

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.53/Nag./2022
(Assessment Year : 2010-11)

Shri Sanjay Dhanraj Jain
38, Bajiprabhu Nagar, Ramnagar Appellant
Nagpur 440 001 PAN – AAGPJ8601G

v/s

Dy. / Asstt. Commissioner of Income Tax
Circle-1(3), Nagpur Respondent

ITA no.54/Nag./2022
(Assessment Year : 2011-12)

Shri Sanjay Dhanraj Jain
38, Bajiprabhu Nagar, Ramnagar Appellant
Nagpur 440 001 PAN – AAGPJ8601G

v/s

Dy. / Asstt. Commissioner of Income Tax
Circle-1(3), Nagpur Respondent

ITA no.55/Nag./2022
(Assessment Year : 2012-13)

Shri Sanjay Dhanraj Jain
38, Bajiprabhu Nagar, Ramnagar Appellant
Nagpur 440 001 PAN – AAGPJ8601G

v/s

Dy. / Asstt. Commissioner of Income Tax
Circle-1(3), Nagpur Respondent

ITA no.56/Nag./2022
(Assessment Year : 2013-14)

Shri Sanjay Dhanraj Jain
38, Bajiprabhu Nagar, Ramnagar
Nagpur 440 001 PAN – AAGPJ8601G

Appellant

v/s

Dy. / Asstt. Commissioner of Income Tax
Circle-1(3), Nagpur

Respondent

ITA no.57/Nag./2022
(Assessment Year : 2014-15)

Shri Sanjay Dhanraj Jain
38, Bajiprabhu Nagar, Ramnagar
Nagpur 440 001 PAN – AAGPJ8601G

Appellant

v/s

Dy. / Asstt. Commissioner of Income Tax
Circle-1(3), Nagpur

Respondent

ITA no.58/Nag./2022
(Assessment Year : 2015-16)

Shri Sanjay Dhanraj Jain
38, Bajiprabhu Nagar, Ramnagar
Nagpur 440 001 PAN – AAGPJ8601G

Appellant

v/s

Dy. / Asstt. Commissioner of Income Tax
Circle-1(3), Nagpur

Respondent

ITA no.59/Nag./2022
(Assessment Year : 2017-18)

Shri Sanjay Dhanraj Jain
38, Bajiprabhu Nagar, Ramnagar
Nagpur 440 001 PAN – AAGPJ8601G

Appellant

v/s

Dy. / Asstt. Commissioner of Income Tax
Circle-1(3), Nagpur

Respondent

Assessee by : Shri Rajesh Loya
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 18/12/2024

Date of Order – 25/02/2025

ORDER**PER K.M. ROY, A.M.**

The captioned appeals by the assessee are emanating from the impugned orders of even date 18/02/2022, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the assessment year 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2017-18, respectively.

2. Since all the above-mentioned appeals pertain to the same assessee involving common issues arising out of identical facts and circumstances, except variation in figures, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order. However, in order to understand the implication, it will be necessary to take notice of the facts of one appeal in which the issue is involved. We would, accordingly, narrating the facts as they appear in the appeal for the relevant assessment year. The findings of the grounds of appeal raised by the assessee would mutatis mutandis apply to the other appeals as well.

ITA no.54/Nag./2022
Assessee's Appeal – A.Y – 2011-12

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

"(1) That the order of the learned Assessing Officer u/s. 143(3) r.w.s. 153A is bad in law and wrong on facts.

(2) That no incriminating document was found as a result of search and therefore the additions made in the proceedings u/s 153A are void and bad in law.

(3) That the learned AO erred in law and on facts in making addition of Rs.72,68,000/- holding that the assessee has earned commission. On the facts and circumstances of the case the action of the AO is without any sound basis and therefore highly unjustified.

(4) That the learned Assessing Officer erred in law and on facts in charging interest u/s. 234A and 234B of the Income Tax Act. The interest charged is improper.

(5) That for any other grounds with kind permission of your honour at the time of hearing of appeal."

3. Ground no.1, being general in nature, hence no separate adjudication is required.

4. Grounds no.2 & 3, relates to the addition made by the Assessing Officer on account of commission on turnover transaction.

5. The brief facts, as culled out from the assessment order is that a search action under section 132 of the Income Tax Act, 1961 ("the Act") was conducted at the residential premises of assessee on 26/07/2016. The return of income under section 139(1) of the Act was filed on 17/02/2012, declaring total income of ₹ 10,36,730. Intimation under section 143(1) of the Act was issued on 07/06/2012, accepting the returned income. Notice under section 153A of the Act was issued on 23/05/2017, in response to which the assessee filed his return of income on 28/04/2018, declaring an income of ₹ 10,36,726. The assessment order under section 143(3) r/w section 153A dated 26/12/2018, was passed assessing the total income at ₹ 83,04,726. The addition of ₹ 72,68,000, was made on account of alleged commission income. A survey action under section 133A of the Act was also carried out at the official premises of assessee i.e., M/s. SNJ & Associates, (a Partnership Firm in which Shri Sanjay Jain, who is a Chartered Accountant, is also a Partner)

situated at 1st Floor, Mangalam Icon, Ramnagar Square, Nagpur, by the Jt. Director of Income Tax (Inv.), Nagpur, on 26/07/2016. During the survey, an Excel Sheet, exhibited at Annexure B-2 at Page no.4, is found and impounded. According to the Assessing officer, the transactions mentioned in the excel sheet are turnover of the assessee and commission @0.25% has been received there on. The assessee furnished explanation in the assessment proceedings, vide letter dated 28/09/2018 and 26/11/2018. It is further noted by the Assessing Officer that a summons under section 131 of the Act was issued by the Investigation Wing to explain the nature of transaction in the impounded document to which the assessee explained that the impugned Excel Sheet pertains to M/s. Base Corporation Ltd. (BCL) for whom M/s. SNJ Associates, were Internal Auditor. It is further noted by the Assessing Officer that the assessee did not provide details as asked by the Investigation Wing. After considering the reply of the assessee, the Assessing Officer held that there was no mention of name of Base Corporation Ltd. while the name of Shri Sanjay Jain, is mentioned in the impounded Excel Sheet and further the assessee could not file any appointment letter / offer letter to substantiate that the assessee was Internal Auditor of the company. The Assessing Officer held that the claim of the assessee that the turnover mentioned in the Excel Sheet belongs to M/s. Base Corporation Ltd., is not acceptable. She further held that the words"@.25%" mentioned in the Excel Sheet is the commission earned by the assessee which has not been shown as income and consequently made addition to the income of the assessee.

6. On appeal before the learned CIT(A), the assessee raised various grounds of appeal being legal as well as on merits of the addition made in the

assessment framed under section 143(3) r/w 153A of the Act. The learned CIT(A) held that the impounded Excel Sheet contains the name of assessee and the assessee was unable to prove on the basis of any confirmation that the turnover belongs to any party. The assessee did not claim that the transactions mentioned in the Excel Sheet are fictitious or rough entries. Further, it is apparent from the impounded document that the entries in the impugned sheet are directly related to the assessee and he has provided services to the company M/s. Base Corporation Ltd., in the form of arranging parties for such transaction business. The learned CIT(A) confirmed the addition holding that M/s. Base Corporation Ltd., has paid commission to the assessee which was @0.25% as mentioned in the impounded Excel Sheet.

7. Before us, the learned Counsel for the assessee, Shri Rajesh Loya, drew attention to the submission made in the assessment proceedings vide letter dated 28/09/2018 and 26/11/2018, in survey proceedings vide letter dated 16/11/2016, as well as before the learned CIT(A) during the appellate proceeding. Before the learned CIT(A), the assessee furnished a detailed submissions, which were also recorded by the learned CIT(A) in its impugned order vide Page-3 to 12, are reproduced herein below for better appreciation of facts:-

"3. Submission:

During the appellant proceedings, the appellant's AR has filed detailed written submission and also discussed the case in person. filed by the AR is reproduced as under. The written submission filed by the A.R. is reproduced as under.

This is an appeal filed by the assessee against the order u/s. 143(3) r.w.s. 153A of the learned ACIT, Central Circle 1(3), Nagpur dated 26-12-2018. The addition made in the assessment order have been contested before your

goodself. We have to submit as under for the favour of your kind consideration:-

Facts:

The assessee is an individual regularly assessed to tax. He is Chartered Accountant provides professional services and is also partner in SNJ & Associates earning remuneration, share of profit and interest therefrom and income from capital gains and interest etc. The return of income u/s. 139(1) was filed on 17-02-2012 declaring total income of Rs. 10,36,730/-. Intimation u/s. 143(1) was issued on 7-6-2012 accepting the returned income. A search action u/s. 132 of the Income Tax Act, 1961 was conducted on 26-7-2016 in the case of D.P.Jain Group of cases in which residential premises of assessee is covered. Notice u/s. 153A dated 17-05-2017 was issued and the return of income in response thereof was filed on 28-04-2018 declaring total income of Rs. 10,36,726/-.

GROUND NO. 1 and 2:

That the AO erred in passing the assessment order u/s.143(3) r.w.s. 153A. The notice and proceedings u/s. 153A are bad in law and wrong on facts. That no incriminating document was found as a result of search and the notice u/s. 153A was objected in the computation of income furnished vide letter dated 28-09-2018.

(1) A search and seizure operation was conducted in the premises of the assessee on 26-7-2016. As per the learned AO, in connection with the search, a survey action u/s 133A was also carried out at the official premises of assessee M/s. SNJ & Associates at 1st Floor, Mangalam Icon, Ramnagar Square, Nagpur. During the course of survey, an Excel Sheet Annexure B-2 at Page no. 4 is found and impounded. The addition is made by AO based on such impounded document treating it as incriminating one. We object to the action of learned AO as impugned document is not incriminating in nature and the document and transactions mentioned therein are explained during post survey and post search proceedings. No evidence apart from the single excel sheet was brought on record by the learned AO either during the assessment proceedings or in the assessment order to corroborate the claim made in the order by hiri. In view of the above facts and the circumstances of the case, the order of learned AO is unjustified and liable to be set aside.

(2) The Intimation u/s. 143(1) was passed on 7-6-2012 accepting the returned income and no addition or disallowance whatsoever is made in the same. Further, no notice u/s 143(2) of the Income Tax Act was issued for conducting assessment. In view of above, assessment of the appellant is completed and had attained finality. The assessment was not abated at the time of initiation of search action u/s 132 of the Act and as a result of search no incriminating document/material was found, which shows that the assessee has earned any income in the nature of commission. In absence of any incriminating, document unearthed, the issuance of notice u/s. 153A and conducting afresh re assessments and making additions by the AO in unabated assessments is not in accordance with law and is void-ab-initio.

(3) Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to

the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material". An assessment has to be made under this Section only on the basis of seized material. Completed assessments can be interfered with by the AO while making the assessment under Section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment which is not in the case of assessee.

(4) On contrary to that during the search assessment proceedings, the assessee has furnished all the relevant details relating to the financial as well as transactions relating to the turnover of Base Corporation Limited (BCL) as prepared in the excel sheet found and impounded from the premises of M/s SNJ & Associates pointed out in the assessment order in the form of its Audited Financial Statements, Bank Statements of loan and turnover business parties, ledger accounts of parties etc. Thus, the assessee has duly explained the nature of document and the transactions mentioned therein. No discrepancies have been brought on records by the learned AO in respect of above explanations and documentary evidences what-so-ever. The documents and details as well as books of accounts have been accepted by her.

(5) We draw your kind attention to the additions made in the Assessment order. Your goodself will find that the transaction in the excel sheet is explained with the help of documentary evidences such as ledger account of parties and bank account statement showing the entries of fund transfer. There is no allegation that the transaction of sale and purchase in impugned document is unaccounted/undisclosed. Thus the same cannot be construed as incriminating in absence of any corroborative evidence found to prove that such commission income is earned by assessee. Thus, the additions are based on whims and fancies of AO and not on the basis of any incriminating document found during the course of search. It has been held by the Hon'ble Jurisdictional and other High Courts that when assessment is made as a result of search action and order is passed u/s. 143(3) ऩव.ऱ. 153A, additions can be made only on the basis of any incriminating documents or evidence found during the course of search. Since, no such document/evidence was found during search, no addition should have been made by the AO. In support of our contention we rely on the following case laws:-

(a) CIT us. Continental Warehousing Corporation (Nhava Sheva) Ltd. [2015] 374 ITR 645/232 Taxman 270/58 taxmann.com 78. This case is affirmed by Apex Court in [2018] 93 taxmann.com 31 (SC)

(b) All Cargo Global Logistics Ltd. Vs. DCIT 137 ITD 287 (Mum.) (SB) which has been now affirmed by Hon'ble Bombay High Court

(c) Pr. Commissioner of Income Tax vs. M/s Bhadani Financiers Pvt Ltd in the High Court of Delhi ITA No.81/2020 dated 9th September, 2021

(d) CIT vs. SKS Ispat & Power Ltd [2018] 99 taxmann.com 424 (Bombay)

(e) CIT-20 us. Deepak kumar Agarwal (2017) 86 taxmann.com 3 (Bom.)

(f) CIT vs. Gurinder Singh Bawa (2016) 386 ITR 483 (Bom.)

(g) CIT (Central) vs. Murli Agro Products Ltd. (2014) 49 taxmann.com 172 (Bom.)

(h) CIT Vs. Kabul Chawala (2015) 234 Taxmann 300 (Del.)

It has been held that if no incriminating material is found during the course of the search in respect of an issue, then no addition in respect of such an issue can be made in the assessment u/s 153A of the Act.

(i) Vijayrattan Balkrishna Mittal vs DCIT [2020] 121 taxmann.com 100 (Mumbai-Trib.)

j) Sera Sera Productions Ltd. Vs. DCIT (2017) 87 taxmann.com 249 (Mum Trib.)

(k) Anil Mahavir Gupta vs. ACIT (2017) 82 taxmann.com 122 (Mum Trib.)

(l) CIT Vs. Pratibha Industries Ltd. [2013] 141 ITD 151

(m) Principal CIT Vs. Kurele Paper Mills (P.) Ltd. (2016) 380 ITR 571

(n) CIT Vs. Lancy Constructions (2016) 383 ITR 168

(o) CIT Vs. Anupkumar Bhatia (2013) 352 ITR 493 (Del.)

(p) CIT Vs. MGF Automobile Ltd. Delhi High Court

(q) Jai Steel India Jodhpur Vs. ACIT (2013) Tax Pub. (DT) 1647 (Raj. High Court).

(r) LMJ International Ltd. vs. Dy. Commissioner of Income Tax reported in (2008) 14 DTR 540 (ITAT Kolkata)

(s) ACIT us. Jayendra P. Jhavery, ITA No. 2141 to 2144/Mum/2012 dated 20-2-2014

It is therefore submitted that the notice issued u/s.153A for reassessment is bad in law and the addition made in the assessment order is illegal as no incriminating document or unaccounted income was found during the course of search in the case of assessee.

We would be submitting further while discussing the individual unds for addition made in the Assessment order.

GROUND NO. 2;

That the learned AO erred in law and on facts in making addition of Rs.72,68,000/-holding that the assessee has earned commission. On the facts and circumstances of the case, the action of the AO is without any sound basis and therefore highly unjustified. We object to the addition made and have to submit as under for the favour of your kind consideration:-

(1) That the various allegations made by the assessing officer are without considering the facts available and brought on record during the course of search as well as in the assessment proceedings. We draw your kind attention to the assessment order wherein the AO has held that the explanation that the turnover mentioned in the seized document page 4 of Annexure B-2 belongs to

Base Corporation Ltd. (BCL) is not acceptable. It is further mentioned in the assessment order that no documents relating to BCL were found at the premises of SNJ & Associates and the assessee could not produce documentary evidence to justify that they are the internal auditors of BCL. The allegation that the assessee has not offered any explanation and also not provided any documentary evidence is baseless in view of various documents available on record and also considered by her. The allegation that the address of BCL etc. and no reply was submitted before the Investigation Wing is contradictory to her own finding. We object to the various allegations made by the AO and would be dealing with each and every allegation hereafter.

(2) That during the course of survey action in the case of SNJ & Associates at Mangalam Icon, 1 Floor, Ramnagar Square, Nagpur, an excel sheet Annexure B-2, at page no. 4 was impounded. The detailed enquiries in this regard have been made by the Investigation Wing in the survey proceedings, post survey proceedings and by the Assessing Officer during assessment proceedings. The nature of transaction therein was duly explained with the help of documentary evidences such as ledger accounts and bank account statements. We refer to the summons u/s. 131 issued by the Investigation Wing dated 30-09-2016 in post search proceedings and the reply furnished dated 16-11-2016 to ADIT. The AO has also referred to the order sheet noting of ADIT dated 6-10-2016 at para 7 of the assessment order in page 7. During assessment proceedings as well, assessee has furnished details and explanation regarding the seized document and transaction mentioned therein vide two replies dated 28-9-2018 and 26-11-2018. The observation of AO that the assessee has neither given any explanation nor any documentary evidence is furnished regarding the seized document is devoid of merits.

It was submitted that the year wise turnover and the commission mentioned in the seized document does not belong to the assessee. No amount of commission is received by the assessee nor any amount is outstanding. It was informed to the Authorised Officer that all the transactions contained in the aforesaid documents belongs to Base Corporation Limited (BCL). All the sale, purchase etc. mentioned therein are the transaction of aforesaid party. The firm M/s. SNJ & Associates in which assessee is partner had conducted the Internal Audit of BCL earlier and the statement found is part documents of such verification/audit. The address of the party, Audited Financial Statements of M/s. BCL for the period 2006 to 2013 and credit rating report from Brick Work Ratings was submitted. The Investigation Team had also made enquiries from the Officer/ Director of BCL reference which can be found in letter dated 26-11-2018.

(3) It is informed that M/s. SNJ & Associates, Chartered Accountants, a partnership firm in which CA Sanjay Jain, CA Nirmal Agrawal and CA Jitendra Jain were partners, were conducting the internal audit of BCL. The working paper file regarding Internal Audit was found at the business premises which was enquired into by the Authorised Officer of Investigation Wing. It is undisputed that the impugned document was found in the aforementioned working file. Apart from the Internal Audit function, the assessee was also helping BCL for arrangement of finance. The impugned document contains the transaction of turnover of BCL as well as the loan transaction of Mr. Sanjay Jain. There were differences in the transaction of turnover of Base Corporation Ltd with various parties. BCL was finding it difficult to reconcile the transaction as well as to make proper recoveries. In the impugned document, on the top of it, the name of Mr. Sanjay Jain A/c. is mentioned meaning thereby that the

responsibility of reconciliation in the firm was of Mr. Sanjay Jain. The reconciliation of the same was prepared by Shri. Sanjay Jain as this part of the audit which was looked after by him.

(4) It was informed that the assessee has helped the company by way of finance. The company was running into losses therefore Shri. Sanjay Jain through his company Navdurga Advisory Pvt. Ltd. helped them by financing. It is informed that the father of Mr. Sanjay Jain had earlier invested huge amount in the aforesaid company because of good relationship. At the time of reconciliation, there was a difference in the amount recoverable as per the company and as per the working of Shri. Sanjay Jain. This document is the record of such reconciliation and was found in the Internal Audit file. The recovery plan was also mentioned in the impugned document and in that recovery plan the assessee also made his claim of recovery which is mentioned therein. The attention of AO was drawn on the recovery plan wherein it is mentioned that Rs. 75 lacs was received in July and August. The deposit of Rs. 50 lacs in July, 2011 and deposit of Rs.25 lacs on 1 August, 2011 in bank account of Base Corporation Ltd. was substantiated with the help of bank account statement for the period April, 2011 to March, 2012. Similarly the out of recoverable amount of Rs.4.43 Crore by the company, it was informed that Rs.1 Cr. was marked for payment to Navdurga Advisory Pvt. Ltd. The ledger account of Base Corporation Ltd. in the books of Navdurga Advisory Pvt. Ltd. was furnished in which there was outstanding recoverable of Rs.1 Cr. before 31st May, 2012 which was recovered in the month of June, 2012. Similarly it is mentioned in the impugned document that Rs. 25 lacs is received on 19th & 20th which can be seen in the Bank Account of Omega Industries which paid by RTGS in Base Corporation Rs.15 lacs and Rs.10 lacs. Subsequently there is note that Rs.20 lacs received on 24th. The same can be seen as payment from the account of Omega Industries on 24th, Similarly, Rs. 20 lacs is mentioned as received in Chattisgarh. The same is duly found paid from the Bank Account of Omega Industries, Chattisgarh. These transactions itself establishes on record that the transactions in the impugned document relates to BCL. Below these notings is again the reconciliation as per SJ means Sanjay Jain is also mentioned in which the entries of payment received of Rs. 65 lacs and amount to be paid to Navdurga Advisory Pvt. Ltd. is mentioned thereby the adjustment of amount receivable is reconciled. Thus your goodself will appreciate that the assessee has substantiated the explanation that the transaction in the impugned document belongs to BCL with the evidences like bank accounts of parties, their ledger accounts and balance sheet. These submissions of the assessee are uncontroverted.

(5) There were differences in the transaction of BCL with the various parties. At the time of reconciliation, there was a difference in the amount of recoverable as per the company and as per working of assessee. The impugned document is the record and reconciliation of such transaction prepared by Shri Sanjay Jain to help them in reconciliation during Internal Audit. The document was found in the Internal Audit File of BCL which shows that it belongs to the company which is prepared during Internal Audit Function performed by the assessee.

(6) The allegation on Page No. 8 of the Assessment Order that the assessee did not provide the address of BCL and Balance Sheets of various years to the ADIT is incorrect. In this regard, we draw your kind attention to the reply dated 16-11-2016 filed before the ADIT (Duly Acknowledged) wherein the address of BCL was given in writing. Further, the Audited Financial Statements

of BCL for the period 2006 to 2013 were also furnished. The copy of the above reply is attached herewith for your perusal. Not only that, the AO himself acknowledged on page 7 of the Assessment Order that the assessee provided the ledger account of BCL in the books of Navdurga Advisory Put Ltd. On perusal of the aforesaid ledger account your goodself will find that full address of BCL alongwith PIN code is duly mentioned. The AO also acknowledges on Page No. 8 that the Investigation Wing had made enquiries of turnover of BCL from ITD Application which is exclusively available to Income Tax Authorities. Thus allegation of the AO that the Address etc. of BCL was not provided or not available is incorrect. We already mentioned that the Investigation Wing had undertaken the enquiries of the impugned party.

(7) The Assessing Officer has held that the commission mentioned in the impugned document is commission payable to Shri Sanjay Jain. The observation made by the AO is baseless and thus objected and it was submitted vide letter dated 28-09-2018 furnished in the assessment proceedings that the commission of 0.25% mentioned in the seized document represents the gross profit assured by Base Corporation Ltd. to the parties for turnover business. BCL had entered into arrangement with few parties for these types of transaction to increase the turnover and accordingly they had to provide commission in the form of Gross Profit to such parties of turnover to facilitate such transaction. The copy of ledger account of some of the parties was produced at the time of hearing establishing the goods purchased from BCL were sold immediately to another party which subsequently sold the goods to BCL. The copy of account of Base Corporation Ltd. and copy of account of Omega Industries Bhopal in the books of Chhattisgarh Infratrade Bhopal was furnished alongwith the copy of account of Chattisgarh Infratrade Bhopal and BCL in the books Omega Industries Bhopal. The turnover as per ledger tallies with the seized document. It was also established before the AO that the sale and purchase has been done simultaneously. The transactions were explained entry-by-entry. In the ledgers, it could be categorically found that the transactions in crores are through banking channel. Thus, the allegation of the AO that the transactions in the seized document does not belong to BCL and the assessee did not furnish any evidence to explain the same is devoid of any merit.

(8) The Assessing Officer has raised doubt about the providing of Internal Audit services to BCL by M/s SNJ & Associates and thereby holding the transaction in impugned seized document as belonging to the assessee and not to BCL. In this regard, we have already submitted before the AO that the impugned document was found in the Internal Audit working paper file and also produced the file. Please refer to our letter dated 26-11-2018 in the assessment proceeding. The same shall be again produced before your goodself for your kind perusal.

We further draw your kind attention on Page 9 of the Assessment Order wherein the AO observed that no books of accounts or other documents relating to BCL were found at the business premises of M/s. SNJ & Associates thereby doubting the role as an Internal Auditor. Your goodself will appreciate that the books of accounts and documents in support thereof are maintained by such public limited companies in the electronic media in accounting software package and can be accessed from remote places without print outs being taken. Shri. Sanjay Jain had informed the authorities that he has visited many times to Bangalore for audit purposes. Working file prepared for Internal Audit was found during the course of Survey by Investigation Wing. The

working file found itself establishes the fact that the firm M/s. SNJ & Associates was professionally serving the company.

We further draw your kind attention to page 9 of the Assessment Order wherein the AO has held that the transactions do not belong to BCL on the basis that the assessee is unable to establish role as Internal auditor because of non-availability of appointment letter and Internal Audit fees not received. In this regard, we draw your kind attention to the letter dated 26-11-2018 wherein the explanation was offered along with evidence. Although, the appointment letter could not be traced, however, the assessee produced copy of published accounts of BCL for the F.Y.2010-11 in which the name of the firm M/s. SNJ & Associates in which assessee is partner, is mentioned as an Internal Auditor. This, along with the Internal Audit file establishes the role of firm as Internal Auditor and the doubt raised is without any sound basis.

As regards the F.Y.2009-10, F.Y.2011-12 and F.Y.2012-13, the Internal Audit was the help of conducted by M/s. Maheshwari Jain & Associates of Nagpur assessee. The reasons for non-receipt of Internal Audit fees also discussed in the letter dated 26-11-2018. The mention about audit fees outstanding could also be found in the impugned seized document. Thus, all these documents on record establishes the role of firm as Internal Auditors of BCL and also the fact that the transactions does not belong to the assessee but to BCL.

(9) As regards to the Internal Audit Fees fixed at Rs.2,00,000/- per year, it was informed that the fees could not be recovered as the company BCL was unable to make the payment for the fact that it was under huge financial liability. The assessee had also provided finance to the aforesaid company. The recovery of finance became difficult and therefore the assessee recovered the amount by keeping himself associated with the group in some way or other. Full recovery of loan was made. However, neither the interest could be recovered nor the Internal Audit Fess was recovered. Reference of the same could be found in the impugned seized document itself. Therefore, the assessee could not show any receipts accruing or arising to him from BCL for the services provided as Internal Auditor.

(10)The Audited Financial Statements of Base Corporation Ltd. from F.Y.2009-10 to F.Y.2012-13 were submitted to AO. The audited accounts of Base Corporation Pvt Ltd for the period 2006 to 2013 were duly submitted to the Authorized Officer in the post search enquiry. The Xerox copy of the letter dated 16-11-2016 filed before ADIT was furnished to AO. Thus the observation of the AO in para 7 that no such information was given by the assessee is contrary to the facts available on record.

(11)The turnover of Rs.611.63 Cr of the Base Corporation Ltd as verified by the AO from ITD and mentioned in the assessment order is as per Audited Financial Statements of the company whereas the turnover of Rs.290.75 Cr as mentioned in the excel sheet is from the turnover business carried out by company considered for reconciliation purposes as explained above. Hence the difference in turnover in between such two documents cannot be the reason to hold that the contents of seized document does not relate to BCL when the assessee has substantiated the same from other records.

(12) No evidence was unearthed during the course of search and survey to hold that the assessee has received such commission income. There is no evidence whatsoever to prove that the assessee has unaccounted income or

unaccounted cash received from the company as commission. There was no document or agreement found to establish that the assessee had any contractual obligation to receive such commission. There is no trail of cash found as having changed hands between assessee and company to establish that the income belongs to assessee or earned by him.

In view of the above facts, we have to submit that the assessee has not received any commission but the 0.25% represents the gross profit receivable by the various parties involved in the turnover business. The name of the Company Navdurga Advisory Pvt. Ltd. mentioned in the impugned document is the unansaction of recovery of loan through Banking Channel which was found in the regular books of accounts. Thus, adverse inference drawn against the assessee is baseless. The action of AO in making addition thereof in the hands of assessee is unjustified and illegal. The addition of Rs. 72,68,000/- may kindly be deleted and the ground of appeal may kindly be allowed.

GROUND NO. 3:

That the learned AO charged interest u/s. 234A and 234B of the Income Tax Act. We object to the action of the AO and have to submit that the AO failed to consider the fact that while estimating the Advance Tax, the assessee was unable to visualise that there would be addition in the returned income. In such a situation, no interest u/s. 234B which are on account of short payment of advance tax instalments should be levied. The action of the AO is unjustified.

Furthermore, the calculation of interest levied u/s. 234A and 234B have also not been provided in the computation sheet and in such a situation, the assessee is unable to comment on the correctness of the said amounts.

In view of the same, it is humbly submitted that the calculation made and interest u/s. 234A and 234B levied by assessee in the return sou-moto is correct and may kindly be accepted. The ground of appeal may be allowed.

In view of the submissions made above and the facts and circumstances of the case it is submitted that the appeal of the assessee may kindly be allowed."

8. The learned Counsel for the assessee relying upon the submissions as made above, further submitted that the learned CIT(A) did not consider the explanation and the evidence brought on record by the assessee. The learned counsel vehemently contended that no document was found during the search in the premises of the assessee and the impugned document was found from the premises of Partnership Firm M/s. SNJ & Associates, and was taken out from the Internal Audit file of M/s. Base Corporation Ltd. He thus emphasised that the Excel Sheet is the working paper of the Firm and does

not pertain to the assessee. There was no evidence found regarding earning of neither commission income nor any cash transactions relating thereto where found. The assessee had explained to the Department before the Investigation Wing and the Assessing Officer that he was working with M/s. Base Corporation Ltd. in the capacity of Internal Auditor and in this regard proof that M/s. SNJ & Associates is associated as Internal Auditor can be seen from the Audited Financial Statement in which name of his Firm is appearing as "*Internal Auditor*". Further, the nature of transactions in the Excel Sheet were duly explained with the help of documentary evidence such as Ledger Accounts and Bank Statements of the parties. He drew our attention to the letter furnished in the post survey proceedings enquiry before the ADIT, Investigation Wing, and objected to the observation of Assessing Officer that no details/reply were furnished before the Investigation Wing. The learned Authorised Representative further submitted that the turnover mentioned in the Excel Sheet was explained in the Ledger Account of Base Corporation Ltd. and various parties with whom aforesaid company had entered into the transaction of sale or purchase. The aforesaid documents were furnished before the Investigation Wing and also during the assessment proceedings and no falsity were pointed out in any of the document so submitted. The transactions between M/s. Base Corporation Ltd. and other parties were through banking channels which is not doubted. It was explained in detail, based on ledger account that the parties to the transactions were charging gross profit in each transaction and the assessee was entrusted with the work of verification of gross profit charged as well as the accounting of such transaction in the capacity of Internal Auditor. He drew our attention to the

individual entries in the Excel Sheet below the chart of turnover and explained that each and every entry shown as payment there in is found in the bank account of parties to whom such payment was made or received by M/s. Base Corporation Ltd. Further, the learned A.R. also pointed out the mention of Internal Audit fees recoverable in the impugned sheet which he submitted was not recovered. He vehemently contented that the Audited Financial Account of M/s. Base Corporation Ltd. for the period from the year 2006 to 2013 as well as the Ledger Account were furnished in the post survey proceedings before the Investigation Wing and during the assessment proceedings. Further, the address of the company was also furnished and is also available on the Audited Financial Statements. At no stage, the explanation based on such documents was found as false by any of the authorities. Finally, the learned A.R. concluded contending that addition cannot be made merely on the doubt in mind of the authorities and more so when there is no falsity found in the documents submitted in support of the explanation of impounded document.

9. Per-Contra, the learned Departmental Representative (*"the learned D.R."*) strongly relying upon the order passed by the Assessing Officer and the learned CIT(A), submitted that the dismissal of the assessee's appeal by the learned CIT(A) was after indicating detailed reasons, which do not call for any interference and in this view of the matter, the appeal filed by the assessee be dismissed.

10. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. As already

mentioned elsewhere in this order that the assessee is a Chartered Accountant and is a partner in M/s. SNJ & Associates. It is noted from the assessment order and is undisputed that the document Annexure B-2, Page-4 was impounded during the survey proceedings at M/s. SNJ & Associates, situated at 1st Floor, Mangalam Icon, Ramnagar Square, Nagpur, by the Jt. Director of Income Tax (Inv.), Nagpur, on 26/07/2016, which is also found mentioned in the summons under section 131 of the Act dated 30/05/2016 issued by ADIT (Inv.), Unit-I, Nagpur, which is exhibited in the Paper Book Page-1. We find that the assessee has responded to the summons under section 131 and the notices issued in the assessment proceedings and explained the transaction/entries in the impounded document with the help of supporting documents. We refer to the reply dated 16/11/2016, furnished before the ADIT, Unit-I, Nagpur, (placed on record in the Paper Book Page-14&15) which is also duly acknowledged in which the assessee has categorically mentioned that the sheet was impounded from the Internal Audit file of M/s. Base Corporation Ltd. and it was also stated that the firm was the Internal Auditor of BCL. The purpose of preparation of reconciliation was mentioned therein. Further, in Para-C of the letter, address of BCL was also provided and the copies of Balance Sheets of BCL filed with Registrar of Companies for the financial year 2006-07 to 2012-13 were also furnished. Thus, the assessee has furnished the reason for preparation of Excel Sheet by the firm. It is also mentioned by the Assessing Officer herself in the assessment order at Page-8 that "*Further on verification of details from ITD application by Investigation Wing, the turnover of M/s. Base Corporation for the above financial year was 611.63 Cr.*" This figure of turnover of ₹611.63

crore is also found mentioned in the Audited Profit and Loss Account which is placed on record in the Paper Book Page-28. This establishes on record that the Investigation Wing as well as the Assessing Officer was fully aware of the whereabouts of the BCL and the observation of the Assessing Officer that the address of BCL and other detail were not provided during investigation is contrary to their own finding. On perusal of the Audited Financial Statements, we find that the details of Board of Directors, Registered Office, Bankers, Statutory Auditor, Internal Auditor, Manufacturing Plant, etc., are available attached to the Audited Financial Statements. Further, we find that the Ledger Accounts of BCL which were submitted vide letter dated 28/09/2018 (reproduced in assessment order in Para-(e) at Page-6 of the assessment order) in the assessment proceedings in support of explanation of transaction in Excel Sheet also mentions the complete address of BCL. The Assessing Officer doubted whether the firm M/s. SNJ & Associates in which the assessee is Partner has conducted the Internal Audit in the absence of appointment letter. However, we find that the assessee categorically mentioned before the Investigation Wing about the documents and files relating to Internal Audit and we also find the name of the firm as "*Internal Auditor*" mentioned in the Audited Financial Statements. It is in this capacity of Partner who was looking after the assignment of Internal Audit of BCL that the name of assessee is appearing on impugned Excel Sheet. Thus, we find that the explanation by the assessee that they were conducting the Internal Audit of BCL and that the impugned Excel Sheet which was taken out from the Internal Audit file is prepared during the discharge of function as an Internal Auditor is established.

11. We have also carefully examined the impounded Excel Sheet in order to verify the veracity of explanation offered by the assessee to explain the entries/noting in the impounded documents. The Assessing Officer observed in Para-8 of the assessment order that the name of BCL is not appearing in the impounded document and also did not accept the claim of the assessee that Sales/Purchase turnover mentioned therein belongs to BCL. The assessee stated during the assessment proceedings that the impugned sheet is prepared for the purpose of reconciliation of the transaction of BCL. We find that in the impugned sheet (lower side) it is categorically mentioned "*Difference between base and Sj*" with the figure of ₹ 1,20,19,394=96, against it. Further, the turnover of Sales and Purchase are mentioned in the form of chart on the upper side of the document. In order to verify whether the transactions belong to M/s. Base Corporation Ltd., we examined the transaction in Excel Sheet vis-à-vis the ledgers which were furnished before the authorities below. The sales turnover mentioned in the document corroborates with the Ledger Accounts furnished in the assessment proceedings vide letter dated 28/09/2018. We have carefully examined the ledger accounts placed on record vide Paper Book Page-39 to 107. The Ledger Accounts are the record of sales made by BCL to other party Omega Industries which in turn sold goods to Chhattisgarh Infra Trade which was sold to BCL again. Each transaction is separately identifiable, and the payments are found to have been made through banking channel. Thus, it is amply clear that the impugned sheet is the record of transaction of sale and purchase of BCL and the sheet was prepared for reconciliation purposes as explained by the assessee before the authorities below. Sale to parties in the

loop have the element of gross profit commission embedded in such transaction. It is nowhere mentioned in the impugned document that the mention of "0.25%" represents commission paid to the assessee. The assessee has explained in Para-(d) of the letter dated 28/09/2018 placed in the record at Page-12 of the Paper Book that 0.25% represents the gross profit assured by M/s. Base Corporation Ltd. to the parties for turnover business, which remains uncontroverted. All the transaction mentioned below the chart are through banking channel and the assessee has explained each and every entry vide letter dated 28/09/2018 which is reproduced on Page-5 and 6 of the assessment order extract of which is reproduced herein below:-

"..... aforesaid company because of good relationship. At the time of reconciliation there was a difference in the amount recoverable as per the company and as per the working of Shri Sanjay Jain. This document is the record of such reconciliation and was found in the Internal Audit file. The recovery plan was also mentioned in the impugned document and in that recovery plan the assessee also made his claim of recovery which is mentioned therein for e.g. your goodself will find mentioned on Rs. 75 lakhs received in July and August in the impugned document. We are enclosing herewith the copy of Bank Account of Base Corporation Ltd. for the period April, 2011 to March, 2012 wherein your goodself will find deposit of Rs. 50 lakhs in July, 2011 and deposit of Rs.25 lakhs on 14 August, 2011. Similarly your goodself will find that from the recoverable amount of Rs. 4.43 Crore by the Company, Rs 1 Cr. was marked for payment to Navdurga Advisory Put. Ltd. We are enclosing herewith the ledger account of Base Corporation Ltd. in the books of Navdurga Advisory Put. Ltd in which your goodself will find that there was outstanding recoverable of Rs. 1 Cr. before 31st May, 2012. The same was recovered in the month of June, 2012. Similarly it is mentioned in the impugned document that Rs 25 lakhs is received on 19th & 20th which can be seen in the Bank Account of Omega Industries which paid by RTGS to Base Corporation Rs. 15 lakhs and Rs. 10 lakhs. Subsequently there is note that Rs. 20 lakhs received on 24. The same can be seen as payment from the account of Omega Industries on 24th. Similarly. Rs. 20 lakhs is mentioned as received in Chattisgarh. The same is duly found paid from the Bank Account of Omega Industries, Chattisgar Below these notifications is again the reconciliation as per SJ mea Sanjay Jain is also mentioned in which the entries of payment received Rs. 65 lakhs and amount to be paid to Navdurga Advisory Pvt. Ltd mentioned thereby the adjustment of amount receivable is reconciled."

12. The entry was also corroborated with the bank accounts enclosed with such submissions. The Assessing Officer failed to point out any infirmity or incorrectness in such specific explanation provided by the assessee with regard to such noting. The Assessing Officer could not point out any unrecorded/cash payment transaction with regard to receipt of commission on the impugned document. In the letter dated 29/11/2018, at Para-(a), addressed to the Assessing Officer, we find that assessee did mentioned that detailed enquiries were made by the Investigating Officer with the officer/Director of the company. The details of BCL were available with the authorities, however, nothing is on record as to whether BCL has been examined on this issue and definitely, there was no document or confirmation from BCL brought on record that they paid commission to the assessee. In the absence of such evidence of payment of commission by BCL or anybody else and considering the totality of the facts of the case, we are of the considered opinion that there is no income in the nature of commission received by the assessee. In view of the discussion above and overall facts and circumstances of the case, we direct the Assessing Officer to delete the addition of ₹ 72,68,000. Thus, the grounds no.2 & 3 raised by the assessee are allowed.

13. Insofar as ground no.4 raised by the assessee is concerned which relates to charging of interest sunder section 234A and 234B of the Act on the basis that interest charged, we find it to be improper. However, nothing was specifically contended before us. Therefore, the ground no.4 raised by the assessee is dismissed.

14. In the result, appeal by the assessee for A.Y. 2011-12 stands partly allowed.

ITA no. 55/Nag./2022
Assessee's Appeal – A.Y – 2012-13

15. The assessee has raised following grounds:-

"(1) That the order of the learned Dy./Asst. Commissioner of Income Tax, Central Circle-1(3), Nagpur passed u/s. 143(3) r.w.s. 153A is bad in law and wrong on facts and the learned CIT(A) erred in confirming the same.

(2) That the learned CIT(A) erred in law and on facts in confirming the addition made by AO in the proceedings u/s 153A of the Income Tax Act, 1961 in absence of incriminating document found as a result of search. The additions made are void and bad in law.

(3) That the learned CIT(A) erred in law and on facts in confirming the addition made by the AO of Rs.1,18,00,000/- holding that the assessee has provided services of arranging parties and earned commission therefrom. On the facts and circumstances of the case, learned CIT(A) erred in holding that the assessee is engaged in the business of providing accommodation entries as the same is without any sound basis and therefore highly unjustified.

(4) That the learned CIT(A) erred in law and on facts in confirming the addition made by the AO of Rs.12,657/- holding that the assessee has arranged accommodation entries and earned commission therefrom. On the facts and circumstances of the case, the action of both the authorities is without any sound basis and therefore highly unjustified.

(5) That the learned CIT(A) erred in law and on facts in confirming the action of Assessing Officer in making addition of Rs. 15,00,000/- u/s. 68 of the Income Tax Act. On the facts and circumstances of the case, the source of amount received as unsecured loan, the identity, creditworthiness of lender and genuineness of transaction is fully substantiated by legal and cogent evidence. The action of both the authorities in treating the same as unexplained cash credit is therefore improper and unjustified.

(6) That the learned CIT(A) erred in law and on facts in confirming the action of Assessing Officer by relying on the statement of Shri. Praveen Agrawal and others. On the facts and circumstances of the case, the above statements are not related to the search action conducted on assessee and the allegations and averments made in the statement are also denied by the assessee. The action of both the authorities in treating the unsecured loan taken as unexplained cash credit on the basis of above statements is therefore misplaced and unjustified.

(7) That the learned CIT(A) erred in law and on facts in confirming the action of AO in charging interest u/s. 234A and 234B of the Income Tax Act. The interest charged is improper.

(8) That for any other grounds with kind permission of your honour at the time of hearing of appeal.”

16. Ground no.1, being general in nature, hence no separate adjudication is needed.

The issue arose out of grounds no.2 & 3, relate to the addition made by the Assessing Officer on account of commission on turnover transaction.

17. After hearing both the parties and on a perusal of the material available on record, we find that identical issue has been raised by the assessee in its appeal being ITA no.54/Nag./2022, for the assessment year 2011-12, wherein, vide grounds no.2 and 3, we have decided this issue in favour of the assessee and against the Revenue in Para-10, 11 and 12, of this order. Since the issue for our adjudication being identical, except variation in figures, consistent with the view taken therein in assessee's appeal cited supra and following the findings given therein, we reverse the order passed by the learned CIT(A) and allow the grounds no.2 & 3 raised by the assessee.

18. In ground no.4, the issue raised by the assessee relates to the addition on account of commission on loan transaction.

19. The facts in brief, as emerges from the assessment order are that, in survey action in the office premises of the assessee, documents mentioned in Annexure B-1 containing 29 loose sheet and Annexure B-3 containing 31 loose sheet were impounded and it is noted that these documents are confirmation letters of parties who were advanced loans or taken loan. Similar transactions were found in the print outs of whatsapp and text messages

taken from the phone of assessee and are inventorised in Annexure B-2 and Annexure B-3. The seized documents were confronted to the assessee and his statement was recorded on 26/07/2016, wherein the assessee accepted of having arranged loan funds for various parties by charging commission @ 0.1% to 0.25% and in case of arranging of institutional finance or Bank finance it is @1.8%. The Assessing Officer, on such basis, applied the rate of 0.25% as commission earned on the transactions noted in the seized document. Accordingly, addition of ₹ 12,657, was made in the total income of the assessee.

20. Before the Ld. CIT(A), the assessee raised ground contesting of the addition made on account of earning of commission income. The learned CIT(A) noted in Para-4.3 of the impugned order that in the instant case there are clear evidence that the appellant has earned income from commission on arranging loan transaction which assessee himself admitted in his sworn statement recorded during search proceedings. The learned CIT(A) has not accepted the ground of appeal raised by the assessee by upholding the addition of ₹ 12,657, made by the Assessing Officer on account of commission income.

21. Before us, the learned Authorised Representative for the assessee drew attention to the conclusion drawn by the Assessing Officer at Page-11 of the assessment order and also on the statement recorded during the course of search. He fairly accepted the earning of commission but contented that there was no evidence found about the actual earning of commission. In the sworn statement. the assessee has mentioned that normally the commission is

charged between the range from 0.1% to 0.25% and the Assessing Officer was not justified in adopting the highest percentage i.e., 0.25% while determining the earning from commission. The learned Authorised Representative for the assessee requested for adoption of average @0.15% on account of earning of commission income.

22. Per-Contra, the learned D.R. strongly relying upon the order passed by the Assessing Officer and the learned CIT(A), submitted that the dismissal of the assessee's appeal by the learned CIT(A) was after indicating detailed reasons, which do not warrant any interference and in this view of the matter, the appeal filed by the assessee be dismissed.

23. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. The addition is made by Assessing Officer on earning income of commission income @ 0.25% on the basis of sworn statement of the assessee. We find that in the statement recorded during search on 26/07/2016, extract of which are reproduced on Page-10 and 11 of the assessment order, the assessee agreed about the earning of commission and indicated that the commission charged ranges between 0.1% and 0.25%. However, there was no evidence found about the actual earning from commission and in such circumstances the Assessing Officer adopted the rate of 0.25% for determination of income. Thus, according to us, the average of both the rates would meet the end of justice. Consequently, we direct the Assessing Officer to adopt rate of 0.15% for determining the income earned on account of commission. Thus, in view thereof, the commission income earned applying the rate of 0.15% would be

restricted to ₹ 7,595, and the addition to that extent is confirmed. Thus, ground no.4, raised by the assessee is partly allowed.

24. The issue raised by the assessee in grounds no.5 and 6, relates to the addition of ₹ 15 lakh on account of unsecured loan under section 68.

25. The brief facts, as brought out by the Assessing Officer in the assessment order are that the assessee obtained loan of ₹ 15 lakh from M/s. Sakambhari Vanijya Pvt. Ltd. The assessee filed explanation and documents like confirmation, Bank Account, Balance Sheet, Ledger Account, ITR Acknowledgement and status of company on MCA portal during the course of assessment proceeding. The Assessing Officer discussed the reasons for addition in Para-11.1 and 11.2 of the assessment order. She held that the loan was arranged by the assessee through Shri Praveen Kumar Agrawal, and the Directors of the company were employees of Shri Praveen Kumar Agrawal, whose statement were also recorded by the Investigation Wing of Kolkata. The Assessing Officer held that the assessee has not been able to prove the creditworthiness of the loan creditors and genuineness of the transaction and therefore addition was made under section 68. The assessee being aggrieved carried the matter before the first appellate authority.

26. Before the learned CIT(A) the assessee raised various grounds being legal as well as on merit of the addition made in the assessment framed under section 143(3) r/w section 153A of the Act. The learned CIT(A), vide its impugned order at Para-4.4 concluded that the Assessing Officer has made the addition referring to the statement of Shri Praveen Kumar Agrawal, recorded under section 131(1) by the Investigation Wing, Kolkata, and also

the statements of Shri Pramod Sharma, and Shri Pulak Bagchi, earlier recorded by the Director of Income Tax (Inv.), Kolkata, who are employees of Shri Praveen Kumar Agrawal. Referring to the statement, learned CIT(A) held that the company M/s.Sakambhari Vanijya Pvt. Ltd. is a paper company not doing any active business and, therefore, there is no creditworthiness of the company. The learned CIT(A) has not accepted the grounds raised by the assessee by upholding the addition of ₹ 15,00,000, under section 68.

27. Before us, the learned Counsel for the assessee drew our attention to the submission made in the assessment proceedings as well as before the learned CIT(A) during first appellate proceeding. The relevant Page-13 to 17 of the impugned order passed by the learned CIT(A) is felt necessary to reproduce herein below:-

"That the learned AO erred in law and on facts in making addition of Rs.15,00,000/- u/s. 68 of the Income Tax Act, 1961. The source of amount received as unsecured loan is explained and fully substantiated by legal and cogent evidence and therefore the action of the AO in treating the same as unexplained cash credit is improper and unjustified. We object to the addition made and have to submit as under for the favour of your kind consideration:-

(1) The assessee has received unsecured loan from various parties and the addition is made with respect to only Sakambhari Vanijya Pvt Ltd (SVPL) for unsecured loan amount received of Rs. 15,00,000/- during the year. The same is also repaid in subsequent years. Remaining unsecured loans are accepted and no doubt is raised on them. The AO has alleged that the assessee has arranged accommodation entries to various entities at Nagpur. We have to submit that the above observation is not relevant and the addition made with respect to unsecured loan obtained from Sakambhari Vanijya Pvt Ltd (SVPL) is not based on it. The AO has also alleged that the assessee has not been able to prove the creditworthiness of loan creditor and the genuineness of the transaction in view of the provisions of section 68 of the Income Tax Act, 1961. Further, the AO did not find the explanation offered by the assessee satisfactory and stated that the assessee has failed to discharge its onus towards explaining the credit of Rs.15,00,000/-. We respectfully object to the above observations and allegations made by the AO as the same are based on conjectures and surmises of AO without providing opportunity of being heard to assessee and also without properly verifying the facts of the case.

(2) The AO has stated that the onus of proving the source of a sum received is on the assessee. It was informed that the unsecured loan of Rs. 15,00,000/- was received from SVPL and the account confirmations of the above party along with the copy of ITR Acknowledgement, Bank Account Extract and Audited Financial Statement were furnished. All the above documents are attached herewith for your kind and immediate reference

(3) The AO in the assessment order has alleged that the assessee has not been able to prove the creditworthiness of the loan creditors and genuineness of the transaction. Further the explanation offered is not found satisfactory by the AO.

Your kind attention is invited to the ITR Acknowledgement and Financial Statement of the SVPL from whom funds are received. The details with regard to equity and own capital may kindly be perused. The aforesaid company has net worth of Rs.3,00,52,265/-. Your goodself will find that the net worth of the impugned company is sufficient to advance such smaller amounts to assessee:

The observation made by AO in para 11.2 that immediately before payment to the assessee, equivalent funds are received from different entities and the closing balance at the end of the day is minimal cannot be made basis to check the creditworthiness of the companies. No person would keep money idle in the bank account but that could not be the reason to doubt the transaction. The net worth of the company is the true criteria to be looked after which is enough in the impugned company for lending such amount to assessee.

Further, your goodself will find that the unsecured loan transaction is carried out through banking channel. A bank account is only opened by bank after due verification of the KYC documents of the customer. In such a situation, the genuineness of the party is well established. The said transaction was thoroughly verified and accepted by the AO. No doubt was raised with respect to genuineness of the party or the transaction per se during the course of post search enquiry as well as during assessment proceedings.

Further, as per status of company on MCA portal, the company is Active Compliant and the last date of Balance Sheet is 31-3-2020 and last date of AGM is 31-12-2020. Therefore, the identity and creditworthiness of the above company and genuineness of transaction cannot be doubted in view of the above parameters and therefore the addition made is without any sound basis.

In view of above, the assessee has duly discharged his onus and the source of the sum received is duly explained and thus in such circumstances, action of AO in making addition of amount as unexplained cash credit is unjustified and illegal.

(4) We would like to submit that the said amount of Rs. 15,00,000/- received by assessee is duly shown as Unsecured Loan in the Balance Sheet. The copy of Balance Sheet and Income & Expenditure A/c was furnished in assessment proceedings which is also attached herewith highlighting the unsecured loan of Rs. 15,00,000/-. There is no any document found in the search action u/s 132 which can be termed as incriminating in nature. The addition is not made referring to any kind of incriminating document found during the course of search. The addition made merely on the basis of entries made in the regular books of accounts of the assessee duly reflected in the assessee's financial

accounts without reference to any search material is not sustainable u/s 153A. We rely on the judgement of ITAT Mumbai in the case of Dinesh Salecha Vs. DCIT in ITA No. 5165, 5166, 5167/Mum./2018 dated 1-1-2021

(5) We have to respectfully object to the observations and would like to submit that the assessee has duly discharged his onus by establishing the identity of the unsecured loan party providing PAN and address in the account confirmation. Further, the source of receipt through banking channel and the purpose of taking the amount and utilization thereof to substantiate the genuineness of the credits reflected in books of accounts and the bank statement and audited financial statement to establish creditworthiness of the parties. We draw your kind attention to the assessment order, the AO did not at all discuss about the evidences submitted and disregarded the same while making addition casually brushing aside the details filed. Thus the addition is made merely on conjectures and surmises not considering the documentary evidence available on record.

(6) We have to submit that no incriminating document relating to SVPL was found during search action on the premises of assessee which suggest that the assessee is indulged in providing accommodation entries and he has any income which is undisclosed or unaccounted. Further, no evidence was brought on record by Investigation Wing or Assessing Officer that the assessee has indulged into any non-genuine transaction and therefore the genuineness of the transaction mentioned in para 13 cannot be doubted. No doubt was raised on the unsecured loan received from Sakambhari Vanijya Pvt Ltd holding it as non-genuine based on which addition is made. There is no proof that the cash/ unaccounted income belonging to assessee have changed hands and received by him as unsecured loan from SVPL. No such cash trail is produced during search or post search proceedings.

The conclusion drawn by AO that Mr.Sanjay Jain and Mr.Nirmal Agarwal are involved in providing accommodation entries to DP Jain Group has no bearing on the transactions vis a vis income of the assessee as from the seized documents it is nowhere established that the assessee has unaccounted income which is shown as unsecured loan in the books of accounts. Further, we would like to inform that there is no transaction of loan/ transfer of funds to D.P. Jain Group and therefore the allegation made by the AO that the assessee is engaged in providing accommodation entries is incorrect. Since there is no proof that the amount credited is unaccounted income and belongs to the assessee, the action of AO in treating entire unsecured loan as cash credit is unjustified and illegal.

It is humbly submitted that the assessee being individual, the proviso to section 68 is not applicable. The AO has mentioned in para 13, two case laws and observed that the assessee is required to explain source of source and that the proviso introduced in Section 68 is applicable retrospectively. The AO failed to realize that proviso is applicable to the company assesses and not to individual assessee and that too in case amount is received on account of issue of shares. Thus, the case laws quoted in the assessment order are not applicable to the assessee being individual and are therefore distinguished.

(7) It is respectfully submitted that the AO during search assessment proceedings neither confronted assessee with the doubt on the unsecured loan nor asked for any further details with respect to the same. The assessee has discharged onus cast on him by establishing the identity and creditworthiness

of the parties and genuineness of the transaction with the help of legal and cogent evidences. The AO has not brought on record any evidence to prove that the said funds are unaccounted and the transaction is not genuine. It is respectfully submitted that the AO never informed or conveyed during assessment proceedings her dissatisfaction or disagreement with respect to the amount received as unsecured loan and documentary evidence furnished. The observation drawn by AO is thus without giving proper opportunity of being heard and thus the addition made in such circumstances is not in accordance with the principal of natural justice. The AO could have informed the assessee or could have issued summons u/s.131 to the party in case of doubt over the transaction which in this case is not done.

We rely on the decision of Hon'ble Supreme Court has held in case of CIT vs. Orissa Corportion Pvt. Ltd. [1986] 159 ITR 78:-

"ITO treated certain cash credits shown to have been received by assessee from outside parties as unproved and added same to income of assessee under section 68 and imposed penalty on it under section 271(1)(c) -

Tribunal deleted the impugned addition as well as the penalty imposed on the grounds that (i) assessee have given the names and addresses of the creditors, (ii) it had also produced before ITO letters of confirmation, the discharged hundis and particulars of the different creditors including their general index numbers with the Income-tax Department, and (iii) the revenue, apart from issuing notices under section 131 to creditors at instance of assessee, did not pursue the matter further, nor it examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans - Whether any question of law arose from Tribunal's order - Held, on facts, no.

The above decision is a landmark decision and has been later relied upon in a plethora of judgements.

(8) We draw your kind attention to the statement of Shri. Praveen Agrawal recorded on 28th July, 2016. The statement of Shri. Praveen Agrawal was not provided inspite of specific request in the search and post search proceedings in case of assessee. Your goodself will find that there is no enquiry about Sakambhari Vanijya Put Ltd from whom the assessee had obtained unsecured loan. There is no discussion about the transactions of the assessee with the impugned company. The statement of Shri. Praveen Agrawal was recorded in respect of D.P. Jain Group, transaction undertaken and funds transferred to them and not with respect to the transactions undertaken by assessee. However, as informed, the assessee has not entered into any transaction in the year under consideration with D P Jain Group and there is no connection whatsoever as such and no funds are transferred by assessee to D P Jain Group. Further, the assessee and Shri Nirmal Agrawal who is also partner in M/s SNJ & Associates have denied all the averments made by Shri. Praveen Agrawal vide statement dated 26-7-2016 and 30-7-2016. Thus the reliance on the statement of Shri Praveen Agrawal is misplaced and the addition on the basis of such statement is devoid of merit.

We have to further submit that Shri. Praveen Agrawal is not director in the above-mentioned company and does not exercise any control whatsoever. There is no enquiry of the impugned transactions from Shri. Praveen Agrawal or other directors of the company SVPL. Thus it is submitted that no adverse

inference can be drawn on the basis of statements of the persons who have no legal control over the assessee or the company.

(9) The Directorate of Investigation has also recorded statements of Shri. Pramod Sharma and Shri. Pulak Bagchi who are alleged to be directors of the impugned company and employees of Shri. Praveen Agrawal who is entry operator.

It is submitted that the statement of Shri. Pramod Sharma is recorded on 10-11-2012, ie, four years before the search action on the assessee. Thus it is neither recorded nor related to the search on assessee but is recorded u/s 132(4) during the occasion of Search & Seizure operation on the premises of Gateway Financial Services Pvt Ltd. There is no enquiry about the assessee and transactions with the company viz. Sakambhari Vanijya Pvt Ltd from whom funds are taken by assessee. In the statement recorded, there is also no mention of the impugned company in which Shri. Pramod Sharma is alleged to be director. Another statement of Shri. Pramod Sharma was also recorded u/s 131 on 5-7-2013. In the said statement as well, there is no discussion about the assessee and the transactions connected to him with the impugned company.

The statement of Shri. Pulak Bagchi is also recorded on 4-7-2013, Le. three years before the search action on the assessee. Thus it is neither recorded nor related to the search on assessee. It seems that the said statement is recorded in connection with transactions of PACL Limited/ PACL India Limited and thus nowhere related to assessee by any stretch of imagination. There is no enquiry about the assessee and transactions with the company viz. Sakambhari Vanijya Pvt Ltd from whom funds are taken by assessee. In the statement recorded, there is also no mention of the impugned company in which Shri. Pulak hi is alleged to be director.

We further draw your kind attention to the Audited Financial statement and more particularly to Schedule 1.2 wherein the names of Shareholders are mentioned. Both the shareholders are not from Kolkata but belong to the local group and the shareholding is still continuing today. No doubt whatsoever is raised on the shareholders to whom company belongs.

The statements of so called directors of the company relied upon by the Assessing Officer in such circumstances is misconstrued. The transaction of credit of impugned sum in the bank account of assessee cannot be doubted on the basis of such third party statement not associated with the assessee. The action of AO is thus arbitrary and beyond the scope of making addition relying on such statements.

It is thus submitted that either there is no discussion whatsoever of the company in the statement of Shri. Paveen Agrawal or if it is there, no discussion is found about that company in the statement of so called directors of the impugned company recorded by Investigation Wing. Thus, it is submitted that no adverse inference can be drawn on the basis of statements of the persons who have no legal control over the above mentioned company.

In view of above, the statements as referred in the assessment order cannot be made basis for making addition and thus there is no unexplained cash credit within the meaning of section 68 of the Income Tax Act.

In view of above submission and facts of the case, the satisfactory explanation was furnished to AO with respect to the genuineness and creditworthiness of the unsecured loan and thus the addition made treating the same as unexplained cash credit may kindly be deleted. The ground of appeal may be allowed."

28. The learned Counsel for the assessee further submitted that the learned CIT(A) did not consider the evidence brought on record to justify the genuineness and creditworthiness of the company and further objections raised with regard to the statements relied upon by the Assessing Officer while making addition. The learned counsel submitted that the confirmation indicating details of PAN and address and ITR were furnished and the onus to explain the credit was discharged. The learned counsel further submitted that the identity of the company is not in dispute as the corporate entity was assessed to tax. The documents evidencing loan transaction through proper banking channel and that the assessee repaid the loan were also furnished which were accepted by revenue. The creditworthiness was established by furnishing the Audited Financial Statements and Bank Account of the loan credited. The learned counsel further submitted that there was no incriminating document found in the search proceedings under section 132 of the Act to doubt the loan transaction and the addition is made merely on the basis of entries in the regular books of accounts. Further, the learned Counsel referring to the statements relied upon by the Assessing Officer, contended that the enquiry was not with respect to the specific transaction of loan under consideration and no adverse observation is indicated in the statement of various persons discussed in the assessment order as regard the loan transaction and repayment thereon. The so-called employees of Praveen Kumar Agrawal were not the Director in the year under consideration and the

Master data status of the company from MCA Portal was furnished. The statements relied upon were rebutted by the assessee in the assessment proceeding itself. No falsity was found in any of the document furnished in the assessment proceedings. The observation of the Assessing Officer, vide assessment order at Para-13 regarding applicability of establishing source of source is not applicable to the assessee as the assessee in an individual.

29. Per-Contra, the learned Departmental Representative strongly relying upon the order passed by the Assessing Officer and the learned CIT(A), submitted that the dismissal of the assessee's appeal by the learned CIT(A) was after indicating detailed reasons, which do not call for any interference and in this view of the matter, the appeal filed by the assessee be dismissed.

30. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. It is noted from the Para-11 of the assessment order that the enquiry of loan of ₹ 15 Lakh from M/s. Sakambhari Vanijya Pvt. Ltd. (lender) was made on the basis of documents submitted by assessee vide letter dated 06/12/2018. There was no document found during search in relation to the lender. The assessee furnished confirmation of account, ITR Acknowledgement, Audited Financial Statement, Bank Account of the lender in the assessment proceedings. Bank Statements highlighting receipts and payment of loan were also placed on record. Ledger account evidencing repayment of loan is placed on record at Paper Book Page-134, wherein the details of repayment of loan by cheque details are mentioned. We find that the name of the assessee with ₹ 15 lakh loan is appearing in the Audited Financial Statement of lender company under

the list of Short Term Loans and Advances which is placed on record at Paper Book Page-132. The business turnover of the lender company is found in the Profit & Loss Account which is placed on record vide Paper Book Page-126 and the networth of the company is ₹3 crore. Similarly, the Company Master data as taken from MCA Portal of Ministry of Corporate Affairs, which is placed on record at Paper Book Page-133 also mentioned that the company is an active company. No irregularity has been pointed out by the Assessing Officer in the documents furnished in the assessment proceedings. Thus, we find that the assessee has discharged his onus to explain the loan credit by adducing proper legal evidence and considering the legal evidence, the lender company cannot be termed as paper company as alleged by Assessing Officer. The genuineness of the transaction and creditworthiness of the lender thus stands established. We have carefully examined the statements of various persons mentioned by the Assessing Officer vide Para-11.1 of the assessment order. Statement of Shri Praveen Kumar Agrawal, which is placed on record at Paper Book Page-135 to 139 recorded under section 131 by DDIT (Inv.), Unit-2(2), Kolkata, on 28/07/2016, at Kolkata is perused and we did not find any enquiry about the impugned loan transaction of ₹ 15 lakh of M/s. Sakambhari Vanijya Pvt. Ltd., in the year under consideration. Statement of Pramod Ramdin Sharma, referred by Assessing Officer was recorded on 10/11/2012 and 05/07/2013 and that of Pulak Bhagchi was recorded on 04/07/2013 i.e., much before the search conducted on assessee on 26/07/2016. As per the Master data from MCA Portal of Ministry of Corporate Affairs both these persons are not the Directors of the lender Company in the year when the loan was received from the lender. On careful perusal of the statement of

aforesaid two persons which are placed on record at Paper Book Page-142 to 154, we find that the statements are recorded much before the search on the assessee and there is no enquiry of the loan taken by the assessee in the year under consideration. Thus, they are general statement recorded by Investigation Wing, Kolkata, which are considered by the Assessing Officer while filing the assessment order and are not in respect to any enquiry of loan in the case of assessee. The legal evidence placed on record to explain loan credit does not get discredited by general statement. We are of the opinion that no addition could be made on the basis of statements of aforementioned three persons in view of our findings as above.

31. The observation of the Assessing Officer in last Para of Page-5 holding that the assessee was responsible for explaining the source of source is not accordance with law. Here, the Assessing Officer grossly erred and failed to realize that such an onus to explain the source of credits is upon the "company" assessee and not on "Individual" assessee which is the case before us. We find support from the decision of Hon'ble Jurisdictional High Court in Gaurav Triyugi Singh v/s ITO, [2020] 121 taxmann.com 86 (Bom.) wherein it was held as under:-

"13. Section 68 of the Act has received considerable attention of the courts. It has been held that it is necessary for an assessee to prove prima facie the transaction which results in a cash credit in his books of account. Such proof would include proof of identity of the creditor, capacity of such creditor to advance the money and lastly, genuineness of the transaction. Thus, in order to establish receipt of credit in cash, as per requirement of section 68, the assessee has to explain or satisfy three conditions, namely : (i) identity of the creditor; (ii) genuineness of the transaction; and (iii) credit-worthiness of the creditor.

14. In Pr. CIT v. Veedhata Towers (P.) Ltd. [2018] 403 ITR 415 (Bom), this court has held that assessee is only required to explain the source of the credit. There is no requirement under the law to explain the source of the

source. In the instant case, there is no dispute as to the identity of the creditor. There is also no dispute about the genuineness of the transaction. That apart, the creditor has explained as to how the credit was given to the assessee. Thus assessee had discharged the onus which was on him as per the requirement of section 68 of the Act. What the Assessing Officer held was that sources of the source were suspect i.e., he suspected the two sources Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur of the source Smt. Savitri Thakur.

15. In view of discharge of burden by the assessee, burden shifted to the revenue; but revenue could not prove or bring any material to impeach the source of the credit. Though Mr. Walve, learned standing counsel, has pointed out that the creditor had no regular source of income to justify the advancement of the credit to the assessee, we are of the view that the assessee had discharged the onus which was on him to explain the three requirements, as noted above. It was not required for the assessee to explain the sources of the source. In other words, he was not required to explain the sources of the money provided by the creditor Smt. Savitri Thakur i.e. Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur."

32. The contention of the learned Counsel that the assessee being an individual is not required to explain the source of source is tenable. Even otherwise also, the assessee has discharged the onus which lies upon him under section 68 by furnishing legal and cogent evidence like Ledger Account confirmation, ITR, Audited Financial Statements, Bank Account of the Lender, etc. Further, that transactions of loans and advances were through proper banking channel, the assessee has established the identity, creditworthiness of loan creditor and genuineness of the transactions also finds support on the basis of decision of Hon'ble Jurisdictional Bombay High Court in CIT vs. Orchid Industries (P.) Ltd.[2017] 397 ITR 136 (Bom.) and CIT v/s Gagandeep Infrastructure (P.) Ltd. [2017] 80 taxmann.com 272/247 Taxman 245/394 ITR 680 (Bom.). The Hon'ble Bombay High Court decision in the case of Orient trading Co pvt. Ltd v/s CIT, [1963] 49 ITR 723 (Bom.) has held that as under:-

"When, however, in a case where the entry stands in the name of the third party, the assessee satisfies the ITO as to the identity of the third party and

also supplies such other evidence which will show, prima facie, that the entry is not fictitious, the initial burden which lies on him can be said to have been discharged by him. It will not, thereafter, be for the assessee to explain further how or in what circumstances the third party obtained money and how or why he came to make a deposit of the same with the assessee. The burden will then shift on to the department to show why the assessee's case cannot be accepted and why it must be held that the entry, though purporting to be in the name of a third party, still represents the income of the assessee from a suppressed source. In order to arrive at such a conclusion, however, the department has to be in possession of sufficient and adequate material". The above judgement was followed by Hon'ble Punjab and Haryana High Court in the case of CIT vs Varinder Rawley reported at 366 ITR 232(P&H)."

33. The ratio laid down by Hon'ble Bombay High Court in decisions mentioned above is binding precedent. In view of law laid down by the Hon'ble Jurisdictional High Court the addition made by Assessing Officer at the hands of assessee is clearly unjustified and unsustainable.

34. Apart from the above decision of the Hon'ble Gujarat High Court in CIT v/s Apex Therm Packaging (P) Ltd., [2014] 42 taxmann.com 473/222 Taxman 125 (Mag.) is also found to be of much relevance. In this case, during the course of proceedings under section 143(3) of the Act, the assessee had furnished complete details of loan creditors along with their PAN, financial statements, loan confirmations, bank statements etc. The Assessing Officer, however, added the entire loan received under section 68 of the Act and also disallowed the interest paid thereon. On appeal, the learned CIT(A) allowed the assessee's appeal which was also affirmed by this Tribunal. On appeal by the Department under section 260A, the Hon'ble High Court observed that when full particulars, inclusive of the confirmation with name, address, PAN, IT returns, Balance Sheet & Profit & Loss account in respect of all the lenders were furnished and that it has been found that the loans were received through cheques, then the Assessing Officer was not

justified in making addition under section 68 of the Act. Accordingly, the Hon'ble High Court dismissed the appeal of the Department. The relevant findings of the Hon'ble High Court are as follows:-

'5. Heard Shri Sudhir Mehta, learned advocate appearing on behalf of the revenue. At the outset, it is required to be noted that the Assessing Officer directed to make the addition of Rs. 33,55,011/- under section 68 of the Income-tax Act with respect to 17 lenders. However, it has been found that with respect to most of the lenders, except two, necessary documents, inclusive of confirmation with name, address and PAN Numbers, copy of the IT return and acknowledgment, balance sheet and profit and loss account and computation of total income in respect of all the parties, except two parties, were furnished before the Assessing Officer. Even with respect to the remaining two depositors the assessee filed the confirmation, address and PAN Numbers. Under the circumstances, when it was found that the assessee already discharged the initial onus cast upon him with respect to all the creditors and accordingly when the CIT (A) has deleted the addition of Rs. 33,55,011/- made under section 68 of the Income-tax Act and consequently deleted the disallowance of Rs. 3,10,478/-, which was made with respect to interest and when the same has been confirmed by the ITAT, it cannot be said that ITAT has committed any error and/or illegality, which calls for the interference of this Court.

In paragraph 11, ITAT has observed and held as under:

"We have heard the rival submissions and perused the material on record. It is an undisputed fact that during the year the assessee had received loan from 17 parties aggregating to Rs.33,35,011/-. The details of which are listed at page 2 of Assessing Officer order. CIT (A) while deleting the addition has given a finding that the assessee had filed before Assessing Officer the confirmations with name, address, PAN Number, copy of ledger account, copy of balance sheet and profit and loss account, copy of Income-tax returns and computation of total income in respect of all the parties except two depositors. With respect to the two depositors, the assessee had filed confirmation, address and PAN Numbers and hence the assessee had also discharged the initial onus cast upon the assessee with respect to the two creditors. He has further noted that the loans were received through cheques and the loan account were duly reflected in the balance sheet of lenders. The CIT (A) has further held once the onus was fulfilled by the assessee, it was for the Assessing Officer to examine and bring any material on record which may help in rebutting the onus of assessee. The Assessing Officer has not brought any material on record in its support. The CIT (A) while deleting the addition has also relied on the decision of the Hon'ble Gujarat High Court in the case of Dy. CIT v. Rohini Builders [2002] 256 ITR 360 and the decision of Hon'ble Supreme Court, in the case of Orissa Corpn. Ltd. 153 ITR 78. Before us, nothing has been brought on record by the revenue to controvert the findings of CIT (A). Revenue has relied on the decision of Hon'ble Delhi High Court in the case of N.R. Portfolio (supra). We however find that the ratio of the aforesaid Delhi High Court decision are distinguishable on facts and therefore cannot be applied to the facts of the present case. In view of the aforesaid

facts, we find no reason to interfere with the order of CIT (A) and thus dismiss this ground of revenue."

35. In the light of the aforesaid decisions of Hon'ble Court and Jurisdictional High Court and other High Courts, the contentions taken by the assessee are supported and on examination of the facts of the present case and details and documents filed with respect to loan the assessee has discharged the onus of establishing the identity, creditworthiness and genuineness and therefore the addition under section 68 is unjustifiable. The issue of making the addition under section 68 of the Act when the loan credit has been repaid through proper banking channel, is considered by the Co-ordinate Bench of the Tribunal, Nagpur Bench, in DCIT v/s M/s. Vibrant Global Capital Ltd., ITA no. 229/Nag./2022, vide order dated 25/10/2024, wherein the same bench is a party to that order. On a careful analysis of judgements of Hon'ble Gujrat High Court in PCIT (C) v/s Ambe Tradecorp. Pvt. Ltd. [2023] 290 Taxmann. 471 (Guj.) and in PCIT v/s Merrygold Games Pvt. Ltd., [2024] 164 Taxmann.com 764 (Guj.) wherein we find that the Hon'ble Gujrat High Court has concluded that when the repayment of loan is accepted by the department in assessee's case the addition made under section 68 of the Act is unjustified and unsustainable. In this case, Principal Commissioner of Income-tax v/s Merrygold Gems (P.) Ltd. [2024] 164 taxmann.com 764 (Gujarat). their Lordships have held as follows:-

"9. Having considered the submissions advanced by learned advocates for the respective parties and the orders impugned in this appeal, what is evident is that the amount of loan received by the assessee was returned within the same financial year and in most of the cases within 30 days. The said repayment was also verified from the Ledger Account and the Bank Statement.

10. In view of aforesaid undisputed fact with regard to repayment of loan, at this juncture, it would be pertinent to take note of decision of

this Court in case of Dy CIT v. Rohini Builders [2003] 127 Taxman 523/256 ITR 360 (Gujarat)/12[2003] 127 Taxman 523/256 ITR 360 (Gujarat), wherein it is held as under:

"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 IIR 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 [TR 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 noncompliance 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.

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."

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 IIR 570."

11. Keeping in mind the ratio laid down in the said judgment, in the facts of the present case, we do not see any merit in the appeal and therefore, same deserves to be dismissed and is accordingly dismissed with no order as to costs."

36. This view is also supported by the Decision of Hon'ble Bombay High Court in the case of Pr.CIT v/s M/s. Skylark Build in Income Tax Appeal no.616 of 2016. In the present case also, we find that the loan amount has been repaid through proper banking channel. On the above factual position, their remains no scope to make addition under section 68 of the Act. Consequently, respectfully following the decision in Vibrant Global Capital Ltd. (supra) and detailed legal position discussed therein, we are of the considered opinion that the addition made in assessee's case under section 68 of the Act is unjustified and unsustainable on facts and in law. In assessee's case the confirmation, financial statement, Bank Statement, Master Data from MCA

Portal and ITR of the lender have been placed on record. The assessee has discharged his onus to explain the credit by adducing legal evidence on record. Accordingly, we set aside the impugned order passed by the learned CIT(A) on this issue and the addition made under section 68 of the Act at ₹ 15 lakh is hereby directed to be deleted. Thus, the grounds no.5 and 6 raised by the assessee are allowed.

37. In ground no.7, the assessee has challenged the charging of interest under section 234A and 234B of the Act on the basis that interest charged is improper. However, nothing was specifically contended before us. Therefore, the ground no.7, is dismissed.

38. In the result, assessee's appeal for A.Y. 2012-13 is partly allowed.

ITA no. 56/Nag./2022
Assessee's Appeal – A.Y 2013-14

39. The assessee has raised following ground:-

"(1) That the order of the learned Dy./Asst. Commissioner of Income Tax, Central Circle-1(3), Nagpur passed u/s. 143(3) r.w.s. 153A is bad in law and wrong on facts and the learned CIT(A) erred in confirming the same.

(2) That the learned CIT(A) erred in law and on facts in confirming the addition made by AO in the proceedings u/s 153A of the Income Tax Act, 1961 in absence of incriminating document found as a result of search. The additions made are void and bad in law.

(3) That the learned CIT(A) erred in law and on facts in confirming the addition made by the AO of Rs.14,31,000/- holding that the assessee has provided services of arranging parties and earned commission therefrom. On the facts and circumstances of the case, learned CIT(A) erred in holding that the assessee is engaged in the business of providing accommodation entries as the same is without any sound basis and therefore highly unjustified.

(4) That the learned CIT(A) erred in law and on facts in confirming the addition made by the AO of Rs.13,513/- holding that the assessee has arranged accommodation entries and earned commission therefrom. On the facts and circumstances of the case, the action of both the authorities is

without any sound basis and therefore highly unjustified.

(5) That the learned CIT(A) erred in law and on facts in confirming the action of AO in charging interest u/s. 234A and 234B of the Income Tax Act. The interest charged is improper.

(6) That for any other grounds with kind permission of your honour at the time of hearing of appeal."

40. Ground no.1, being general in nature, hence no separate adjudication is required.

41. In grounds no.2 & 3, the assessee has challenged the addition on account of commission on turnover transaction.

42. After hearing both the parties and on a perusal of the material available on record, we find that identical issue has been raised by the assessee in its appeal being ITA no.54/Nag./2022, for the assessment year 2011-12, wherein, vide ground no. 2 and 3, we have decided this issue in favour of the assessee and against the Revenue in Para-10, 11 and 12, of this order. Since the issue for our adjudication being identical, except variation in figures, consistent with the view taken therein in assessee's appeal cited supra and following the findings given therein, we reverse the order passed by the learned CIT(A) and allow the grounds no.2 & 3 raised by the assessee.

43. The issue arose out of ground no.4, relates to the impugned addition on account of commission on loan transaction.

44. After hearing both the parties and on a perusal of the material available on record, we find that identical issue has been raised by the assessee in its appeal being ITA no.55/Nag./2022, for the assessment year 2012-13, wherein, vide ground no.4, we have decided this issue partly in favour of the

assessee in Para-23 of this order. Since the issue for our adjudication being identical, except variation in figures, consistent with the view taken therein in assessee's appeal cited supra and following the findings given therein, we reverse the order passed by the learned CIT(A) and partly allow the ground no.4, raised by the assessee.

45. Insofar as ground no.5 is concerned, the issue relates to charging of interests under section 234A and 234B of the Act on the basis that interests charged is improper. However, nothing was specifically contended before us. Therefore, ground no.5, is dismissed.

46. In the result, assessee's appeal for A.Y. 2013-14 is partly allowed

ITA no. 57/Nag./2022
Assessee's Appeal – A.Y – 2014-15

47. The assessee has raised following grounds:-

"(1) That the order of the learned Dy./Asst. Commissioner of Income Tax, Central Circle-1(3), Nagpur passed u/s. 143(3) r.w.s. 153A is bad in law and wrong on facts and the learned CIT(A) erred in confirming the same.

(2) That the learned CIT(A) erred in law and on facts in confirming the addition made by AO in the proceedings u/s 153A of the Income Tax Act, 1961 in absence of incriminating document found as a result of search. The additions made are void and bad in law.

(3) That the learned CIT(A) erred in law and on facts in confirming the addition made by the AO of Rs.1,12,138/- holding that the assessee has arranged accommodation entries and earned commission therefrom. On the facts and circumstances of the case, the action of both the authorities is without any sound basis and therefore highly unjustified.

(4) That for any other grounds with kind permission of your honour at the time of hearing of appeal."

48. Ground no.1, being general in nature, hence no separate adjudication is required.

49. The issue arose from ground no.2 is, whether or not the learned CIT(A) was justified in confirming the addition made by the Assessing Officer in the proceedings under section 153A of the Act in absence of incriminating document found as a result of search.

50. During the course of hearing, the learned Counsel for the assessee did not wish to press this ground to which the learned Departmental Representative has not raised any objection. Accordingly, ground no.2, stands dismissed as "*not pressed*".

51. Ground no.3, relates to the addition on account of commission on loan transaction.

52. After hearing both the parties and on a perusal of the material available on record, we find that identical issue has been raised by the assessee in its appeal being ITA no.55/Nag./2022, for the assessment year 2012-13, wherein, vide ground no.4, we have decided this issue partly in favour of the assessee in Para-23 of this order. Since the issue for our adjudication being identical, except variation in figures, consistent with the view taken therein in assessee's appeal cited supra and following the findings given therein, we reverse the order passed by the learned CIT(A) and partly allow the ground no.3, raised by the assessee.

53. In the result, assessee's appeal for the assessment year 2014-15 stands partly allowed

ITA no. 58/Nag./2022
Assessee's Appeal – A.Y - 2015-16

54. The assessee has raised following ground:-

"(1) That the order of the learned Dy./Asst. Commissioner of Income Tax, Central Circle-1(3), Nagpur passed u/s. 143(3) r.w.s. 153A is bad in law and wrong on facts and the learned CIT(A) erred in confirming the same.

(2) That the learned CIT(A) erred in law and on facts in confirming the addition made by AO in the proceedings u/s 153A of the Income Tax Act, 1961 in absence of incriminating document found as a result of search. The additions made are void and bad in law.

(3) That the learned CIT(A) erred in law and on facts in confirming the addition made by the AO of Rs.80,000/- holding that the assessee has arranged accommodation entries and earned commission therefrom. On the facts and circumstances of the case, the action of both the authorities is without any sound basis and therefore highly unjustified.

(4) That for any other grounds with kind permission of your honour at the time of hearing of appeal."

55. Ground no.1, being general in nature, hence no separate adjudication is required.

56. The issue arose from ground no.2 is, whether or not the learned CIT(A) was justified in confirming the addition made by the Assessing Officer in the proceedings under section 153A of the Act in absence of incriminating document found as a result of search.

57. During the course of hearing, the learned Counsel for the assessee did not wish to press this ground to which the learned Departmental Representative has not raised any objection. Accordingly, ground no.2, stands dismissed as "not pressed".

58. Ground no.3, relates to addition on account of commission on loan transaction.

59. After hearing both the parties and on a perusal of the material available on record, we find that identical issue has been raised by the assessee in its appeal being ITA no.55/Nag./2022, for the assessment year 2012-13, wherein, vide ground no.4, we have decided this issue partially in favour of the assessee in Para-23 of this order. Since the issue for our adjudication being identical, except variation in figures, consistent with the view taken therein in assessee's appeal cited supra and following the findings given therein, we reverse the order passed by the learned CIT(A) and partly allow the ground no.3, raised by the assessee.

60. In the result, assessee's appeal for the assessment year 2015-16 stands partly allowed.

ITA no. 59/Nag./2022
Assessee's Appeal – A.Y - 2017-18

61. The assessee has raised following grounds:-

"(1) That the order of the learned Dy./Asst. Commissioner of Income Tax, Central Circle-1(3), Nagpur passed u/s. 143(3) is bad in law and wrong on facts and the learned CIT(A) erred in confirming the same.

(2) That the learned CIT(A) erred in law and on facts in confirming the addition made by the AO of Rs. 6,11,274/- holding that the assessee has arranged accommodation entries and earned commission therefrom. On the facts and circumstances of the case, the action of both the authorities is without any sound basis and therefore highly unjustified.

(3) That the learned CIT(A) erred in law and on facts in holding that the additional income offered by the assessee in the return of income covers any Unexplained portion of Gold ornaments and jewellery, Silver articles and cash found during the course of search even though all the afore-mentioned items were found by him as duly explained.

(4) That the learned CIT(A) erred in law and on facts in not allowing the telescoping of other addition made from the amount remaining out of surrender after the adjustment of unexplained cash, ornaments & jewellery, if any.

(5) That for any other grounds with kind permission of your honour at the time of hearing of appeal."

62. Ground no.1, being general in nature, hence no separate adjudication is required.

63. Ground no.2, relates to the addition on account of commission on loan transaction.

64. After hearing both the parties and on a perusal of the material available on record, we find that identical issue has been raised by the assessee in its appeal being ITA no.55/Nag./2022, for the assessment year 2012-13, wherein, vide ground no.4, we have decided this issue partly in favour of the assessee in Para-23 of this order. Since the issue for our adjudication being identical, except variation in figures, consistent with the view taken therein in assessee's appeal cited supra and following the findings given therein, we reverse the order passed by the learned CIT(A) and partly allow the ground no.2, raised by the assessee.

65. Grounds no.3 & 4, relate to the additional income offered in Return-Telescoping.

66. The brief facts of the case, as mentioned in the assessment order at Page-8 to 10 are that, during the course of search, explanation regarding cash found from the premises and jewellery found and seized was sought vide statements recorded under section 132(4) of the Act. According to the Assessing Officer, the assessee could not furnish proper reply and evidence regarding possession of cash and jewellery at the time of search and,

therefore, ultimately surrendered ₹ 1.50 crore in the statement dated 30/07/2016. However, while filing the return of income, the assessee has only shown an amount of ₹ 75 lakh under the head "Income From Other Sources" mentioning therein as 'amount surrendered' in the computation of Income. During the assessment proceedings, the assessee explained the possession of cash and jewellery on the date of search, vide letter dated 26/11/2018. The explanation was not found satisfactory by the Assessing Officer, who further held that the assessee has offered an additional amount of ₹ 1.50 crore during the statement recorded in the search proceedings. However, while filing the return of income, the amount surrendered was ₹ 75 lakh only. Accordingly, the Assessing Officer made addition of ₹ 75 lakh holding that the acquisition of money as envisaged under section 69A has not been explained. The assessee being not satisfied with the order of the Assessing Officer contested the addition before first appellate authority.

67. The learned CIT(A) discussed the issue at Page-28 to 30 of the impugned order and considered the family background for the purpose of possession of jewellery, detailed chart submitted explaining the gold jewellery in grams for each living and expired family members of Shri Sanjay Jain household. At Page-29 of the impugned order, the learned CIT(A) concluded stating that the explanation of the assessee regarding gold and Jewellery is satisfactory. The learned CIT(A) finally concluded that the additional income surrendered covers any unexplained portion of gold and Jewellery and silver or cash found during the search operation.

68. Before us, the learned counsel of the assessee drew our attention to the submission made by the assessee during the first appellate proceedings, which were reproduced in Page-9 to 23 of the impugned order passed by the learned CIT(A) and submitted that the Assessing Officer did not consider the explanation and evidence brought on record in proper perspective. He further referred to the statement dated 26/07/2016, which is placed on record in the Paper Book Page-53 to 55 and vehemently contended that the assessee explained the source of cash, jewellery and silver items and produced some of the bills of jewellery and also informed that the Jewellery belongs to various family members. He further drew our attention to Paper Book Page-20 to 23 which is the explanation filed in the assessment proceeding and contended that detailed explanation was filed with regard to the circumstances under which the gold Jewellery and silver articles came into his possession. He also drew our attention to various bills and ledgers which were furnished during assessment proceedings. He further contended that the additional offer of ₹ 75 lakh is not with reference to any specific asset, but it was clearly explained that in order to cover up any infirmity, and in case of explanation, not being found to the satisfaction of the Assessing Officer, the amount was surrendered. Thus, he contended that the provisions of section 115BBE are not applicable to the amount surrendered under the head "*Income From Other Sources*". The learned Counsel pointed out that the surrender of income of ₹ 75 lakh is not with reference to any asset as the assessee has explained the possession of cash and jewellery found at the time of search and, therefore, a specific ground no.6 regarding non-applicability of section 115BBE was taken before the learned CIT(A), which was not adjudicated by

the learned CIT(A) and hence filed an application on 10/12/2024, and requested to adjudicate the same.

69. We find force in the argument of the learned A.R. for the assessee that the surrender was not with respect to any specific item of cash and gold jewellery. In the return of income filed on 31/03/2018, the amount of ₹ 75 lakh was mentioned as "*amount surrendered under the head "Income From Other Sources"*" which fact is also noted by the Assessing Officer in the assessment order vide Para-7 / Page-5. We further find that after offering explanation of availability of source of cash, jewellery and silver the assessee also pointed out vide letter dated 26/11/2018, which is placed on record in the Paper Book Page-3 and 23 that there remains no unexplained cash, jewellery and silver article. The learned A.R. for the assessee further stated that the surrender of income of ₹ 75 lakh is available to cover any explanation which may not be upto the satisfaction of the authority. Further he pointed out that no credit of the surrendered income was taken in the books of accounts and, therefore, the same is available for telescoping with the addition, if any, made. Thus, considering the facts and evidence on record, it is an income available with the assessee as there is no credit taken in the books of accounts and no mention of any item against such income. While recording the surrender of income in the statement at Paper Book Page-71, we find that the surrender was with respect to gold jewellery, silver, and any other infirmity found subsequently. While making further addition of ₹ 75, lakh, the Assessing Officer mentioned the same as his undisclosed income under section 69A of the Act. The learned CIT(A) has considered the contentions of the assessee and has held that the explanation of learned A.R.

regarding gold jewellery is satisfactory. The learned CIT(A) accepted the jewellery inherited by the assessee after the demise of his family members and also the explanation with regard to jewellery purchased for which bills and voucher, ledger and cashbook were submitted. In Page-29 of the impugned order passed by the learned CIT(A), addition of ₹ 75 lakh has been already deleted. As regards the additional income of ₹ 75 lakh offered by the assessee in his return of income, the learned CIT(A) at Page-30 of the impugned order held that the surrendered income covers any unexplained portion of gold jewellery and silver articles or cash found during the search operation. Thus, we find that the learned CIT(A) has already allowed the telescoping of other addition from the amount remaining out of surrendered income. We have also examined the issue of chargeability of income under section 115BBE and found that a separate ground has been raised before the learned CIT(A) on which there is no specific findings given in the learned CIT(A) CIT(A) order. Considering the application of the assessee and after examining the issue of surrender of income as discussed above, we find that the assessee surrendered income in the return of income without specifying any item and without taking credit of such income in the books of accounts. In such circumstances, we hold that the provisions of section 115BBE cannot be applied in the instant case and the surrendered income is chargeable to tax at normal rates. Consequently, we set aside the impugned order passed by the Assessing Officer on this issue by allowing grounds no.4 & 5 raised by the assessee.

70. In the result, assessee's appeal for the assessment year 2017-18 is stands partly allowed.

ITA no. 53/Nag./2022
Assessee's Appeal – A.Y - 2010-11

71. The assessee has raised following grounds:-

"(1) That the assessment order passed by the Asstt. Commissioner of Income Tax, Central Circle 2(3), Nagpur is bad in law and wrong on facts.

(2) That the notice issued u/s.148 and the proceedings thereafter u/s.147 are bad in law and wrong on facts.

(3) That the learned AO erred in law and on facts in making addition of Rs.55,09,000/- holding that the assessee has earned commission. On the facts and circumstances of the case the action of the AO is without any sound basis and therefore highly unjustified.

(4) That the learned AO erred in law and on facts in making addition of Rs.1,54,676/- to the income holding that the cash receipt to that extent is unexplained. On the facts and circumstances of the case, the source of cash deposited in Bank is fully justified with evidence and the action of the AO is arbitrary and unjustified.

(5) That the learned AO erred in law and on facts in making addition of Rs.78,80,999/- to the income holding that there is no documentary evidence in support of deposit in the Bank Account. On the facts and circumstances of the case and explanation, the action of the AO is unjustified.

(6) That the learned Assessing Officer erred in law and on facts in charging interest u/s. 234B of the Income Tax Act. The interest charged is improper.

(7) That for any other grounds with kind permission of your honour at the time of hearing of appeal."

72. Ground no.1, relates to the issue of legality of notice issued under section 148 of the Act and proceedings or re-opening under section 147 of the Act.

73. The brief facts, as culled out from the assessment order are that, the return of income under section 139(1) of the Act was filed on 23/03/2011, disclosing income of ₹ 5,53,190. A survey action in the case of M/s. SNJ & Associates, was conducted at its office premises at Mangalam Icon, 1st Floor, Ram Nagar Square, Nagpur, on 26/07/2016, during which an Excel Sheet was

found and impounded which is placed on record at Page-4 of Annexure B-2, which, according to the Assessing Officer, contained details of turnover and commission earned by the assessee which was not shown in his return of income. A search action under section 132 was also conducted on 26/07/2016 in the residential premises of the assessee. Notice under section 131 was issued by the Investigation Wing in the name of Shri Sanjay Jain, Director, M/s. Navdurga Advisory Services Pvt. Ltd., and as Partner, M/s. SNJ & Associates, in response to which the assessee furnished reply before the Investigation Wing, vide letter dated 06/11/2016. The case of the assessee for the assessment year 2010-11 was reopened and the reasons recorded is placed on record at Paper book Page-6 & 7 by the Assessing Officer are as under :-

"Reasons for reopening the assessment u/s.147

Search & seizure action u/s.132 & survey u/s.133A were carried out in the case of M/s. D.P.Jain & Co. Group of cases on 26-07-2016. During the course of survey operation in the case of SNG CA Associates at Mangalam Icon, 1st Floor, Ramnagar Square, Nagpur an excel sheet bearing annexure No. B2 at Page No. 4 was impounded. It is seen from the excel sheet that it is year wise record of turnover made and commission by Shri Sanjay Jain. The details for F.Y. 2009-10 are as under :-

Sr. No.	F.Y.	Turnover	Commission @ 0.25%
1	2009-10	Rs. 220.39 Crores	Rs. 55.09 Crores

It is seen from the above that the assessee has worked out commission @ 0.25% on the turnover. The table further shows the amount received by him and also the outstanding receivable by the assessee. Summons u/s.131 was issued to the assessee to explain the nature of the above transactions. The assessee submitted that this amount pertains to one company M/s. Base Corporation of Bangalore of which the assessee was internal auditor. When asked to produce the same, the assessee till date could not produce any evidence. Further, on verification of details from ITD application the turnover of M/s. Base Corporation for the above F.Y. is Rs. 522.11 crores. Therefore the claim of the assessee that the above turnover belongs to M/s. Base Corporation is not supported by factual evidences. Considering the fact that the assessee Mr. Sanjay Dhanraj Jain and Mr. Nirmal Kumar Agarwal are in the business of providing accommodation entries to various entities, and further since the assessee has not given any evidence to show that the

commission worked out in the above document has been offered to tax. I have reason to believe that income of Rs. 55,09,000/- has escaped assessment in case of assessee within the meaning of first proviso to the Section 147 of the I.T. Act since the assessee failed to disclose fully & truly all material facts for its assessment for A.Y.2010-11."

The Approval granted u/s 151 is available in the Form of recording the reason for initiating proceedings u/s.147 and obtaining the approval of the Pr. Commissioner of Income Tax (Central) Nagpur which is at P.B. Page 6 & 7 are scanned and reproduced herein :-

FORM OF RECORDING THE REASONS FOR INITIATING PROCEEDINGS UNDER SECTION 147
AND OBTAINING THE APPROVAL OF THE
Pr. COMMISSIONER OF INCOME TAX (CENTRAL), NAGPUR

1	Name & address of the assessee	Shri Sanjay Jain 38, Sudesh Niwas, Baji Prabhu Nagar, Near Sarveswara Devalaya Square, Nagpur
2	PAN / GIR NO	AAGPJ8601G
3	Status	Individual
4	District / Circle / Ward	Dy. Commissioner of Income Tax, Central Circle-1(3), Nagpur
5	Assessment year in respect of which it is proposed to issue notice u/s 148	2010-11
6	The quantum of income which has escaped assessment	Rs. 55,09,000/-
7	Whether the provisions of section 147 are applicable	Provisions of section 147 are applicable.
8	Whether the assessment is proposed to be made for the first time. If the reply is in affirmative please state - (a) whether any voluntary return has already been filed	Yes Yes
	(b) If so, the date of filing the said return	23.03.2011
9	If the answer to item 8 is negative, Please state (a) The income originally assessed	Rs. 5,53,190/- u/s 143(1)
	(b) Whether it is a case of under assessment at a low rate assessment which has been made subject of allowing of excessive loss or depreciation	No. It is a case of failure on the part of the assessee to disclose full and true facts.
10	Whether the provisions of section 150(1) are applicable. If the reply is in the affirmative, the relevant facts may be stated against item No 11 and it may be brought out that provisions of section 150(2) would not stand in the way of initiation proceedings under section 147	No
11	Reasons for the belief that income has escaped assessment	As per annexure
12	Whether the Joint Commissioner / Pr Commissioner / Board are satisfied on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of notice u/s 148.	(V. MURALIDHARAN) Joint Commissioner of Income Tax, (Central) Range-1, Nagpur.
13	Whether the Pr. Ctl(Central) is satisfied on the reasons recorded by AO that it is fit case for the issue of notice under section 148	I am satisfied that it is a fit case for issue of notice u/s 148

Reasons for reopening the assessment u/s 147

Search & seizure action u/s 132 & survey u/s 133A were carried out in the case of M/s. D P Jain & Co. Group of cases on 26.07.2016. During the course of survey operation in the case of S N J CA Associates at Manglam Icon, 1st floor Ramnagar square, Nagpur an excel sheet bearing

annexure no.B2 at Pg no.4, was impounded. It is seen from the excel sheet that it is year wise record of turnover made and commission by Shri Sanjay Jain. The details for F.Y. 2009-10 are as under :-

S. No.	F.Y.	Turnover	Commission @ 0.25%
1.	2009-10	Rs.220.39 crores	Rs.55.09 lacs

It is seen from the above that the assessee has worked out commission @ 0.25% on the turnover. The table further shows the amount received by him and also the outstanding receivable by the assessee. Summons u/s 131 was issued to the assessee to explain the nature of the above transactions. The assessee submitted that this amount pertains to one company M/s. Base Corporation of Bangalore of which the assessee was internal auditor. When asked to produce the same, the assessee till date could not produce any

evidence Further on verification of details from ITD application the turnover of M/s Base Corporation for the above F.Y is Rs 522.11 crores Therefore the claim of the assessee that the above turnover belongs to M/s Base Corporation is not supported by factual evidences Considering the fact that the assessee Mr. Sanjay Dhanraj Jain and Mr Nirmal Kumar Agarwal are in the business of providing accommodation entries to various entities, and further since the assessee has not given any evidence to show that the commission worked out in the above document has been offered to tax. I have reason to believe that income of Rs 55,09,000/- has escaped assessment in case of assessee within the meaning of First proviso to the Section 147 of the I.T. Act since the assessee failed to disclose fully & truly all material facts for its assessment for AY 2010-11.

(C.S. Pojge)
Dy. Commissioner of Income Tax
Central Circle-1(3), Nagpur

74. Before the first appellate authority, the assessee challenged the reopening proceedings, which was rejected by the learned CIT(A).

75. We have carefully perused the reasons recorded for reopening which is placed on record at Paper Book Page-6 & 7, wherein the Form of approval under section 151 and reasons recorded were attached. Surprisingly, the date on which reasons are recorded and the date on which approval was granted is nowhere mentioned in the impugned Form. In Box no.8, it is mentioned "whether the assessment is proposed to be made for the first time. If the reply is in affirmative please state:-" The answer mentioned is "Yes". We also find from the assessment order that previously there was no assessment made under section 143(3) of the Act. However, while recording the reasons and concluding the Assessing Officer noted "I have reason to believe that income of Rs. 55,09,000/- has escaped assessment in case of assessee within

the meaning of first proviso to the Section 147 of the I.T. Act since the assessee failed to disclose fully & truly all material facts for its assessment for A.Y.2010-11". As per section 147 of the Act, for attracting the provisions of the proviso to section 147, it is sine qua non that an assessment under section 143(3) or under section 147 has been made for the relevant assessment year. In the absence of such an assessment having been made as noted in Box no.8 of the approval form, provisions of the proviso to section 147 cannot come into operation. It was obligatory on the part of learned Principal CIT, Central, to verify this prior to granting approval whether the first proviso could be made applicable in this case or not. It is further mentioned in Box no.9 – "If the answer to Item no.8 is negative, please state (a) the income originally assessed". It was noted against this that the originally assessed income is "₹ 5,53,190 under section 143(1)". Thus, on one hand, it is categorically accepted that the assessment order is to be made for the first time, while the aforementioned note, the intimation under section 143(1) as originally assessed income. Here, we place reliance on the judgment of the Hon'ble Jurisdictional High court in Dr. Amin's Pathology Laboratory v/s Jt. CIT, [2001] 252 ITR 683 (Bom.) wherein it has been held as under :-

"In the present case, returns have been accepted under section 143(1)(a). Thereafter, the Assessing Officer found that unpaid expenses which ought to have been disallowed were not disallowed. This aspect was overlooked when the returns were accepted under section 143(1)(a). Therefore, there is no question of change of opinion as alleged. Therefore, the first argument is rejected. On the second argument, it may be noted that the proviso to section 147 applies only to cases where reopening is sought of assessments under section 143(3). In the present case, there was no assessment of the petitioner under section 143(3) in respect of the assessment years 1995-96 and 1996-97. Hence, the proviso to section 147 has no application. It is true that after the returns came to be accepted in respect of the assessment year 1995-96, four years have elapsed. However, there was no assessment under section

143(3) as in the case of the notice which is the subject-matter of Writ Petition No. 955 of 2001 (see [2001] 252 ITR 673 (Bom)). Therefore, the proviso to section 147 has no application to the facts of the present case. "

76. Thus, while granting approval, the learned Principal CIT, Central, mechanically without appraisal of material and without application of mind granted approval mentioning that "*I am satisfied that it is fit case for issue of notice u/s.148 of I.T. Act*". In our considered opinion, while recording the satisfaction, at least, there should be some indication that the approving authority has examined the record prior to granting of approval. In large number of decisions which are discussed herein below, it has been held that such mechanical approval vitiates the reopening proceedings. We place reliance on the judgment of the Hon'ble Jurisdictional High Court in Kartik Sureshchandra Gandhi v/s ACIT, [2023] 154 taxmann.com 193 (Bom.), wherein it has been held that where Assistant Commissioner while issuing notice under section 148, had obtained sanction from specified authority (i.e., Principal CIT) but specified authority while granting approval under section 151, had selected wrong section 149(1)(b), it could be said that neither issuing authority, i.e., Assistant Commissioner, nor sanctioning authority, i.e., Principal CIT had applied their mind but have simply issued notice mechanically and thus, notice issued under section 148 is liable to be quashed. The relevant portion in Para-14 of the said judgment of the Hon'ble Jurisdictional High Court cited supra, is reproduced herein below:-

"14. Having considered the approval under section 151 of the Act, we are satisfied that there is no valid sanction. There is no evidence that PCIT has even granted any valid sanction. If respondents say there was a sanction by respondent no. 2, then it is an obvious case of utter non application of mind because he would otherwise have not granted sanction if he had only read and applied his mind to what is stated in box 9, i.e., the time limit for current proceedings covered under is stated to be under section 149(1)(b), or he

would have sent it back to respondent no. 1 refusing to grant approval. It also goes to say that even respondent no. 1, who has sought approval, has not applied his mind. We are of the opinion that if only respondent no. 2 had read the report carefully, he would have never come to the conclusion that there is any material before him to treat it as a fit case to issue notice under section 148 of the Act or pass order under section 148A(d) of the Act. The safeguards provided in sections 148 and 151 were lightly treated by respondent nos.1 and respondent no. 2. Both of them appear to have taken the duty imposed on them under these provisions as of little importance."

77. We also place reliance on the judgment of the Hon'ble Delhi High Court in United Electrical Company (P) Ltd. v/s CIT & Ors., 258 ITR 317 (Del.) where approval by the Addl. CIT under section 151, was given in the following terms:-

"Yes, I am satisfied that it is a fit case for issue of notice u/s. 148 of the Income Tax Act". Analyzing, the above satisfaction/approval, it has been held by the Hon'ble High court that the CIT is required to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the AO. The said power cannot be exercised casually and in a routine manner. It has been held by Hon'ble high Court that "We are constrained to observe that in the present case, there has been no application of mind by the Addl. CIT before granting the approval". (Para 19 is relevant in this judgment).

78. We further find that the Hon'ble Jurisdictional High Court in Svitzer Hazira v/s ACIT, 441 ITR 19 (Bom.), has held that approval/sanction granted under section 151 by writing - *"Yes, I am satisfied "cannot be held to be a valid approval/sanction.*

79. The Hon'ble Supreme Court in CIT v/s S. Goyanka Lime & Chemical Ltd. [2023] 150 taxmann.com 245 (SC) arising out of order of Hon'ble High Court of Madhya Pradesh in CIT vs. S. Goyanka Lime & Chemicals Ltd. [2015] 56 taxmann.com 390 (MP) confirmed the order of the Hon'ble High Court wherein Hon'ble High Court, by impugned order, held that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under section 148,

reopening of assessment was invalid – *"Whether Special Leave Petition filed against impugned order was to be dismissed Held, Yes (in favour of the Assessee)."*

80. The Hon'ble Delhi High Court in Pr. CIT vs. N.C. Cables Ltd. [2017] 391 ITR 11 (Del.), while deciding an identical issue has held that section 151 of the Act clearly stipulates that the CIT, who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. Mere appending of the expression '*approved*' says nothing. It is not as if the Commissioner has to record elaborate reasons for agreeing with the noting put up before him. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. When such exercise appears to have been ritualistic and formal rather than meaningful which is the rationale for the safeguard of an approval by a higher ranking official, the finding of the Tribunal quashing the reassessment proceedings cannot be disturbed.

81. Hon'ble Supreme Court in Chhugamal Rajpal v/s S.P. Chaliha & Ors. [1971] 79 ITR 603 (SC) has held that where the Commissioner had mechanically recorded permission and the important safeguards provided in sections 147 and 151, were lightly treated by the Officer and the Commissioner, the notice issued u/s 148 was held as invalid.

82. Hon'ble Delhi Court, while following Chhugamal Rajpal in the case of Ess Adv. (Mauritius) S.N.C. Et Compagnie v/s ACIT, [2021] 437 ITR 001, wherein, while granting the approval, the ACIT mentioned – *"This is fit case for issue of notice under section 148 - has written the Income- tax Act, 1961. Approved"*,

had held that the said approval would only amount to endorsement of language used in section 151 of the Act and would not reflect any independent application of mind. Thus, the same was considered to be flawed in law.

83. Hon'ble Delhi High Court in Capital Broadways (P.) Ltd. v/s ITO, [2024] 167 taxmann.com 533 (Del.) held as under:-

"13. The satisfaction arrived at by the concerned Officer should be discernible from the sanction order passed under Section 151 of the Act. However, as may be seen, the approval order is bereft of any reason. There is no whisper of any material that may have weighed for the grant of approval.

14. Even the bare minimum requirement of the approving authority having to indicate what the thought process was, is missing in the aforementioned approval order. While elaborate reasons may not have been given, at least there has to be some indication that the approving authority has examined the material prior to granting approval. Mere appending the expression "Yes I am satisfied" says nothing. The entire exercise appears to have been ritualistic and formal rather than meaningful, which should be the rationale for the safeguard of an approval by a high ranking official. Reasons are the link between material placed on record and the conclusion reached by the authority in respect of an issue, since they help in discerning the manner in which the conclusion is reached by the concerned authority.

15. to 19.

20. As explained in the above cases, mere repeating of the words of the statute, mere rubber stamping of the letter seeking sanction or using similar words like "Yes, I am satisfied" will not satisfy the requirement of law. Hence, we are of the firm view that PCIT has failed to satisfactorily record his concurrence. The mere use of expression "Yes, I am satisfied" cannot be considered to be a valid approval as the same does not reflect an independent application of mind. The grant of approval in such manner is thus flawed in law."

84. In view of the aforesaid discussions, the impugned notice issued under section 148 of the Act and proceedings or re-opening under section 147 of the Act are not sustainable and are thus hereby quashed. Consequently, ground no.1, raised by the assessee is allowed.

85. Ground no.2, relates to the addition on account of commission on turnover transaction.

86. After hearing both the parties and on a perusal of the material available on record, we find that identical issue has been raised by the assessee in its appeal being ITA no.54/Nag./2022, for the assessment year 2011-12, wherein, vide ground no. 2 and 3, we have decided this issue in favour of the assessee and against the revenue. Since the issue for our adjudication being identical, except variation in figures, consistent with the view taken therein in assessee's appeal cited supra and following the findings given therein, we set aside the impugned order passed by the learned CIT(A) and allow the ground no.2, raised by the assessee.

87. Ground no.3, raised by the assessee relates to the addition on account of amount received in Bank.

88. Brief facts as emerging from the assessment order and other records are that in the assessment proceedings the assessee furnished Bank Account and ledger account of Bank in which there were certain deposits in the Bank Account by cheques amounting to ₹ 78,80,999. The assessee furnished explanation that it relates to sale of shares inherited from his father after his death. In support thereof he furnished the death certificate, Balance sheet, capital account, copy of journal entry and ledger account of shareholding. The receipt on account of sale of shares through banking channel was explained with evidence. Rejecting the explanation of the assessee, the Assessing Officer observed that the assessee could not produce the return of

income of his father, share certificate and documents evidencing sale of shares and therefore made addition to the income of the assessee.

89. The assessee challenged the addition before the learned CIT(A) who dismissed the ground by holding that there are wide gaps in the explanation of the assessee as the total share transferred are not reconciled or matching with the amount received and further there is no share purchase agreement or confirmation brought on record by the assessee. Consequently, the learned CIT(A) confirmed the addition holding it to be unexplained credit.

90. Before us, the learned counsel for the assessee vehemently contended that the credits in the Bank Account were duly explained and there is no unexplained credit. He submitted that there was no evidence found as a result of search to doubt the deposit in the Bank Account and the reasons recorded before issue of notice under section 148 also does not mention any such outcome as a result of enquiry in search or survey proceedings. The Bank Accounts and the ledger account along with explanation were duly furnished and it was explained to the Assessing Officer, how the assessee inherited share from his father and which were sold and the realisation deposited in Bank Account. The books of accounts in the ledger account were found at the time of search and, therefore, are very crucial evidence which the Assessing Officer has totally disregarded. He submitted that the assessee furnished documents like Bank Account, Ledger Accounts, copy of return filed under the Companies Act etc., to substantiate that the amount deposited in the Bank Account are only out of realisation of opening balance in the share account and, therefore, cannot be treated as unexplained income. He drew our

attention to the show cause notice dated 27/11/2017 and submitted that the Assessing Officer only asked for the details of deposit which were duly submitted and explained. There was no mention of any requirement of share certificate, etc., in the show cause notice.

91. Per-contrā, the learned Departmental Representative strongly relying upon the order passed by the Assessing Officer and the learned CIT(A), submitted that the dismissal of the assessee's appeal by the learned CIT(A) was after indicating detailed reasons, which do not call for any interference and in this view of the matter, the appeal filed by the assessee be dismissed.

92. We have given thoughtful consideration to the arguments made by the rival parties and perused the material available on record. On careful perusal of the show cause notice dated 27/11/2017 which is placed on record vide Paper Book Page-8 to 10, we find that the show cause was with respect to the impounded document Annexure-B-2 / Page 4. vide Para-4, the Assessing Officer, on referring to ledger extracts of Bank Account, asked for the explanation for deposit in detailed along with documentary evidence. The assessee furnished detailed letter dated 05/12/2017, which is placed on record vide Paper Book Page-15 to 18 and vide Para-3 of the aforesaid letter, the assessee explained how he inherited shares from his father and furnished death certificate, copy of capital account of Sanjay Jain, copy of journal entry passed and copy of ledger account of "*Based Shares received from father*" account. It was also stated therein the name of the Group to whom the shares were sold and that sale proceeds received were deposited in the Bank Account. On a perusal of the Balance Sheet as on 31/03/2008, of the

assessee, a copy of which is placed on record vide Paper Book Page-82, we find that under the head "*Assets received from father*" the details of various assets of father including the "*Shares-Based Shares received from father ₹ 78,80,990*" have been separately disclosed. Further, the assessee also furnished Ledger Account of "*Based Shares received from father*" which is also placed on record vide Paper Book Page-92 for the period from 01/04/2009 to 31/03/2010 in which the aforesaid amount is shown as opening balance. These documents are part of the regular books of accounts. The amount received in the year under consideration is found recorded in the regular Bank Account and the ledger account. Thus, we find that the aforesaid amount received in the realisation of assets by the assessee and certainly cannot be held as unexplained credit or income for the year under consideration when the transaction is through Banking channel. The addition on account of unexplained income, according to us, cannot be sustained. Further, the assessee has furnished documentary evidence to establish that the receipts were relating to sale of shares which were inherited from his father who expired earlier. On close examination of annual return of Base Corporation Ltd., which is part of the record of Registrar of Companies under the Companies Act, at the back Page-99, the name of father of assessee Shri Dhanraj Jain, is appearing as "*transferor*" and the name of Aditya Arora is appearing as "*transferee*", similarly, on Back Page-101, the assessee's name is found as shareholder in the annual return of company for the year 2007-08. Thus, the shareholding in the name of father and assessee is corroborated with evidence, though the assessee could not reconcile the share mentioned in these documents and the share sold. The assessee fairly considered that

the enquiry was made in the year 2017 while the transactions were in the financial year 2009-10. As discussed, in the order for the assessment year 2011-12, wherein we have already noted that the address of the company was known to the Department, however, there was no enquiry with such company by the Assessing Officer. The Assessing Officer, while making addition, mentioned that the assessee could not furnish the return of income of his father or his own so that the shareholding declared could be verified. The return of income, according to our knowledge, for the year 2008-09 and 2009-10 did not have any such requirement of disclosure of shareholding. Further, in a closely held company the share certificate is required to be surrendered along with share transfer form at the time of its transfer to the transferee. Considering the facts and circumstantial evidence, we hold that the credit in Bank Account is on account of realisation of opening balance in asset account viz., shares and the name of the payer is identifiable and, therefore, it cannot be treated as unexplained income as the Revenue has miserably failed to point out the any incorrectness in the information provided in spite of the search action. Thus, considering the above factual aspects, we direct the Assessing Officer to delete the addition of ₹ 78,80,999. The ground no.3, raised by the assessee is allowed.

93. In ground no.4, the assessee has challenged the charging of interest under section 234B on the basis that interest charged is improper. However, nothing was specifically contended before us. Therefore, the ground no.4, is dismissed.

94. In the result, assessee' appeal for A.Y. 2010-11 is partly allowed

Order pronounced in the open Court on 25/02/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 25/02/2025

Copy of the order forwarded to:

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

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur