

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "A" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A.Nos.970 & 971/PUN./2024
Assessment Years 2005-2006 & 2006-2007

Shri Habibullah Abbasali Chaudhary, S.No.99, Plot No.06, Yashwant Nagar, Telco-Bhosari Road, Pimpri, PUNE-411 018. PAN AABPC1577B Maharashtra.	vs.	The DCIT, Central Circle-2(3), Income Tax Office, Bodhi Towers, PUNE – 411 037 Maharashtra.
(Appellant)		(Respondent)

ITA.Nos.1318 & 1319/PUN./2024
Assessment Years 2005-2006 & 2006-2007

The DCIT, Central Circle-2(3), Income Tax Office, Bodhi Towers, PUNE – 411 037 Maharashtra.	vs.	Shri Habibullah Abbasali Chaudhary, S.No.99, Plot No.06, Yashwant Nagar, Telco-Bhosari Road, Pimpri, PUNE-411 018. PAN AABPC1577B Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Suhas P. Bora
For Revenue :	Shri Amol Khairnar, CIT-DR

Date of Hearing :	09.10.2024
Date of Pronouncement :	10.10.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

These assessee's and Revenue's twin cross-appeals each i.e., ITA.No.970/PUN./2024 and ITA.No.1318/PUN./2024 [in former assessment year 2005-2006] and ITA.No.971/PUN./2024 and ITA.No.1319/PUN./2024 [for the latter assessment year 2006-2007 herein], arise against the CIT(A), Pune-12, Pune's

common DIN & order No.ITBA/APL/S/250/2023-24/ 1063458562(1) and 1063458680(1), dated 27.03.2024, in proceedings u/s.143(3) r.w.s.254 of the Income Tax Act, 1961 (in short “the Act”); respectively.

Heard both the parties. Case files perused.

2. We first of all advert to the assessee’s appeals I.T.A.Nos.970 and 971/PUN./2024, for both these assessment years 2005-2006 and 2006-2007, challenging the learned lower authorities action adding unexplained loans extended to Shri Rajpal Panghal of Rs.25 lakhs in former and Rs.4,02,05,000/- to Shri Tanaji Jagtap in latter assessment year 2006-2007, in the course of assessments dated 31st December 2019, as upheld in the learned CIT(A)’s detailed discussion. We note from a combined perusal of both these case files that this is the second round of proceedings before the tribunal u/sec.143(3) r.w.s.153A r.w.s.254 of the Act. The department has admittedly carried out section 132 search action in assessee’s and other cases on 24th October 2007. All this lead to initiation of section 153A proceedings which finally culminated in the Assessing Officer’s first round assessment dated 31st December 2009 making these additions in the assessment years in question. The same admittedly stood affirmed in the CIT(A)’s first round common order dated 30th December 2013. The assessee thereafter preferred his appeals

ITA.Nos.186 & 187/PUN./ 2014. Learned coordinate bench's earlier common order dated 17th October 2018 appears to have restored the same back to the Assessing Officer thereby accepting the said cases for statistical purposes.

3. It is in this factual back drop that the learned Assessing Officer resumed the corresponding consequential second round proceedings forming subject matter of adjudication before us. Both the learned representatives take us to the identical assessment findings wherein the learned Assessing Officer went on to observe that the instant identical issue had never formed subject matter of the tribunal's remand directions and therefore, there was no need to adjudicate the same afresh. Learned CIT(A) also upholds these said assessment findings which leaves the assessee aggrieved who has accordingly filed his instant twin appeals ITA.Nos.970 and 971/Pune./2024 before us challenging the unexplained loans addition (supra).

4. We have given our thoughtful consideration to the rival pleadings and also gone through this tribunal's remand directions forming part of the paper book at pages 201 to 216. Learned CIT-DR could hardly dispute that the said remand order at page-8 para-"B" had duly considered the impugned addition of Rs.25 lakhs which was also followed *mutatis mutandis* in the latter assessment year 2006-07. That being

the case, we do not see any merit in the Revenue's instant technical objection that these twin additions never formed subject matter of the tribunal's earlier remand directions. We accordingly deem it appropriate to restore these assessee's identical sole substantive grounds; *albeit* involving varying sum(s), back to the learned Assessing Officer for his afresh, appropriate adjudication as per law, preferably within three effective opportunities of hearing, subject to the rider that it shall be the taxpayer's onus and responsibility only to file and prove all the relevant facts in consequential proceedings. Ordered accordingly.

These assessee's twin appeals I.T.A.Nos.970 & 971/PUN./2024 are allowed for statistical purposes in above terms.

5. Next come the Revenue's as many cross-appeals ITA.Nos.1318 and 1319/PUN./2024, for assessment years 2005-2006 and 2006-2007 respectively. It's identical sole substantive ground pleads herein seeks to revive Assessing Officer's action adding similar loans of Rs.1,55,00,000/- under section 69 as unexplained investment; given to the co-searched person Shri Chetan Mehta and interest thereupon to the tune of Rs.52.50 lakhs received in F.Y.2004-2005 relevant to the impugned assessment year 2005-2006 and Rs. 2,27,50,000/- in the latter assessment year 2006-2007; respectively. Our attention is invited to the CIT(A)'s "lead"

discussion in his impugned common order; followed *mutatis mutandis* in latter assessment year 2006-2007, reading as under :

“7.4. As regards to the other additions of Rs.1,55,00,000/- and Rs.52,50,000/- being unexplained loan given to and interest received from Shri Chetan Mehta, the appellant has submitted that the AO has erred in making these additions only on the bases of the statements given by Shri Chetan Mehta. The appellant has further argued that on similar set of facts the case of Shri Vishal Prakash Malhotra another searched person from the same group was also set aside by the Honible ITAT Pune and the same Ld. AO has accepted the view taken by the Hon'ble ITAT Pune that the FIR stands quashed by the judgment of 16th First Class Magistrate Pune on 09.09.2016 and the AO has passed the order u/s 143(3) r.w.s.254 of the Act on 28.12.2018 in the case of Shri Vishal Prakash Malhotra without making any addition. The same Ld. AO while accepting the income returned by the said assessee held as under :

"During the course of hearing various details were called for and submitted by the assessee. On verification of the details and copy of the paper book filed by the assessee, the contention raised by the

assessee before the ITAT Pune, appears to be correct and accordingly as per the order of the ITAT."

7.5. *In this regard, the appellant has contended that the Ld. AO has violated the Article 14 of the Constitution of India on the ground of individual discrimination between the same classes of persons ie. the Ld. AO cannot discriminate between two assesseees on the same incriminating material and same facts of the reopening of the assessment proceedings.*

7.6. *I find force in the contention of the appellant. Hon'ble ITAT had set aside the both cases on similar grounds to be decided by the AO based on the decision of Hon'ble Court of 1st Class Magistrate, Pune dated 09.09.2016. However, the AO has given different treatment to different assesses without distinguishing the two cases and without bringing out anything on record to deviate from the decision of the Hon'ble ITAT. Hence, Grounds No. 2 and 3 of the appeal are allowed. As the appellant has already got relief on Grounds No. 2 and 3, hence, Ground No. 1 does not require separate adjudication."*

6. Both the parties vehemently reiterate their respective stands against and in support of the correctness of the above extracted learned CIT(A)'s lower appellate

discussion deleting the impugned additions on the ground that the assessee's case is very much on identical footing as that of Shri Vishal Prakash Malhotra and going by the favourable findings from the court of learned 16th First Class Magistrate dated 9th September 2016 against the department. Mr Bora further sought to buttress the point that the assessee has never been granted opportunity to cross-examine the concerned recipients of the loans and therefore, we ought to confirm the CIT(A)'s findings under challenge.

7. We deem it appropriate in this factual backdrop to advert to the basic relevant identical facts in both these assessment years. There could be hardly any dispute that we are dealing with section 153A assessment proceedings in assessee's case in furtherance to the department's search action dated 24.10.2007. It is noticed in this factual backdrop that the learned Assessing Officer had framed his first round assessment dated 31.12.2009 in assessee's case making the impugned section 69 unexplained investment addition of Rs.1,55,00,000/- and Rs.52.50 lakhs (supra) in A.Y.2005-2006 reading as under:

“7. Unaccounted loan given to Sri Chetan Mehta and interest received (Rs.1,55,00,000 & Rs.52,50,000/-) :

7.1. *During the search, it was found that Shri Habibullah Chaudhary is also actively engaged in the activity of money lending apart from dealing in purchase and sale of industrial steel scrap. He advances cash loans to the petty as well as corporate entrepreneurs at a huge rate of interest ranging from 2% per month to even 20% per month depending upon the repayment ability of a person. During the search and seizure action u/s 132 of the L.T. Act at his residence and the residences of his associates and counterparts engaged in this money lending business, various incriminating documents have been seized which clearly indicate that Habibullah is dealing in money lending activity in a big way. From the residence of Shri Tanaji Jagtap, a close associate of the assessee, vital incriminating documents were seized.*

7.2. *Amongst many persons, Shri Chetan Mehta is one of the persons to whom Habibullah had lent 1.55 crores of rupees and by charging a phenomenal rate of interest, even up to 20% per month at times, he has recovered 5.68 Crores as principal and interest towards the repayment of loan. A copy of FIR filed by Shri Chetan Mehta at Chatushringi Police station, Pune and the statements of Shri Chetan Mehta, Shri Habibullah Chaudhary and Shri Vishal Malhotra recorded before the police authorities have been annexed with this order as*

Annexure-L. As per the FIR and the statement deposed by Shri Chetan Mehta before the police, Shri Mehta had received loan of Rs.1.55 Crores in cash from Shri Habibullah Chowdhary in F.Y.2004-05. Shri Mehta has also reiterated the fact that he has already made repayment of Rs 5.68 crores towards the said loan by paying cash to Shri Habibullah. Shri Habibullah has denied Shri Mehta's claim of repayment of the loan to the tune of Rs.5.5 Crores. Before the Police authorities, Shri Habibullah insisted for a balance repayment of Rs.36 lacs. Shri Mehta has further deposed that Shri Habibullah had forcibly taken from him number of signed undated cheques towards the repayment of money lent out to Shri Mehta. In these statements/complaint before the police, Shri Mehta has also stated that he had received an amount of Rs.25 lacs in cash from Shri Vishal Malhotra also as a hand loan which is also claimed to have been repaid by Shri Mehta. Shri Habibullah Chaudhary also, in his statement recorded before the police authorities, has voluntarily confirmed the fact of having extended a cash loan of Rs.1.55 Crores to Shri Chetan Mehta. Similarly, Shri Vishal Malhotra, in his statement recorded before the police authorities, has voluntarily confirmed the fact of having extended a cash loan of Rs.25 lacs to Shri Chetan Mehta. As far as this particular money lending transaction

is concerned, all the three parties i.e. Shri Habibullah Chaudhary & Shri Vishal Malhotra (lenders) and Shri Chetan Mehta (borrower) have confirmed before Police authorities the fact of having lent/borrowed amount of Rs.1.8 Crores in cash. A paper chit giving the date wise schedule of installment repayment with interest of the loan given by Shri Habibullah to Shri Mehta bearing signature of Shri Habibullah as well as Shri Mehta was also seized from the residence of Chetan Mehta at page no.5 of Bundle No.1 annexed with this order as Annexure-II. Further, the documents collected from the police authorities also confirm that 45 blank, undated cheques signed by Shri Mehta were given to Shri Habibullah's custody and similar 10 cheques to Shri Malhotra which were recovered by police authorities, from them. In the statement before the police, Shri Habibullah has stated that still a part of the money (Rs.38 lacs) is due from Shri Mehta out of the loan given to him.

7.3. *From the perusal of the return of income for the relevant year i. e. AY 2005-06, it is observed that no such transaction of paying loan or receiving any interest in money lending activity has been accounted for by Habibullah. During the search as well as during the assessment-proceedings, Shri Habibullah has denied the above loan transactions. However, his denial cannot be*

accepted in view of the facts mentioned above as well as further evidences gathered during the search as discussed in subsequent paras.

7.4. *During the search, Shri Chetan Mehta in his statement u/s.132(4) once again confirmed all the above facts. The documents as per page no.5 & 6 of bundle no.1 seized from the residence of Chetan Mehta reveals the fact of loan given by Habibullah. These papers show the repayment schedule which is duly signed by Habibullah and Chetan Mehta.*

7.5. *Loose Paper No. 6 of Bundle No.1.*

7.5.1. *Loose Paper No. 6 of Bundle No.1 seized from the residence of Shri Chetan Mehta is a handwritten paper written from top to bottom without leaving any margin either at the top or bottom. The matter is about repayment schedule relating to cash Joan taken by Shri Chetan Mehta from Shri Habibullah. Shri Habibullah had occupied the flat of Shri Mehta at Mantri Lawns, Aundh to recover the cash loan given to him Thereafter they decided to settle the matter and mutually agreed terms were decided. This paper has those noting of mutually agreed terms. As per the first para of this noting, Shri and Smt. Mehta have agreed to pay Rs.50,00,000/- to Shri Habibullah in June*

2006 and he will return the flat key of Mehtas. Thus, the 'matter will be finished".

7.5.2. The rest of the noting is actually a second part of the terms and conditions agreed by both the parties. As per this part, if Mehtas fail to repay the said amount of Rs.50,00,000/-in June 2006 as agreed, there will be different schedule of payment. The same is reproduced hereunder :

June	July	August	September
10 - 7.25 Lacs	10 - 7.25 Lacs	10 - 7.25 Lacs	10 - 7.25 Lacs
20 - 7.25 Lacs	20 - 7.25 Lacs	20 - 7.25 Lacs	20 - 7.25 Lacs
30 - 7.25 Lacs	30 - 7.25 Lacs	30 - 7.25 Lacs	30 - 7.25 Lacs

7.5.3. Thus, if not paid in lumpsum, Mehtas shall pay Rs.87,00,000/- to Shri Habibullah and the 'matter will be finished'.

7.5.4. It is further mentioned in this noting that these terms have been agreed between both the parties. After that there are names of Shri Chetan Mehta, Smt. Monika Mehta and Shri Habibullah Chaudhary and all of them have signed before their respective names. Since Shri Mehta has put date 17/06/06 after his signature, it can be said that this paper has been prepared and signed on this day ie. 17/06/2006.

7.6. Loose Paper No. 5 of Bundle No.I.

7.6.1. *Loose Paper No. 5 of Bundle No.1 seized from Shri Chetan Mehta, too, is a handwritten paper. In all there are five entries. Shri Chetan Mehta in his statement dated 24.10.2007 has stated that this paper is in respect of cash loan given by Shri Habibullah to him.*

7.6.2. *As per the first entry, from 10/6/04 to 10/2/05 Rs.25,00,000/- have been given. Above this entry, '2,50,000/- per month' is written. A word 'Monthly' is written after this entry.*

As per the second entry, from 19/5/04 to 25/2/05 Rs.20,00,000/- have been given. Above this entry, "2,00,000/- per month is written. A word 'Monthly' is written after this entry.

As per the third entry, on 20/4/04, Rs.15,00,000/- have been given. A word 'fix' is written after this entry.

As per the fourth entry, on 5/5/04, Rs.20,00,000/- have been given. A word 'fix' is written after this entry.

As per the fifth entry, on 12/5/04, Rs.10,00,000/- have been given. A word 'fix' is written after this entry.

7.6.3. *Beneath each entry, the amount given is written in words also. At the end, a sentence "**Habib ne Chetan ko diya**" (Habib gave Chetan) is written and the*

noting is signed by both Shri Chetan Mehta and Shri Habibullah. When asked to explain this page, Shri Chetan Meht in his statement dated 24.10.2007 stated that this noting is in respect of loan of Rs.90,00,000/- given by Habibullah to him up to the date mentioned in the noting i.e. 22.02.2005. Shri Mehta further stated that he had borrowed some more loan from Habibullah after it and in total he had borrowed Rs.1.55 crores.

7.6.4. Both these papers from the Loose paper bundle No.1 need to be seen and analyzed in tandem as they form part of the same transaction of money lending which has taken place between Chetan Mehta and Habibullah Chaudhary. The loose papers no.6 & 5 ate annexed with this order as Annexure-II.

7.7. Loose Paper Bundle No.6.

7.7.1. Further, a Loose Paper Bundle No.6 was seized from the residence of Shri Chetan Mehta which is a bundle of loose papers containing 10 pages serially numbered from 1 to 10. It is annexed with this order in Annexure-III.

7.7.2. Page No. 10 to 6 is an agreement between FPIPL and Shri Habibullah Chaudhary made on a stamp paper of Rs.500/- regarding the terms and conditions of repayment of an amount of Rs.1,55,00,000/- to Shri Habibullah by FPIPL.

7.7.3. *Page 5 & 4 is another agreement on Rs.100/- stamp paper between Shri & Smt. Mehta and Shri Habibullah.*

7.7.4. *Pages 3 to 1 is a copy of the petition in the court of civil judge, senior division, Pune by Shri Habibullah praying to attach the property at 601 AA, at Mantri Lawns, Pune and to prohibit Shri & Smt Mehta from selling he said flat as they owed him money.*

7.8. *As per the statement deposed by Chetan Mehta, he has repaid not only the engusal principal amount of Rs.1,55,00,000/- to Habibullah but has paid a huge amount 2300 towards the interest, which was charged by Habibullah at a phenomenally higher rate. Thus, according to Chetan Mehta, a total amount of Rs.5,68,00,000/- was paid to Habibullah Chaudhary by him. The relevant portion of Chetan Mehta's statement u/s.132(4) of the LT Act. 1961 dated 24/10/2007 is reproduced below :*

Q6 :- Have you taken any loan from any individual bank/financial institution for any purpose? Please explain the reason of loan taken, name and address of the person, period mode and its repayment?

Ans: 1) I have availed Rs.60 lakhs loan from CITIBANK in 2003 for Mantri Laws flat. After that it was shifted to Citi Financial Bank and in 2006 again to us shifted to ICICI Bank. Now the flat was sold in September 2007.

2) I have taken Rs.27 lakhs for Indrayani nagar plot of land at Bhosari which was sold in April May 2007 for sale consideration of Rs 35 lakhs.

3) I have taken Rs.10 lakhs loan from Citi Bank for purchase of office at Bombay (Andheri in 2004-05. This office has been sold in 2005-06 itself for sum of around Rs 20 laks.

4) For my Hinjewadi plant I have taken loan from Habibullah Choudhary residing at Somran apartments, Pimpri Pune-411018, a sum of Rs.1.5 crores in the year 2004 at the rate of interest of 5% which increased to 20% per month. The loan of Rs.1.5 crores was received by me in installment in cash only from Habibullah Chowdhary, I have repaid this loan of Rs.1.5 crores with interest which comes to Rs.5.68 crores [5 crores 68 lakhs only] in period of 2 years from 2004 to 2006. Even after repayment of 5.68 crores to Habibullah Choudhary, he is still claiming additional sum of Rs.88.50 lakhs from me and my company. For the same additional amount he has filed a

case vide No. 861/07 against my company and as a director me and my wife both are attending the court. For the repayment of Habibullah Choudhary's loan, we have withdrawn money from our company account, personal account and hand loan from friends. Also I have availed loan from Bangdia Finance company, Pimpri to the tune of Rs.40 lakhs in the year 2006 for the repayment to Habibullah Choudhary.

Q14:- Please go through the contents of Page No.5 of bundle No.1 and give your say ?

Ans. This is a paper in the handwriting of Habibullah Choudhary In this paper Habibullah has categorically mentioned about the loan given in cash. I acknowledge this loan. The amount of loan taken from Habibullah is in cash. This amount has been reflected by me in the books of accounts of our company M/s Fixity Packaging Industries Put. Ltd in my name from the cash book produced before you which has been found during the course of search. It is very clear that the source of cash deposit is the money received from Habibullah.

Q15:- Are you sure of your answer to question No.14 above?

Ans: Yes, I am very sure.

Q16: From page number-5 it appears that you have received cash loan of Rs.90 lakhs from 28/04/04 to 10/06/04. Have you taken any other loan subsequent to 10/06/2004 from Habibullah?

Ans: Yes, this paper was written by Habibullah somewhere in month of June 2004 and therefore the details of cash loans received by me from Habibullah are not there. In all I have borrowed Rs.1.50 crores from Habibullah and the same have "been deposited in the books of our company M/s Fixity Packaging Industries Pot. Ltd. in my name.

Q17:- Are you sure of your answer to question No.15 above?

Ans: Yes, I am very sure.

Q18: From the entries on page number 5 it appears that loan of Rs.25 lakhs has been given by Habibullah during the period 10/06/2004 to 10/02/2005 against this entry monthly has been written. Will you please explain the transactions in detail?

Ans:- This loan was taken for 8 months. I was supposed to pay 2,50,000/- per month against this loan. The rate of interest for this loan was higher than 5% p.m. on reducing balance as they take interest for the entire period in

advance. The first two transactions for Rs.45 lakhs are of that nature. The third, fourth and fifth transactions are on monthly interest basis. The quantum of these transactions is Rs.45 lakhs. The rate of interest is at 5% per annum.

Q19. Please go through page No.6 of bundle No.1 explain the transaction therein?

Ans:- In April 2006 we had repaid 4.50 crores to Habibullah. Since we were in great financial trouble at that time, we discussed the same with Habibullah and he asked us to pay him Rs.50 lakhs to finish the money matter with him. But within 3-4 days he started demanding for Rs 68 lace to be paid to him by mid May to finish the money matter. We paid him Rs.68 lakhs by end of May 2006 Since we paid him late by few days, he demanded for another Rs.50 lakhs to be paid to him by 10th June 2006. At that time he made us sign a document which stated that if we could not pay him by 10 June, we would have to pay him Rs.87 lakhs by October 2006. We then paid him an additional Rs.48 lakhs by end of September 2006.

From his reply to question No.19,it is also clarified that the loose paper No.6 of Bundle No.1 which is

discussed above pertains to the said transaction of cash loan of Rs.1,55,00,000/-only.

7.9. What transpires from the documents, related evidences and statements deposed by Chetan Mehta is that a cash loan transaction had taken place between Chetan Mehta and Habibullah Chaudhary whereby Habibullah had given a total cash loan of Rs.1,55,00,000/- to Chetan in F.Y.2004-05 in mutually convenient installments.

7.10. Even at the residence of Vishal Malhotra who is a close associate of Habibullah, an agreement has been seized as per page 27 to 43 of bundle no 9 between Chetan Mehta, Habibiullah and Vishal malhotra. A criminal complaint has been lodged against them by Shri Chetan Mehta with Chatushringi Police Station. The police authorities. have filed a charge-sheet in the case wherein he was also booked under Sec.32 and 33 of Money Lending Act. Not only Chetan Mehta but many other persons who had taken loans from Habibullah such as Shri Babban Singh, Shri Manoj Singh, Shri Nabil Malik, Shri Surendra Singh, Shri Dinesh Singh have also stated on oath to have taken loans in cash from Habibullah from time to time confirming that he was actively engaged in money lending activity.

7.11. *Even though Habibullah has denied to have entered into any such transaction these papers, which even include a copy of Civil suit by Habibullah before Civil Judge Senior Division, Pune are primary evidences to establish that Habibullah is actively s engaged in money lending and a cash loan transaction had taken place between him and Chetan Mehta, wherein he had advanced Rs.1.55 crores. All these papers/copies of Agreements etc. in this Loose paper bundle and statements of persons referred to above more than sufficient to establish that Habibullah had advanced a cash loan to the tune of Rs.1.55 Crores to Chetan Mehta.*

7.12. *Chetan Mehta in his police complaint dated 08.06.2007 has stated that he has paid Rs.5.68 crores in cash to Habibullah for repayment of loan of Rs.1.55 crores. Shri Habibullah in his deposition before the police on 13.06.2007 has confirmed that he had given loan of Rs.1.55 crores to Shri Mehta and certain amount was repaid back. He has not stated how much amount was repaid.*

7.13. *Chetan Mehta has again confirmed the repayment of 5.68 crores to Habibullah during the search. Mehta in his statement during search has explained in detail as to how the money has been taken and also*

stated as to how the money taken as cash loan was utilized by him and also explained as to how he has repaid the loan by withdrawing from his bank accounts. A chart showing withdrawal is kept in loose paper bundle no.3 (page 12) seized from his residence which is reproduced as under :

Name of the Bank	2003-04	FY 2004-05	FY 2005-06	FY 2006-07	Total
ABN Amro Bank	Nil	Nil	1,27,69,000	73,99,000	2,01,68,000
Citi Bank	Nil	24,40,000	1,29,32,000	Nil	1,53,72,000
Uco Bank	64,60,000	53,15,000	11,00,000	Nil	1,28,75,000
HDFC Bank	Nil	9,50,000	1,00,12,461	Nil	1,09,62,461
Shri Jotiba	Nil	Nil	7,23,000	10,49,685	17,72,685
The Cosmos Bank	12,62,000	3,45,000	Nil	Nil	16,07,000
Indusind	Nil	Nil	Nil	14,90,000	14,90,000
Total	77,22,000	90,50,000	3,75,36,461	99,38,685	6,42,47,146

7.14. It has been stated by Chetan Mehta that the money of 5.68 crores (principal plus interest) has been repaid to Habibullah out of the withdrawals of 6.42 Crores from the bank a/c as mentioned above. As stated by Chetan Mehta he has repaid the principal plus interest of Rs 5.66 crores as under :

A.Y.2005-06	Rs.75,00,000/-
A.Y.2006-07	Rs.3,25,00,000/-
A.Y.2007-08	Rs.1,66,00,000/-
Total	Rs 5,66,00,000/-

7.15. As per the agreement dated 10.04.2006 between Mehta and Habibullah and Civil suit filed by Habibullah which are annexed as Annexure-III, Mehta had

executed a power of attorney in respect of his immovable properties viz. Factory with plant & machinery at S.No.254 Tirumalla Industrial Estate, Hinjewadi, Pune, Factory with plant & machinery at H-block, 824, Pimpri MIDC, Morewadi, Pune and a flat at 601, Mantri lawn, Anand Park, Aundh, Pune. The total value of all these properties is in excess of Rs.15 crores. It means the claim of Habibullah on Mehta was more than 1.55 crores. It substantiates Mehta's claim of charge of huge interest by Habibullah.

7.16. *As discussed in para 7.5.1, Loose Paper No.6 of Bundle No.1 seized from the residence of Shri Chetan Mehta shows that the 'matter will be finished" if Mehta pays Rs.50,00,000/- to Habibullah in June, 2006 but, if he fails to do so, he would pay Rs.87,00,000/- up to September, 2006 to 'finish the matter. This clearly indicates that Habibullah was charging very high rate of interest. All these circumstantial evidences prove that Habibullah was charging very high rate of interest and collected huge amounts from Mehta as interest. It is also to be noted that Shri Mehta has not only stated the amount of repayment but has explained the year-wise source for the repayment.*

7.17. *Shri Habibullah Chaudhary had accepted before the police giving loan of Rs.1.55 crores to Chetan Mehta. The other evidences discussed above also prove the loan. The assessee has not come forward to state how much he had received from Mehta in repayment. I, therefore, hold, based on the statement of Shri Mehta and other circumstantial evidences discussed above that the assessee received back an amount of Rs.5.66 crores from Shri Mehta.*

7.18. *It is noted that the total repayment made by Chetan mehta is Rs.5.66 crores in different years which includes the repayment of principal of Rs.1.55 Cr. Therefore, a sum of Rs.4.11 Cr (Rs.5.66 Cr-Rs.1.55 Cr) is taxable as undisclosed interest income for different assessment years from AY 2005-06 to AY 2007-08. Since the interest component is approximately 70% of the total amount repaid by Chetan Mehta, therefore whatever amounts have been repaid by Chetan Mehta in a particular assessment year, 70% can be taken as the interest and accordingly be taxed as interest income for that particular year. Following this assumption the AY wise approximate amount of interest taxable will be as under :*

AY	Amount Repaid	Amount treated as principal @ 30%	Amount treated as Interest @ 70%
2005-06	75,00,000	22,50,000	52,50,000
2006-07	3,25,00,000	97,50,000	2,27,50,000
2007-08	1,66,00,000	35,00,000	1,31,00,000
Total	5,66,00,000	1,55,00,000	4,11,00,000

7.18. *Despite of the clinching evidences, Shri Habibullah has denied to be engaged in any money lending activity, When the facts and statement pertaining to the loans given by Habibullah to Chetan Mehta and other persons were confronted to him, he has given only an evasive reply that those persons are not telling the truth. During the assessment proceedings, the assessee vide letter dated 01.12.2009 was asked to show cause as to why unaccounted loan given by him to Shri Mehta should not be treated as unexplained investment and interest received as unaccounted income. The assessee vide letter dated 24.12.2009 denied of being indulged in any money lending activity. He asked for the copies of relevant documentary evidence as discussed above. The same were given to the assessee. However, no detailed submission rebutting the contents of "Those documents has been made by the assessee.*

7.19. *In view of the statements of Chetan Mehta given during the search confirming the receipt and repayment of loan, the statement of Habibullah given*

before Police authorities and suit filed by Habibullah against Chetan Mehta, admitting the fact of giving loan to Chetan Mehta, it is proved beyond doubt that Shri Habibullah had given a cash loan of Rs.1.55 Crores in FY 2004-05 relevant to AY 05-06. Since the loan has been given in cash and the source has not been explained by Habibullah, therefore the sum of Rs.1.55 Cr is added as unexplained investment u/s 69 of the IT Act for AY 2005-06 whereas the interest of Rs.52,50,000/- is added as undisclosed interest income. Since the assessee has concealed particulars of this income, separate penalty proceeding u/s.271(1)(c) of the I.T. Act, are being initiated.”

8. Suffice to say, it has come on record that the said former round of assessment came up before the tribunal wherein the earlier learned coordinate bench duly concluded that there existed sufficient “incriminating” material against the assessee as under :

A. Validity of assessment/additions - incriminating material:

The first issue relates to validity of assessment/additions made u/s.153A of the Act where no incriminating material was found and seized. Ld. Counsel also submitted that loose papers/documents relied upon by the Assessing

Officer are found during search do not belong to the assessee. In this regard, Ld. Counsel for the assessee submitted that the basic documents, which suggest the payment of loan to Mr. Chetan Mehta outside the books, were not found in the premises of the assessee although the same were discovered from his premises during search action on the group of cases involving assessee, Mr. Chetan Mehta and Mr. Abbas Ali Choudhary. In this regard, Ld. Counsel also submitted that the said document do not belong to the assessee. Considering the legal nature of the above issue, raised in the additional ground, we admit the additional ground as it does not call for investigation on the facts and proceed to adjudicate the same after hearing both the parties.

7. *On the other hand, Ld. DR for the Revenue placed reliance on the orders of Assessing Officer and CIT(A). Ld. DR vehemently argued stating that the unaccounted transactions involving the assessee are very much evident on the said documents seized from Shri Mehta. Hence, the addition is justified.*

8. *On hearing both the parties, we find, it is case where incriminating documents do exists involving the unaccounted payment of loan to Mr. Chetan Mehta. It is fact that the said documents/material were not discovered*

*or served from the premises of the assessee, in our view, the very facts of the said documents constitute incriminating evidence and both assessee and Shri Mehta are searched u/s.132 of the Act, the additional grounds raised by the assessee needs to be dismissed. There was search and seizure action on all these assessees on the same day and therefore, the incriminating information gathered in the said premises of Shri Mehta is rightly used by the Assessing Officer in making assessment. Absence of any incriminating evidence seized from the premises of the assessee, does not alter the incriminating nature of the said documents. Accordingly, the question of document not belonging to the transaction of the assessee does not arise. Considering the admitted position of the nature of incrimination, we are of the opinion that the assessment made based on the documents relied by the Assessing Officer constitutes a validity of assessment. Therefore, **additional ground No.(a) raised in appeal by assessee stands dismissed.**”*

9. There is again no dispute between the parties that the learned Assessing Officer’s consequential assessment framed herein in second round dated 31.12.2019 took note of all the relevant facts whilst reiterating the impugned addition(s) as under :

“The Search action u/s.132 of I.T. act, 1961 was conducted on 24.10.2007 at the residential premises of the assessee located at S. No. 99, Plot No. 6, Yeshwantnagar, Telco - Bhosari Road, Pimpri, Pune 18 which was part of the Search setion conducted in the cases of Habibullah Chaudhary, Chetan Mehta Jand Vishal Malhotra Group of Pune consisting of its various business enterprises Shamely, Golden Scrap traders, Akahs Steel, Aksha Engineers and Fabricators, Golden Steel Corporation, Modern enterprises, Fixity Packaging Ind. Pvt. Ltd, and Malhotra Machine Tools etc.

2. The return of income for the year was filed on 31.10.2005 disclosing total income of Rs.1,26,48,170/-. Consequent upon the search action the assessment order u/s.143(3) RWS 153A was completed on 31.12.2009 determining the total income of Rs.3,72,10,310/- which resulted in an addition of Rs.2,45,62,140/- The issues on which additions are made over and above returned income, with details of disputed or accepted additions is tabulated as under :

Sr. No	Particulars	Amount	Disputed /Undisputed
1	Short term capital gain as discussed in para 9 of the Assessment order	2,77,140/-	Undisputed
2	Unexplained investment in undisclosed bank accounts as discussed in para 6 of the Asstt. Order	10,35,000/-	Undisputed
3	Unexplained investment u/s 69 on account of loan given to Shri Chetan Mehta as discussed in para 7 of the Asst . order	1,55,00,000/-	Disputed
4	Undisclosed interest income from loan given to Shri Chetan Mehta as discussed in para 7 of the Asst . order	52,50,000/-	Disputed
5	Unexplained investment u/s 69 on account of loan to Rajpal Panghal as discussed in Para 8 of the Asstt. Order	25,00,000	Disputed
	Total addition to the returned income	2,45,62,140/	

With the above findings in the assessment order dated 31.12.2009 the assessee filed the appeal before the Commissioner of Income Tax (A), Pune. In the first appeal the CIT(A) Central, Pune on elaborate discussion about the additions made in the assessment order has confirmed the additions made and dismissed the appeals filed by the assessee vide his office order dated 31.12.2013.

3). Being aggrieved the assessee filed the second appeal before the Hon. ITAT, Pune. In the appellate proceedings before the Hon ITAT the assessee filed an additional evidence in the form of Copy of Civil court's order in favour of assece. ITAT has considered the order passed by the Sixteenth First Class Magistrate, Pune on the regular Criminal complaint against the assessee and others alleging the violation of Section 386, 120(b), 506(2) of Rule 33 of IPC and section 32 & 33 of Bombay Money lending Act wherein the assessee and others are released from charges leveled against them. As discussed in para 6 and Para No.9 (c) of the ITAT's appellate order Nos.ITA Nos.186 to 188/PUN/2014 for A.Y. 2005-06 to 2007-08 and another appeal No. ITA.No.498/PUN/2014 for A.Y. 2009-10 dated 17.10.2018, the ITAT has adjudicated the appeals and has remanded the issue to the file of the Assessing Officer for the A.Y.2005-06 to 2007-08 and also for 2009-10 in the case of the assessee.

While setting aside the order in para-9(c) the ITAT has observed that it has found the order of the 1st Class Magistrate is relevant for the impugned additions made u/s.69 of the Act. The said order is delivered in the month of September 2016 in connection with the registration of appeal in 2007 before the 1st Class Magistrate. Further it has found that CIT(A) passed the order in the month of December 2013 regarding the assessment order dated 31.12.2009 which was much earlier to the date of the order of the 1st Class Magistrate. On going through the said relevant facts, it has found that the facts discussed in the order of the 1st Class magistrate was relevant, did not exist at the relevant point of time. The relevant para of the court's order is reproduced as under :

“It is the firm arguments of the Ld. Counsel for the assessee that the said order goes to the root of the matter relating to the addition made u/s.69 of the Act. On perusal of the same, we are of the opinion that this order is not only relevant for adjudication of the issue on hand but also has effect considering the set principal of natural justice and the matter should be remanded to the file of Assessing Officer for considering the said order. The assessing officer is directed to grant reasonable opportunity of being heard to the assessee in accordance with set

principal of natural justice and pass a speaking order after considering the same. Accordingly, the issue raised on merits in the assessment years 2005-06, 2006-07 ad 2007-08 in appeals ITA No. 186 to 188/PUN/2014 are allowed for statistical purpose."

4) *On perusal of the ITAT's order it is noticed that out of three disputed points of appeal, there is no discussion about disputed addition made of Rs.25,00,000/- in the appellate order passed by the Hon. ITAT which has been confirmed by the CIT (A) vide Para No. 7.6. of the appellate order dated 31.12.2013 and hence the same issue is being considered as, it is in the assessment order passed for the year under consideration.*

5) *With the above back ground of the case and as discussed about the disputed addition the set aside issues now remained to be considered as under :*

<i>Unexplained investment u/s.69 on account of loan given to Shri Chetan Mehta as discussed in para 7 of the Asst.</i>	<i>1,55,00,000/-</i>
<i>Undisclosed interest income from loan given to Shri Chetan Mehta as discussed in para 7 of the Asst. order</i>	<i>52,50,000/-</i>

Before deciding the issue as above it is important to note the relevant contents of the order of the 1st First Class Magistrate, Pune dated 09.09.2016. The short story in the form of summary of prosecution before the Court as

discussed by the Hon. Court in para 2 of the decision and other issues reproduced as under:

Complainant Chetan Suryakant Mehta wanted to start new factory at Hinjewadi hence he was in need of money. Hence through Vishal Malhotra introduced him with Mr Habibullah Abbas Choudhary. Mr. Mehta wanted to establish the new factory, he demanded of Rs.One Crore Fifty lakh from Habibullah Khan. Together the accused Shri Habibullah has given the amount as under :

<i>(i)</i>	<i>19.03.2004</i>	<i>Rs.10,00,000/-</i>
<i>(ii)</i>	<i>28.04.2004</i>	<i>Rs.15,00,000/-</i>
<i>(iii)</i>	<i>05.5.2004</i>	<i>Rs.20,00,000/-</i>
<i>(iv)</i>	<i>12.05.2004</i>	<i>Rs.10,00,000/-</i>
<i>(v)</i>	<i>19.05.2004</i>	<i>Rs.20,00,000/-</i>
<i>(vi)</i>	<i>19.06.2004</i>	<i>Rs.25,00,000/-</i>
<i>(vii)</i>	<i>4.08.2004</i>	<i>Rs.50,00,000/-</i>

Together an amount of Rs.1,50,00,000/- were paid by Habibullah to Chetan Mehta.

2. It is stated that Rs.1 Crores was taken on 2% interest and Rs.50,00,000 were taken at 5% interest per month. This amount is used for factory at Hinjewadi. At times of borrowing money no mortgage of any property and for Rs. 1 crore no document has been done. Transaction done orally and mutually.

After the above facts narrated in the decision there is discussion in Para 4 to 7 about the repayment of amount to assessee by Chetan Mehta during the period 2004-06 in aggregate amount of Rs.1,22,50,000/-, Thereafter, there is discussion about mode of recovery used by the assessee. The discussion about use of revolver for recovery and words of threatening is discussed in para No.4 and discussion about the registration of the complaint in the police and investigation about the charges were made by the authority. The discussion about the proceeding in the court has been discussed in the paras No.6 & 7 of the decision on page 3 of the order. The discussion about examination of the witnesses are made and the discussion about the result is made in the order and it is claimed that false case was filed against the accused (Assesee in the case). In para 8 of the order the decision of the court is recorded.

The facts that the amount in question of Rs.1.50 Crores are duly paid by the Assessee is confirmed and the investment and receipt of money from Kiran Mehta is proved however the complaint as appearing from the discussion in the court's order is about mode of recovery adopted by the assessee. It is important to examine the cort's decision for completion of the set aside assessment order as directed by the Hon. ITAT and for the for the sake

of information point No.8 of the Court's order is reproduced as under :

"In the opinion of prosecution, evidence submitted by Prosecution and the arguments of defence the justice of this case in the judgment following points are arise arguments of following points my conclusion and reason behind the point as under :

S.No	Particulars	Conclusion
1.	Can Prosecution proved that accused no.1 to 4 had ransom money from complainant making motive of criminal conspiracy of crime between them?	Negative
2.	Can Prosecution proved that accused no. 1, 3 & 4 had taken signature on consent letter and two agreements of complainant on dtd. 3.5.2006 in the morning 11.30 to 12.00 noon at complainant's factory of MIDC Pimpri in the motive of ransom money demand from complainant threatening with Revolver?	Negative
3.	Can Prosecution proved that accused no.1 had taken signature on consent agreement of complainant on dtd. 6.5.2007 at Mantri lawns., Anand Park, Aundh Pune and in the May -2006 at Faactory of H-Block, MIDC complainants making conspiracy and to putting Gun to the complainant ear?	Negative.
4.	Can Prosecution proved that became money lender accused no.1 hd taken signature on consent letter and two agreements of complainant & his family members on dtd 3.5.2006 in the morning 11.30 to 12.00 noon, and criminal conspiracy with other accused to put revolver on the ear on complained?	Negative.
5.	Can Prosecution have proved that all accused making criminal conspiracy in the motive of demanding forcefully ransom money from Chetan Mehta & his family to showing he is borrower?	Negative.
6.	What is order	Through the Final Decision Accused are free from crime.

In para 9 of the said order the discussion about the receipt of the amount of Rs.1,50,00,000 and there is no denial of such receipt of the amount by Chetan Mehta. There is discussion about repayment of Rs.4,50,00,000 and demand of additional amount of Rs.68,00,000/- and threat to shoot with revolver. Hence Mehta had filed complainant in Police Station. However in witness statement in the cross examination it is found that this transaction was money transaction and they are settled their problems mutually. Subsequent discussion in the order is about denial of fact by wife of complainant who has denied about any coercive action by the accused. Thus, it is to be noted that the decision of the Hon. Court is about the different actions as alleged by Shri Chetan Mehta and the assessee and 3 others are free from crime and free from charges levelled by Mr. Mehta for coercive action for recovery of the amount.

It is worth to note that in the order of the courts deciding the issue there is no doubt or complaint against the payment/ advancing of loan amount by the assessee to Chetan Mehta and the complaint was about subsequent actions for recovery of the amount after payment of Rs.4,50,00,000 paid by Chetan

Mehta. The negative remarks forming part of the order of the court is about various mode of actions for recovery of the amount and use of illegal means for the same. It do not speak about the amount advanced by the assessee to Mr. Chetan Mehta and hence impact of the order on the assessment now to be framed taking into consideration the ITAT's order is found to be irrelevant while considering the deletion of the amount from the original assessment. In the circumstances the shelter taken by the assessee in the appellate proceedings for the order passed by 16th First Class Magistrate is found to be of no use and seems to have not been pleaded with correct facts of the case in the appellate proceedings before the Hon. ITAT.

In view of the above in the de-novo proceedings the issue of disputed amount is again been considered and the dispute amounts as discussed above are added to the total income with the following discussion on the issue involved.

Unexplained Loan given to Shri Chetan Mehta and interest received (Rs.1,55,00,000 and Rs.52,50,000/-) :

From the original assessment order the issue involved in discussed as under and the same is considered in this order.

The issue of unaccounted loan given to Shri Chetan Mehta and interest received Rs.1,55,00,000 & Rs.52,50,000/-is elaborately been discussed in para No. 7 of the assessment order. In the said order the discussion and the findings of the seized papers and recording of the statement in search action is considered. What transpires from record seized documents is elaborately been discussed at point No.7 to 7.19.

It is noted that the total repayment made by Chetan Mehta is Rs.5.66 crores in different years which includes the repayment of principal amount of Rs.1.55 Cr. Therefore, a sum of Rs.4.11 Cr. (6.66 Cr – Rs.1.55 Cr.) is taxable as undisclosed interest income for different assessment years from A.Y. 2005-06 to 2007-08. Since the interest component is approximately 70% of the total amount repaid by Chetan Mehta, whatever amounts have been repaid by Chetan Mehta in a particular assessment year, 70% is taken as the interest and accordingly taxed as interest income for that particular year as discussed in the original assessment order. It is to be

noted that in the post assessment the assessee has agitated the order passed by this office before the CIT(A) and also taken-up the matter before the Hon. ITAT A Bench, Pune. In the appellate proceedings before ITAT, he has produced the copy of courts order wherein the assessee has been released from the charges leveled against him by Chetan Mehta for various actions taken by him for recovery of the amount, however, in the order of the ITAT the case is set aside without discussion on merits of the case about advancing of loan and the fate about the loans given to Chetan Mehta amounting of Rs.1.50 Crs and receipt of interest from him by the assessee during the different years as discussed in Para 5 above has not been considered while setting aside the order.

7] *At this stage it is important to note that findings out of the documents seized in search has elaborately been discussed in the original assessment order and on the basis of that, the income has been determined. The assessee was given an opportunity to file his submission however, in the current proceeding no new facts or submission has been made and hence no further discussion on the findings is repeated herein again. The assessee has fled the copies of Miscellaneous application for*

A.Y. 2005-06 and A.Y 2006-07 are filed on record. As such the amount of Rs.1.55 Crs are added as unexplained investment u/s 69 of the I.T.Act for A.Y.2005-06 whereas the interest amount of Rs.52,50,000/- is added as undisclosed interest income. Since the assessee has concealed particulars of this income, separate penalty proceedings u/s.271(1)(c) of the Act are being initiated.”

10. Needless to say, we have already extracted the learned CIT(A)'s lower appellate discussion deleting the impugned addition(s) for the precise reason that similarly situated persons had already got the relief in light of the findings of the learned criminal court (supra).

This leaves the Revenue aggrieved in the instant “second” round.

11. We have given our thoughtful consideration to the foregoing vehement rival stands and find no merit in assessee's arguments. We wish to make it clear that the learned CIT(A) has gone by the developments in a criminal case decided by learned 16th First Class Magistrate, Pune dated 09.09.2016 quashing and FIR/prosecution and holds that non-compliance thereof amount to discriminatory treatment herein violative of Article-14 of the Constitution of India. We fail to see any substance in the learned CIT(A)'s

foregoing reasoning once it is clear that the impugned addition is indeed not only based on the seized incriminating material having attained finality as per this tribunal's first round findings (supra), but also such evidence collected during a search carries presumption of correctness under section 292C of the Act.

11.1. So far as the assessee's reliance on some developments in learned criminal court's proceedings is concerned, we are of the considered view in light of GTC Industries Limited vs. ACIT [2017] 80 taxmann.com 284 [Mumbai] [S.B.] that the proceedings under the provisions of the Act are governed by the theory of preponderance of probability than governed by the provisions of the Indian Evidence Act applicable in a criminal court wherein the prosecution is supposed to prove its case beyond reasonable doubt. It has further come on record that learned Assessing Officer's specific findings extracted in the preceding paragraphs 7 to 7.19 had discussed all the relevant facts whilst retreating the impugned addition and therefore, the mere fact that there is some other similarly placed assessee whose facts are neither here nor there discussed as per section 250(6) of the Act; would not form the sole reason for granting relief to the assessee/respondent herein. We thus reject learned counsel's vehement contentions that we must follow the findings in the criminal court so as to delete the impugned

addition since the provisions of Income Tax Act 1961 are in the nature of a complete code in itself and therefore, section 292C herein presuming the contents of the seized documents in a search to be correct which have nowhere been rebutted; seal the fate of the assessee's contentions in very terms.

12. Learned counsel lastly reiterated the fact that this assessee has nowhere been granted an opportunity to cross-examine the concerned loan recipients which violates principles of natural justice. We again see no substance in assessee's instant technical argument as the impugned addition is indeed based on the incriminating material only which has already been decided in departments favour by this tribunal. Rejected accordingly.

13. We conclude in these facts and circumstances that the learned CIT(A)'s lower appellate findings reversing the Assessing Officer's action herein making section.69 unexplained investment(s) vis-à-vis interest income addition(s) (supra), are not sustainable in law. The impugned addition(s) involving varying sum(s) in both assessment years in assessee's hands stand upheld in very terms therefore. These Revenue's twin appeals ITA.Nos.1318 and 1319/PUN./2024 succeeds accordingly.

14. To sum up, these assessee's twin appeals I.T.A.Nos.970 and 971/PUN./2024 are allowed for statistical purposes and Revenue's twin appeals ITA.Nos.1318 and 1319/PUN./2024 are allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 10.10.2024.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 10th October, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT-(A), Pune-12, Pune.
4.	The Pr. CIT, Pune concerned
5.	D.R. ITAT, "A" Bench, Pune.
6.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.