.CIT(A) has correctly deleted the addition of **Rs.5,78,357/-** made by the AO on account of disallowance u/s. 14A of the Act.

3. The Respondent craves right to add, amend, alter, modify, substitute, delete or modify all or any of the above grounds of cross objection."

(e) In CO No.18/Ahd/2021 (in IT(SS)A No.6/Ahd/2021) for AY 2013-14

"All the grounds in this Cross Objections are mutually exclusive and without prejudice to each other-

1. The Ld.CIT(A) has rightly held in Para 9.7 on Page 74 & 75 of the Appellate Order that following the decision for AY 2009-10 before, it is held that legally those additions could not have been made by the AO during the reassessment proceedings u/s. 153A because there was no related incriminating material found during the course of the search and therefore the additions are void ab-initio and are to be quashed because the AY 2013-14 is also an unabated AY and the appellant is protected by various case laws including the decision of the jurisdictional ITAT of Ahmedabad and the jurisdictional HC of Gujarat in Saumaya Construction Pvt.Ltd. and host of other cases. Under the circumstances, the submissions made on the merits of the issues made by the appellant become mere academic and are not required to be gone through. However as apparently there was an element/allegation of scam made by the FMC in the dealings on NMCE platform, the addition related to disallowance of "fictitious commodity losses of transactions made through NMCE platform" have been carefully looked into and in view of the facts brought out by the appellant and failure of the AO to bring on record direct & cogent evidences in relation there to and relying upon various case laws cited in its support by the appellant, the disallowance of such loss has not been found sustainable and the Ld.CIT(A) has correctly deleted the addition of **Rs.24,35,387/-** made by the AD on account of disallowance of alleged fictitious commodity losses of transactions made through NMCE Platform.

2. The Ld. CIT (A) after carefully considering the facts of the case, submission made by the appellant, various judicial pronouncements of the Hon'ble jurisdictional Gujarat High Court, other High Courts and Tribunals as well as following the Appellate Order rendered by the Ld. CIT (A) for A.Y. 2009-10, held in Para 9.8 on Page 75 of the appellate order that the facts related to the additions of **Rs.2,37,48,985/-** being unsecured loan treated as unexplained cash credits are same as those for AY 2009-10, the additions are made without there being any related incriminating material found during the search and therefore, following the decision made there, these additions are directed to be deleted" and the Ld. CIT (A) has correctly deleted the addition of **Rs.2,37,48,985/-** on account of unsecured loan treated as unexplained cash credits.

3. The Ld.CIT(A) after considering the facts of the case, submission of the appellant as well as the various judicial pronouncements relied upon by the appellant has rightly held in Para 9.9 on Page 75 of the Appellate order that "While under normal circumstances the AO should have been directed to restrict the disallowance u/s. 14A to the extent of exempt income by way of dividend of **Rs.2,76,643/-**, but as the assessment is related to unabated AY and there is no incriminating material related to the issue, on legality the entire addition of **Rs.8,62,736/-** made in the

assessment order has to be deleted" and the Ld.CIT(A) has rightly deleted the addition/disallowance of **Rs.8,62,736/-** made by the AO u/s. 14A of the Act.

4. The Respondent craves right to add, amend, alter, modify, substitute, delete or modify all or any of the above grounds of cross objection."

(f) In CO No.19/Ahd/2021 (in IT(SS)A No.7/Ahd/2021) for AY 2014-15

"All the grounds in this Cross Objections are mutually exclusive and without prejudice to each other:

1. The Ld.CIT(A) has rightly held in Para 10.9 & 10.10 of the appellate order that" as to the addition of **Rs.4,43,10,925/-** on account of disallowance of losses on commodity trading made through NMCE Platform done through brokers namely Darshan Sheth and R.P. Jambuwala, following the decision for AY 2009-10 before, it is held that those additions could not have been made by the AO during the assessment proceedings u/s.153A because the basis on which the AO has adverse inferences against the appellant are only circumstantial and no concrete/direct material has been brought on record to prove that the transactions carried on the NMCE platform were bogus. It is seen that the AO has been very selective in choosing the data for analysis because in reality the appellant had incurred profit in many transactions on NMCE platform that the appellant had incurred losses in good number of transactions on other platform which have not been doubted by the AO. and that the appellant has traded in so called illiquid commodities on other platforms/exchanges also. The appellant has rebutted all the allegations made by and the inferences drawn by the AO. It has already been seen and held that the appellant is adequately protected by the decision of the Hon'ble ITAT Jaipur in DCIT Circle-2 vs. M/s. Pyramid Tradelinks Pvt.Ltd. (supra). Furthermore it is also seen that in spite search conducted neither any asset was unearthed which could have been held to have been acquired out of undisclosed income represented by the losses in the commodities trading held to be bogus/ fictitious nor any evidence by way of documents/loss papers have been found which could have been even an iota of evidence as to those losses being fictitious or obtained by way of accommodation entries. Under the circumstances the disallowance of such loss cannot be sustained on the merits of the facts of the issue and the Ld.CIT(A) has rightly deleted the addition of **Rs.4,43,10,925/-** made by the AO.

2. Your Respondent craves right to add, amend, alter, modify, substitute, delete or modify all or any of the above grounds of cross objection."

On the common grounds of appeal - Related with Fictitious Commodity Losses

4. First, we deal with the common grounds, except for the quantum, of appeal filed by revenue and corresponding grounds of Cross Objection (CO) filed by assessee. Ground Nos. 1 to 6 of appeal(s) filed by Revenue for A.Y. 2009-10, A.Y. 2010-11, A.Y. 2011-12, A.Y. 2012-13, A.Y. 2013-14 and Ground Nos. 1&2 for A.Y. 2014-15 and Ground Nos. 1 to 3 of CO in case of A.Y. 2009-10, Ground No. 1 of CO in case of A.Y. 2010-11, A.Y. 2011-12, A.Y. 2012-13, A.Y. 2016-14 are common dealing with alleged fictitious commodity losses of transactions made through NMCE platform.

5. The Ld.Departmental Representative (DR) explained the facts of the case and contented that the assessee booked the losses in the last quarter of the financial years to offset profit earned. The Ld.DR further submitted that Forward Market Commission (FMC) released an Annual Report for 2011-12 dated 25.02.2012, wherein the list of erring entity against which the commission had initiated the action during the year was provided. He brought to attention that the said list constituted the entity named Prabhu Commodity who is the broker of the assessee (trading as Bhagwati Investment) against whom complaint of tax evasion by members and clients of MCE, Ahmedabad and increase in the volume of exchange artificially was reported. The DR also submitted the copy of the FMC report for 2011-12.

5.1. The Ld.DR further stated that from the reports of Forward Market Commission (FMC), it was found that on the National Multi Commodity

Exchange (NMCE) platform, there were bogus clients who used to artificially increase the market and the clients who used the platform booked contrived losses through the pre-mediated synchronized trades and it was also found that such contrived losses booked on MCE were used to set off the other genuine profits booked on other well-regulated exchanges in order to evade the taxes. Consequently, Directorate of Investigation, Ahmedabad put under scrutiny 85 entities who booked losses more than Rs.10 crores on NMCE. Investigation Wing prepared the list of beneficiaries as per information provided by the Investigating Directorate and the assessee was found to be one of the beneficiaries of taking bogus losses.

5.2. The Ld.DR also stated that some brokers accepted the fact that they arranged bogus losses for getting extra commission in cash and because of which brokers such as Divya Commodities, Jet Air Agencies Pvt. Ltd, Prime Commodities, R.P. Jambuwala, Kartika Investments, etc. were suspended. The DR also stated that the statements of various parties such as Shri Narendra C. Thakkar (client of Divya Commodities), Shri Ramavtar Dhoot of Jet Air Agencies Pvt. Ltd, Ahri Amit Sharma, Senior manager, business development MCE were recorded showing the modus operandi for claiming such fictitious loss.

5.3. The Ld.DR placed reliance on the order of AO who observed that the assessee's brokers named AA Plus Commodity Pvt. Ltd. and Prabhu Commodities, were debarred /suspended for various defaults by the NMCE. The AO also observed that during the period F.Y. 2008-09 to 2011-12, all transactions carried out by the assessee were in illiquid commodities

and 87% of these transactions were executed within 60 seconds of the order given and the same were squared off within the same day. The AO further observed that for any given day across one year the assessee always had a cumulative loss at the end of day and almost each buy sell paid of transactions, invariably, resulted in loss alone.

5.4. The Ld.DR stated that AO made additions on the basis of FMC report and the trade data obtained from the assessee's computer during the search. He further submitted that the nature of transaction and the quantum of transactions were such that it would be very difficult to establish such clustering pattern and synchronized transaction in normal day to day life.

5.5. The Ld.DR placed reliance on decision in the case of **Spicy Sangria Hotels (P.) Ltd. Vs. Income Tax Officer, Ward 10(1)(4) [2019] 111 taxmann.com 491(Bombay)**, wherein the Hon'ble Bombay High Court observed that where Assessing Officer received information from DDIT (Investigation) regarding tax evasion by clients/members of MCE Exchange by misusing this platform, and one such record found was related to assessee, same would be sustainable reason to conclude that taxable income had escaped assessment. He also placed reliance on the decision in the case of **Sagar Rajesh Jhaveri vs. Deputy Commissioner of Income Tax [2016] 76 taxmann.com 97 (SC)**, where Hon'ble Supreme Court observed that the reason to conclude that taxable income had escaped assessment is justifiable when revenue authorities matched transactions found in such records with the data from BSE and entries were corroborated with trade data of company maintained by BSE.

5.6. The Ld.DR further argued that though the judgements relied on are with respect to Section 147 of the Act, the same should be read in lines of section 153A of the Act as Pursuant to introduction of Finance Act, 2021, section 153A/153C of the Act was no longer applicable in cases where search had been conducted on or after 01.04.2021, and the same is to be governed by the provisions of section 147/148 of the Act.

6. The Ld.Assessee's Representative (AR), on the other hand, contended that no addition could have been made in the order under Section 143(3) read with Section 153A of the Act for AY 2009-10 to AY 2013-14, in the absence of any incriminating material found during the course of the search on 18.12.2014. The Ld.AR stated that no incriminating material was found during the search that would warrant additional disallowances by the AO in respect of losses incurred through NMCE transactions. The Ld.AR also stated that the addition was made on the basis of statement recorded u/s. 131 of the Act, but there was no specific mention of the name of assessee in such statements. The Ld. AR placed reliance on the decision of the **Hon'ble Gujarat High Court in PCIT vs. Saumya Construction Pvt. Ltd. 387 ITR 529, CIT vs. Kabul Chawla 380 ITR 573 (Delhi High Court) and CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. 374 ITR 645 (Bombay High Court)** before the Ld.CIT(A).

6.1. During the course of hearing before us, the Ld.AR placed reliance on the decision of Co-ordinate Bench in case of ACIT, Central Circle-2(3), Ahmedabad Vs M/s. Affluence Commodities Pvt. Ltd. IT(SS)A No.55 to

60/Ahd/2020 dated 25 November 2021, which deals with similar facts and circumstances. The Ld.AR also relied on the judgement of Hon'ble Supreme Court in case of Principal Commissioner of Income Tax, Central - 3 Vs. Abhisar Buildwell (P) Ltd. [2023] 149 taxmann.com 399 (SC).

6.2. The assessee's argument rested on several judicial precedents, primarily:

(1) PCIT vs. Saumya Construction Pvt. Ltd. 387 ITR 529 (Gujarat High Court): The court held that in cases where no incriminating material is found during the search, the AO cannot make additions under Section 153A of the Act for assessment years where assessments have already been completed (unabated assessments). The Hon'ble Gujarat High Court emphasized that Section 153A does not give arbitrary powers to the AO to reopen assessments without any incriminating evidence discovered during the search.

(2) CIT vs. Kabul Chawla 380 ITR 573 (Delhi High Court): The Court ruled that in the absence of incriminating material, no additions could be made to the concluded assessments under Section 153A of the Act. The rationale was that Section 153A of the Act is not an automatic tool for reopening completed assessments; it is contingent upon the discovery of incriminating evidence during a search.

(3) CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. 374 ITR 645 (Bombay High Court): The court held that

assessments under Section 153A can be framed only on the basis of seized material. The assessment or reassessment under Section 153A is linked to the incriminating evidence found during the search.

(4) ACIT, Central Circle-2(3), Ahmedabad Vs M/S. Affluence Commodities Pvt. Ltd. IT(SS)A No.55 to 60/Ahd/2020 : Where the Tribunal upheld the CIT(A)'s order, noting the lack of incriminating material and based on the Gujarat High Court's ruling that concluded assessments cannot be reopened without such material. In the same decision the Revenue's appeal regarding disallowance under Section 14A was also dismissed as the AO failed to establish a direct nexus between interest-bearing funds and share trading/investment activities. The Tribunal held that Section 14A would not apply in cases where dividend income is incidental to trading.

(5) Principal Commissioner of Income Tax, Central - 3 Vs. Abhisar Buildwell (P) Ltd. [2023] 149 taxmann.com 399 (SC): The Supreme Court held that for completed/unabated assessments, the Assessing Officer cannot make additions to the total income under Section 153A in the absence of incriminating material found during the search. The judgment emphasized that the scope of assessment under Section 153A is limited to material found during the search in such cases. This ruling aligns with the decisions of the majority of High Courts and reinforces the principle that additions to income for completed assessments must be based on incriminating material unearthed during the search.

6.3. These decisions collectively underscore the principle that reassessment under Section 153A of the Act requires the presence of incriminating material found during the search. It is very important to note that in the present case no incriminating material was found during the search.

7. During appellate proceedings, the Ld.CIT(A) analyzed the assessee's submissions and noted that for the AY 2009-10 to AY 2013-14, the assessments were unabated as the time limit for issuing notice under Section 143(2) had expired. He also concluded that any addition made during the proceedings under Section 153A without incriminating material is illegal and *void ab initio*. While doing so he observed that the assessment order does not specifically mention any incriminating material seized during the search that would justify the additions, including the disallowance of losses from NMCE transactions. He further observed that the assessee's denial of discovery of any incriminating material and the AO's reliance on trade data and reports of third parties, not provided to the assessee for rebuttal are crucial factors in determining the legality of the additions. The Ld.CIT(A), after critically looking into the arguments of AO and the assessee, observed that there was no basis by way of cogent evidence, in spite of searches and surveys conducted, which also do not support addition on merit.

7.1. The Ld.CIT(A) also referred to the Hon'ble Supreme Court's dismissal of the SLPs filed by the Department against the decisions in Kabul Chawla

and Saumya Construction, reinforcing the assessee's contention that additions under Section 153A of the Act require incriminating material. The Ld.CIT(A) highlighted the AO's failure to provide the assessee with an opportunity to cross-examine key individuals whose statements were used to make the addition, which violates the principles of natural justice. This aspect was emphasized in the *Andaman Timber Industries vs. Commissioner of Central Excise Kolkata II* [2015] 62 taxmann.com 3 (SC), where the Supreme Court held that not allowing the assessee to cross-examine witnesses whose statements are relied upon for making additions is a violation of the principles of natural justice.

8. We have considered the contentions of both the parties, perused the material available on record, analyzed the order of the Ld.CIT(A) and note that in absence of any incriminating material during the search the addition was arbitrary. The AO had relied on trade data and reports not provided to the assessee for rebuttal and statements from unrelated parties, making the addition without concrete evidence. The assessment order lacked tangible evidence, such as undisclosed income or unaccounted assets, to substantiate the alleged fictitious losses. The assessment order does not specifically mention any incriminating material seized during the search that would justify the additions. The AO did not provide the assessee with the opportunity to cross-examine key individuals whose statements were used to make the addition, which violates the principles of natural justice. The reliance on unverified statements without giving the assessee a chance to rebut or cross-examine the witnesses undermines the validity of the addition.

8.1. The Ld.CIT(A) relied on the judicial precedents set in DCIT Circle-2 vs. M/s. Pyramid Tradelinks Pvt. Ltd. (ITA No. 512/JP/15), where the ITAT held that disallowing speculative losses without credible investigation or evidence is untenable. The decision emphasized that the AO must provide concrete evidence when making additions based on alleged fictitious transactions.

8.2. The assessee provided reasonable rebuttal evidence, demonstrating that the transactions were genuine and conducted through registered brokers on secured electronic platforms. The Ld.CIT(A) also has found that the assessee's rebuttal is credible and noted that the AO's selective use of data and lack of concrete evidence weakened the addition's validity.

8.3. In case of argument of DR that judgments related to Section 147 of the Income Tax Act should be read in line with Section 153A of the Act due to the changes introduced by the Finance Act, 2021, has no merit. The principle that reassessment should be based on incriminating material is likely to hold, even under the new provisions, as the rationale behind requiring tangible material for reopening an assessment remains a cornerstone of the reassessment process. Hon'ble The Supreme Court in the case of CIT v. Kelvinator of India Ltd. (2010) 320 ITR 561 emphasized that the AO must have tangible material to justify the reopening of assessments. This principle continues to be relevant under the amended Sections 147 and 148 of the Act. The judicial principles laid down in the Saumya Construction case regarding the necessity of incriminating material for reassessment of

completed assessments are still relevant. Therefore, the judgment in Saumya Construction Pvt. Ltd. (supra) retains its relevance and can be relied on to support the argument that reassessment post-search should be based on incriminating material, ensuring that the reassessment process is grounded in tangible evidence.

8.4. Given the lack of incriminating material and the reliance on judicial precedents, the additions made by the AO are not sustainable and *void ab initio*. The Ld.CIT(A) has provided a thorough analysis of the legal principles and factual background, leading to the conclusion that the additions cannot be sustained and directed AO to delete the additions made on account of fictitious commodity losses from respective assessment years. Respectfully following the judicial precedents and considering the facts and circumstances of the case, we do not find any reason to interfere with the decision of the Ld.CIT(A). Thus, these grounds of appeal related to fictitious commodity losses by revenue for AYs 2009-10 to AY 2014-15 are dismissed and respective grounds of Cross Objection of assessee are allowed.

On the common grounds of appeal – Related with Unexplained Credit

9. These grounds relate with addition on account of unexplained credit u/s 68 of the Act. Following are the details of assessment year wise addition:

A.Y.	Amount in	Name of Party	Interest in	Revenue's	Assessee's CO
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	Rs.		Rs.	Ground No.	Ground No.
2009-10	75,50,000/-	Bhoomidev Credit Corporation Ltd.	1,00,529/-	7 and 8	4 and 5
2010-11	53,00,000/-	Bhoomidev Credit Corporation Ltd.	2,54,547/-	7 and 8	2
2013-14	2,37,48,985/-	Total	Nil	7	2
	77,52,731/-	Riddhi Siddhi Enterprise			
	25,45,567/-	Kiranben Pineshbhai Panchiwala			
	64,95,724/-	Rekhaben Devchand PAnchiwala			
	39,39,072/-	Pinesh Devchand Panchiwala			
	30,15,891/-	Devchand V. Panchiwala			
2014-15	1,09,52,204/-	Total	Nil	No grounds	Assessee is in appeal
	9,30,328/-	Riddhi Siddhi Enterprise	Nil		
	50,55,036/-	Kiranben Pineshbhai Panchiwala	Nil		
	7,79,487/-	Rekhaben Devchand PAnchiwala	Nil		
	39,40,515/-	Pinesh Devchand Panchiwala	Nil		
	2,46,838/-	Devchand V. Panchiwala	Nil		
2015-16	36,80,676/-	Total	Nil	No grounds	Assessee is in appeal
	7,73,102/-	Riddhi Siddhi Enterprise	Nil		
	6,79,059/-	Kiranben Pineshbhai Panchiwala	Nil		
	3,80,393/-	Rekhaben Devchand	Nil		

		PAnciwala			
	7,00,698/-	Pinesh Devchand Panchiwala	Nil		
	11,47,424/-	Devchand V. Panchiwala	Nil		

9.1. During the course of assessment proceedings, the assessee submitted the confirmation of the parties, PAN and copy of ITRs to the AO. However, the AO added the amounts of loan and interest paid on such loans (as detailed in above table) stating that the director of Bhoomidev Credit Corporation Ltd. (BCCL) admitted that the company was indulged in providing accommodation entries. The AO also concluded that the assessee failed to satisfy all conditions cumulatively for the purpose section 68.

9.2. The Ld.CIT(A) deleted the additions of Rs.71,50,000/- and Rs. 53,00,000/-for A.Y. 2009-10 and A.Y. 2010-11 respectively relating to unsecured loans received from BCCL. The Ld.CIT(A) also deleted additions on account of interest expenses relating to this loan. While doing so he stated that the AO has not pointed out whether any incriminating material was found during the search to treat the loans taken from BCCL to be fictitious or mere accommodation entry. The Ld.CIT(A) concluded that if the assessee has produced contra confirmations, copy of bank statement and copy of income tax returns of the parties, AO has no basis to hold that the tests laid down by the courts in the context of section 68 have not been satisfied. He also concluded that AO has not mentioned in his order as to how and why he was not satisfied about the nature and source of credit as stipulated u/s 68 of the Act. He also stated that the AO could not have

made addition unless the source in the hands of lender is examined and concluded that lender had no capacity to advance money.

10. Before us, the Ld.AR stated that the unsecured loans from BCCL is repaid in full in the A.Y. 2011-12 and submitted ledger account extract along with master data of BCCL to support that the company is active. He also submitted that the TDS on interest is also deducted and paid.

10.1. In light of the above findings, we conclude that the assessee has satisfactorily established the identity and genuineness of the lenders by providing confirmation letters, PAN details, and copies of ITRs. The AO's reliance on the director's statement from BCCL was not corroborated by any incriminating evidence found during the search, thus weakening the basis for addition. The AO did not discharge the burden of proving that the assessee failed to satisfy the conditions under Section 68 by not adequately examining the source of the loans in the hands of the lenders. The evidence of repayment of loans in A.Y. 2011-12, along with the active status of BCCL and compliance with TDS provisions, further supports the genuineness of the transactions. The Ld.CIT(A) correctly deleted the additions as the AO did not provide a clear and satisfactory basis for his dissatisfaction with the nature and source of the loans. The Ld.CIT(A)'s reasoning aligns with judicial precedents, which require a thorough examination of the lender's capacity and the genuineness of the transaction. Further the AO attempted to make additions on account of unsecured loans and interest paid thereon based on statements and observations unrelated to any incriminating material found during the search. Since the assessments were unabated and

no incriminating material was found during the search, these additions cannot be made under Section 153A of the Act.

10.2. Based on the above analysis, we do not find any reason to interfere in the decision of the Ld.CIT(A) in deleting the addition on account of unsecured loans under Section 68 of the Act and the related interest expenses.

10.3. Therefore, the corresponding grounds of appeal of revenue are dismissed and grounds of cross objection of assessee are allowed.

11. Relating to the additions on account of unexplained credit u/s 68 of the Act, of Rs. 2,37,48,985/-, Rs. 1,09,52,204/- and Rs. 36,80,676/- respectively for the A.Y. 2013-14 and A.Y. 2014-15. The AO, during the assessment proceedings, observed cash deposits in the bank accounts of the parties who advanced unsecured loan to the assessee and concluded that the transactions are not genuine. He also observed that these parties have filed return of income with meagre amounts and therefore the creditworthiness is also questionable.

11.1. Before the Ld.CIT(A), the assessee argued that the observation of AO about the meagre income of lenders is vague and general. He also argued that the genuineness of transaction has no direct nexus with return of income as it is not necessary that all receipts are taxable and stated that capital receipts such as bank loan, secured loans can also be used for investments. He also stated that assessee cannot have knowledge about the transactions carried out by the said party in his bank account. He placed reliance on decision of **Hon'ble High Court of Delhi in case of CIT Vs.**

Vrindavan Farms (P.) Ltd. in ITA No. 71 of 2015 dated 12-8-2015 and decision of Allahabad Tribunal in case of Anand Prakash Agrawal reported in 6 DTR 191 (All-Trib).

11.2. The Ld.CIT(A) while deleting the addition of Rs.2,37,48,985/- for the A.Y. 2013-14 concluded that the additions are made without there being any related incriminating material found during the course of search. However, the Ld.CIT(A) confirmed the addition of Rs.1,09,52,204/- for the A.Y. 2014-15 after deducting opening balance of Rs. 2,37,48,985/- from the addition of Rs.3,23,55,968/- made by the AO. For the A.Y. 2015-16 Ld.CIT(A) confirmed the addition of Rs.36,80,676/- after deducting opening balances. While doing so, the Ld.CIT(A) concluded that -

- The assessee must prove the identities and creditworthiness of the creditors and the genuineness of the loans.
- The AO accepted the identities of the lenders based on PANs and ITRs.
- The AO doubted the creditworthiness of the lenders due to their low incomes and immediate deposits in their bank accounts, which originated from cash deposits in third-party accounts.
- The AO's investigation revealed that funds were ultimately traced back to cash deposits in bank accounts of third parties.
- The AO concluded that the loans might be sham or mere accommodation entries.
- Despite compliance with procedural formalities like interest payments, TDS deductions, and accepted income returns, the transactions were still suspicious.
- The AO's unsatisfaction was based on thorough investigations and not arbitrary.
- The AO's findings justified invoking Section 68/69A of the Income Tax Act, leading to the conclusion that the loans were not genuine.

- For AY 2013-14, additions were deleted due to the absence of related incriminating materials found during the search.
- However, for AY 2014-15 (an abated year), new loans and the entire interest (including on loans carried forward) are disallowable.

12. Before us, the Ld.AR reiterated the arguments placed before the Ld.CIT(A) and also stated that the assessee has already placed on record all the appropriate and relevant evidence in order to prove genuineness and creditworthiness of the parties and if the AO is having a doubt, he can exercise the powers u/s 133(6) to satisfy himself about the same. In the present case, AO has not carried out any such inquiry and added the amount u/s.68 of the Act on the basis of assumption and surmises. He placed reliance on the judgement of **Hon'ble Gujarat High Court in case of DCIT Vs. Rohini Builders 256 ITR 360 (Guj.)**. Further, the Ld.AR also stated that the assessee has repaid the unsecured loan along with interest to the depositor parties in subsequent year. The assessee received the unsecured loans by account payee cheques and also repaid the unsecured loans back to the lenders by account payee cheques which establish the genuineness of the transactions.

12.1. Upon perusal of the facts and records, it is evident that the Assessing Officer and the Commissioner of Income Tax (Appeals) have not adequately investigated the "source of source" concerning the loan received by the assessee. The assessee has furnished all necessary details regarding the creditor, including identity, creditworthiness, and genuineness of the transaction. In many judicial pronouncements, it was held that an addition under Section 68 of the Act is not justified if the assessee has provided all

necessary information and no proper inquiry has been conducted by both AO and the Ld.CIT(A). It is also noted that the loans are repaid along with interest in subsequent years.

12.2. The **Hon'ble High Court of Gujarat in the case of DCIT Vs. Rohini Builders (256 ITR 360)** has dealt with similar fact and deleted the additions on account of unsecured loans u/s 68. For the sake of clarity, we reproduce the relevant paras of the judgement:

"7. We have considered the rival submissions and have also gone through the order passed by the Assessing Officer, the relevant portion of which we have also extracted in para. 2 above. The Commissioner of Income-tax (Appeals) more or less confirmed the addition on the reasoning given by the Assessing Officer in the assessment order. A perusal of the chart given by us in para. 3 above indicates that out of 21 creditors the Assessing Officer has recorded the statements of only six creditors, viz., creditors at serial Nos. 1, 2, 3, 4, 6, and 7. However, in respect of all the 21 creditors the assessee has furnished their complete addresses along with GIR numbers/permanent account numbers as well as confirmations along with the copies of assessment orders passed in the cases of creditors at serial Nos. 1, 2, 4, 5, 6, 7, 9, 10, 11, 12 and 16. In the remaining cases where the assessment orders passed were not readily available, the assessee has furnished the copies of returns filed by the creditors with the Department along with their statement of income. All the loans were received by the assessee by account payee cheques and the repayments of loans have also been made by account payee cheques along with the interest in relation to those loans. It is rather strange that although the Assessing Officer has treated the cash credits as non-genuine, he has not made any addition on account of interest claimed/paid by the assessee in relation to those cash credits, which has been claimed as business expenditure and has been allowed by the Assessing Officer. It is also pertinent to note that in respect of some of the creditors the interest was credited to their accounts/paid to them after deduction of tax at source and information to this effect was given in the loan confirmation statements by those creditors filed by the assessee before the Assessing Officer. Thus it is clear that the assessee had discharged the initial onus which lays on it in terms of section 68 by proving the identity of the creditors by giving their

complete addresses, GIR numbers/permanent accounts numbers and the copies of assessment orders wherever readily available. It has also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from bank accounts of the creditors and the assessee is not expected to prove the genuineness of the cash deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source as held by the Bombay High Court in the case of Orient Trading Co. Ltd. v. CIT [1963] 49 ITR 723. The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques. Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee -from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of Orissa Corporation [1986] 159 ITR 78. In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw an adverse inference against the assessee. In the case of six creditors who appeared before the Assessing Officer and whose statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those creditors in their bank accounts, the proper course would have been to make assessments in the cases of those creditors by treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69.

8. Further, we may point out that section 68 under which the addition has been made by the Assessing Officer reads as under:

"68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer,

satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."

9. *The phraseology of section 68 is clear. The Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the assessee of that previous year. In this, case the legislative mandate is not in terms of the words "shall be charged to income-tax as the income of the assessee of that previous year". The Supreme Court while interpreting similar phraseology used in section 69 has held that in creating the legal fiction the phraseology employs the word "may" and not "shall". Thus the unsatisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as the income of the assessee as held by the Supreme Court in the case of CIT v. Smt. P. K. Noorjahan [1999] 237 ITR 570.*

10. *Thus taking into consideration the totality of the facts and circumstances of the case, and, in particular, the fact, that the Assessing Officer has not disallowed the interest claimed/paid in relation to these credits in the assessment year under consideration or even in the subsequent years, and tax deducted at source has been deducted out of the interest paid/credited to the creditors, we are of the opinion that the Departmental authorities were not justified in making the addition of Rs. 12,85,000 which is directed to be deleted.*

11. *In the result, the appeal is allowed."*

12.3. Respectfully following the judgement of the Hon'ble High Court and noting that the AO and CIT(A) have not made any efforts to verify the "source of source" despite the assessee providing sufficient information, we are of the opinion that the addition cannot be sustained. Therefore, we direct the AO to delete the additions on account of both unsecured loans and interest thereon. The grounds of revenue are dismissed and that of assessee are allowed in case of all relevant assessment years.

On the grounds relating to disallowance u/s 14A

13. Following disallowances u/s.14A of the Act are made by the AO and dealt with the Ld.CIT(A):

A.Y.	Amount disallowed by AO in Rs.	Decision of CIT(A)	Revenue's Ground No.	Assessee's CO no.
2010-11	11,89,915/-	Deleted the entire addition	9	3
2012-13	5,78,357/-	Deleted the entire addition	7	2
2013-14	8,62,736/-	Deleted the entire addition	8	3

13.1. During the course of assessment proceedings, the AO observed that the assessee has earned dividend income which is exempt, and assessee has failed to disallow such expenses in accordance with section 14A r.w. Rule 8D. The AO asked to furnish the working of the disallowance u/s 14A of the Act in reply to which the assessee submitted that he is a dealer in shares and securities and the profit earned from the same is included in the total income and since dividend is incidental income, there is no question of disallowance u/s 14A. The AO noted that the assessee has not maintained separate accounts for the purpose of exempt income and therefore it could not be discerned which part of expenses was relatable to exempt income. Therefore, AO, applying rule 8D and relying on some judicial pronouncements, calculated the disallowance.

14. The Ld.CIT(A) deleted these additions stating that these assessments are relating to unabated years and there is no incriminating material related to the issue.

15. We have also noted that the assessee has already disallowed the amount u/s 14A in the return of income filed in response to notice u/s 153A wherever applicable and the Ld. CIT(A) has given relief relating to double disallowance u/s 14A.

16. In light of the judicial pronouncements relied on by the assessee and the Ld.CIT(A), we find that the AO's application of Rule 8D is not justified without recording satisfaction regarding the correctness of the assessee's claim. The assessee, being a dealer in shares and securities, earns dividend income incidental to its business. However, this does not automatically exempt the assessee from the provisions of Section 14A. The Ld.CIT(A)'s deletion of the additions is upheld as the assessments pertain to unabated years. The AO made the disallowance without any incriminating material found during the search, in line with the principles laid down by the **Hon'ble jurisdictional High Court in Saumya Construction Pvt. Ltd. (supra) and and the Delhi High Court in Kabul Chawla (supra).**

16.1. We, therefore, uphold the order of the Ld.CIT(A) and delete the disallowances made by the AO under Section 14A r.w. Rule 8D. These grounds of the Revenue are dismissed and that of assessee's CO are allowed.

17. All other grounds not specifically dealt with are general in nature, hence, not adjudicated.

18. In the combined result, in respective assessment years as detailed initially, the appeals filed by Revenue are dismissed and the two-appeals filed by the assessee are allowed along with the Cross Objections.

Order pronounced in the Open Court on 31 July, 2024 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 31/07/2024

टी.सी.नायर, व.नि.स.।T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-13, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
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