

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER**

**ITA Nos.1131 & 1132/PUN/2024
Assessment Years : 2017-18 to 2018-19**

Shri Ganesh Bhivraj Bhutada 812, Kasba Peth, Near Kamla Nehru Hospital, Pune – 411011 PAN: AHPPB9435N	Vs.	ACIT, Central Circle-1(1), Pune
(Appellant)		(Respondent)

Assessee by : Shri V Narendra Sharma, Advocate
Department by : Shri Amol Khairnar, CIT-DR
Date of hearing : 16-12-2024
Date of pronouncement : 06-03-2025

ORDER

PER R. K. PANDA, VP :

The above two appeals filed by the assessee are directed against the separate orders dated 10.05.2024 of the Ld. CIT(A), Pune-11 relating to assessment years 2017-18 and 2018-19 respectively. Since identical grounds have been raised by the assessee in both these appeals, therefore, for the sake of convenience, these were heard together and are being disposed of by this common order.

2. First we take up ITA No.1131/PUN/2024 for assessment year 2017-18 as the lead case. Facts of the case, in brief, are that the assessee is an individual and filed his return of income for the impugned assessment year on 30.07.2017 declaring total income of Rs.43,33,970/- which was processed u/s 143(1) of the Income Tax

Act, 1961 (hereinafter referred to as 'the Act') on 18.11.2017. A search and seizure action u/s 132 of the Act was carried out in the case of Shri Ashok B Jain and others (Dabba Trading) group on 04.11.2017 by the Investigation Wing, Pune. During the course of search at the residential premises of Shri Ashok B Jain, it was found that Ashok B Jain was engaged in Dabba trading business and made investment in Bhishis. It was also found that the assessee Shri Ganesh Bhutada is operating various Bhishis and also working as a sub-broker of Shri Ashok B Jain. During the course of search at the premises of Shri Ashok B Jain, various documents were seized which revealed unaccounted cash transactions with Shri Ganesh Bhutada in the nature of money lent by Shri Ganesh Bhutada and therefore, the office of the assessee Shri Ganesh Bhutada was covered under survey action u/s 133A of the Act. Since some documents pertaining to unaccounted cash transactions by Shri Ashok B Jain were related to the assessee, proceedings were initiated in the case of the assessee u/s 153C by recording satisfaction and notice u/s 153C of the Act was issued on 29.03.2021. The assessee in response to the same filed the return of income on 23.11.2021. Statutory notices u/s 143(2) and 142(1) of the Act were issued to the assessee in response to which, the assessee filed his submissions from time to time.

3. During the course of assessment proceedings copies of relevant seized material and incriminating documents containing notings evidencing the money lent transactions were provided to the assessee, the details of which are as under:

Sr. No.	Bundle/Page No. (For the Period)	Amount as per seized document	Actual Amount (Rs.)	Interest in F.Ys.	
				2016-17	2017-18
1	B-5/pg (black)	600.00	6,00,00,000/-	66,75,000/-	36,00,000/-
2	B-5/pg.59	300.00	3,00,00,000/-		
			9,00,00,000/-	66,75,000/-	36,00,000/-

4. However, the assessee flatly denied to have any such transactions with Shri Ashok B Jain. The Assessing Officer noted that during the course of search at the residential premises of Shri Ashok B Jain at B-503, Hyde Park, Market Yard, Pune, bundle No.5 was found and seized. Page Nos.43 to 68 of this bundle related to MCX trading and various loans and advances taken and given in cash. During the course of search, notings on said pages were confronted to Shri Ashok B Jain to explain the method of notings along with contents. In the notings on back side of page 55, Shri Ashok B Jain stated that Shri Ganesh Bhutada had given cash loan of Rs.6 crore to him. Further, he had stated that Shri Ganesh Bhutada had also received Rs.6 lakh in cash as interest at 1%. Further, from notings on page No.59 of bundle No.5, Shri Ganesh Bhutada had also given cash loan of Rs.3 crore to Shri Ashok B Jain on which he had received interest @ 1% per month from 01.04.2016 to 30.09.2017. Further, Shri Ganesh Bhutada is also working as sub-broker of Shri Ashok B Jain in Dabba trade and also participating in various Bishis. He is also involved in money lending in cash.

5. The Assessing Officer noted that the aforesaid transactions are unaccounted transactions and source of money so advanced is unexplained and the interest income earned is also unaccounted. The Assessing Officer further noted that during post search enquiry, Shri Ashok B Jain has prepared a ledger by entering all the notings mentioned on said seized documents in tally. During search, said notings were confronted to Shri Ashok B Jain to explain the method of noting along with content and Shri Ashok B Jain offered explanation thereon in his statement u/s 132(4) of the Act which has been reproduced by the Assessing Officer in the body of the assessment order. Similarly, at page 59, there is one more noting of Shri Ganesh Bhutada which the Assessing Officer has reproduced. He noted that as per page 59, it is clear that Shri Ashok Jain duly has received cash loan of Rs.3 Cr from Shri Ganesh Bhutada on 01-04-2016 and paid interest thereon on various dates @ 1% interest per month. Further from the above said seized page no.55, it is clear that Shri Ashok B Jain has taken Rs.6 Cr in cash on 01-10-2017 from Shri Ganesh Bhutada. Further, he has paid interest in cash on various dates as mentioned above. The payment of interest @ 1% is also admitted by Shri Ashok B Jain in his statement recorded u/s 132(4) of the Act. On analysis of the interest given to Shri Ganesh Bhutada, it came to be known that the assessee has given Rs.66,75,000/- as interest on Rs.3 crore @ 1% per month in the F.Y. 2016-17 relevant to A.Y. 2017-18. The Assessing Officer further noted that during the course of assessment in the case of Shri Ashok B Jain for A.Y. 2017-18 the interest paid of Rs.66,75,000/- to Shri Ganesh Bhutada has been added and taxed

accordingly. The Assessing Officer accordingly brought the said transactions to tax in the hands of Shri Ganesh Bhutada as the amount of Rs.3 Cr. lent to Shri Ashok B Jain on 01/04/2016 treating as unexplained investment u/s 69 r.w.s. 115BBE of the Act. The Assessing Officer further noted that Shri Ganesh Bhutada has also earned interest of Rs.66,75,000/- on the amount so lent to Shri Ashok B Jain, therefore the said amount was also brought to tax under 'Income from other sources'.

6. Before the Ld. CIT(A), the assessee, apart from challenging that the Assessing Officer gave very little time for filing the explanations for which the assessment is illegal and bad in law, challenged the addition on merit. So far as the validity of assessment on account of violation of principles of natural justice is concerned, the Ld. CIT(A) dismissed the same on the ground that during the assessment proceedings the assessee did not file the return of income in time and pushed the assessment proceedings towards the time barring date and therefore he cannot claim that the Assessing Officer did not give adequate time for furnishing the details.

7. So far as the addition on merit is concerned, the Ld. CIT(A) confirmed Rs.3 crore on account of cash loan and Rs.66,75,000/- on account of interest received from Shri Ashok B Jain.

8. So far as the addition of Rs.3 crore is concerned, the Ld. CIT(A) sustained the addition made by the Assessing Officer by observing as under:

“15. The appellant has raised a contention that no addition can be made merely on the basis of material seized from the premises of a third party. In support of this, the appellant has relied on various case-laws. I have considered this plea of the appellant. In this connection, it may be mentioned that the addition is made on the basis of meticulous and detailed information contained in the seized material which is further corroborated by the statement of Shri Ashok B Jain, in the statement recorded u/s 132(4) of the Act. Thus, it cannot be said that the addition was made merely on the basis of seized material in a third-party case.

16.1 It is a well settled legal position that the provisions of Indian Evidence Act do not strictly apply to income tax proceedings because the income tax proceedings are civil proceedings and not criminal proceedings as held in the case of CIT v. Swarup Cold Storage and General Mills [1982] 136 ITR 435 (All.). Also, the jurisdiction Tribunal in the case of Arvind M Kariya vs. ACIT (2013) 153 TTJ 0422 (MUM) has held that income tax proceedings are civil proceedings and the degree of proof required is by preponderance of probabilities. The principle of preponderance of probability means that a fact is said to be proved when, after considering the matters before it the Court considers its existence so probable that a prudent man ought under the circumstances of the particular case, to act upon the supposition that it exists.

16.2 The Hon'ble Bombay High Court in the case of Smt. Rajrani Gupta vs DCIT [2012] 27 taxmann.com 235 (Bombay) after relying on the judgement of Hon'ble Supreme Court in the case of Sumati Dayal v. CIT [1995] 80 Taxman 89 (SC) has observed as under:

33In matters such as these all facts are within the knowledge of the appellant and therefore the department is not expected to prove its case with mathematical precision but a degree of probability of a prudent man taking into account the probable behaviour of a reasonable man along with surrounding circumstances.....

16.3 An almost identical situation has been dealt by Hon'ble ITAT, Delhi Bench in the case of Hersh V Chadha vs DDIT [2011] 9 taxmann.com 1 (Delhi) wherein on the basis of admission of M/s Bofors of paying commission over and above what was disclosed in books, the Hon'ble ITAT upheld the addition on account of unaccounted commission, in the hands of Mr. Chadha. Various observations made by Hon'ble Tribunal in this case are as under:-

i. The dispute concerned the determination of the income-tax liability of the assessee rather than fixing any criminal liability or accountability of the assessee for any other law or obligation. The admissibility of

documents, evidence or material differs greatly in income-tax proceedings and criminal proceedings respectively. In criminal proceedings, the charge is to be proved by the State against the accused establishing it beyond doubt, whereas as per the settled proposition of law, the income-tax liability is ascertained on the basis of the material available on record, the surrounding circumstances, human conduct and preponderance of probabilities [Para 6.1]

ii. Rules of evidence do not govern the income-tax proceedings, as the proceedings under the Income-tax Act are not judicial proceedings in the sense in which the phrase 'judicial proceedings' is ordinarily used. The Assessing Officer is not fettered or bound by technical rules about evidence contained in the Indian Evidence Act and he is entitled to act on material which may not be accepted as evidence in a Court of law. [Para 6.3]

iii. It would, at this stage, be relevant to consider the admissibility and use of circumstantial evidence in income-tax proceedings. Circumstantial evidence is evidence of the circumstances, as opposed to direct evidence it may consist of evidence afforded by the bearing on the fact to be proved, of other and subsidiary facts, which are relied on as inconsistent with any result other than the truth of the principal fact. It is evidence of various facts, other than the fact in issue which are so associated with the fact in issue, that taken together, they form a chain of circumstances leading to an inference or presumption of the existence of the principal fact

In the appreciation of circumstantial evidence, the relevant aspects as laid down from time to time are -

- *the circumstances alleged must be established by such evidence, as in the case of other evidence;*
- *the circumstances proved must be of a conclusive nature and not totally inconsistent with the circumstances or contradictory to other evidence;*
- *although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the surface of the evidence adduced, some of these links may have to be inferred from the proved facts;*
- *in drawing those inferences or presumptions, the authorities must have regard to the common course of natural events, to human conduct and their relation to the facts of the particular case;*
- *The circumstantial evidence can, with equal facility, be resorted to in proof of a fact in issue which arises in proceedings for the assessment of taxes both direct and indirect, circumstantial evidence can be made use of in order to prove or disprove a fact alleged or in issue. In fact, in whatever proceedings or context inferences are required to be drawn from the evidence or materials available or*

lacking, circumstantial evidence has its place to assist the process of arriving at the truth [Para 6.13]

iv. It will also be worthwhile to consider the nature of burden of proof on the Assessing Officer for proving a fact or circumstance in the income-tax proceedings. The questions raised about the tax liability by the Assessing Officer are to be answered by the assessee by furnishing reasonable and plausible explanations. If assessee is not forthcoming with proper or complete facts or his statement or explanation is contradictory, drawing of suitable inferences and estimation of facts is inevitable. The Courts generally will not interfere with such estimate of facts, unless the inferences or estimates are perverse or capricious [Para 6.14]

17. The ratio laid down by above case-laws is clearly applicable to the facts of the present case and therefore following the above case-laws and discussion made earlier in this, it is held that the appellant has paid 'on-money' in cash amounting to Rs.1,42,81,000/- to M/s Hiranandani Properties Private Limited for the flat no.2202, Orchid, Hiranandani Meadows, Thane. The ground no.1 raised by the appellant is DISMISSED.

18. Another contention raised by the appellant is that he was not provided the cross examination of Shri Ashok B Jain and thus, the assessment order should be held as invalid. In this connection, it may be stated that it is not the claim of the appellant that he requested the assessing officer to allow cross-examination of Shri Ashok B Jain and the AO did not allow the same. The appellant has not submitted any document/letter suggesting that any request of cross-examination was made before the assessing officer. It is a settled legal position that after foregoing its right of cross-examination at the stage of assessment proceedings, the appellant now cannot take this plea at this stage that it was not provided the opportunity of cross-examination. This position has been upheld by Hon'ble High Court of Calcutta in the case of Hindustan Tobacco Company vs CIT 211 Taxman 11 (Cal.) The relevant portion of the said decision is reproduced as under -

34. If the assessee felt that cross-examining of any person was necessary for establishing its case it was incumbent upon the assessee to make such prayer before the Assessing officer during the assessment proceeding. If a party fails to avail of the opportunity to cross-examine a person at the appropriate stage in the proceeding, the said party would be precluded from raising such issue at a later stage of the proceeding. Therefore, the belated claim of the assessee at the appellate stage that it was denied the opportunity of cross-examining witnesses in the assessment proceeding is wholly untenable in law.

35. Plea of violation of natural justice taken at the appellate stage appears to be belated and clearly an afterthought. It appears that no prejudice had been suffered by the appellant assessee in the manner the proceeding was conducted by the Assessing Officer and the assessee was not aggrieved at

that stage. Only when the assessment order went against it, the assessee conveniently raised such belated plea of denial of opportunity of fair hearing and breach of principles of natural justice

(Emphasis supplied)

19. The issue of cross-examination was further examined by Hon'ble High Court of Calcutta in the case of PCIT vs Swati Bajaj 446 ITR 56 (Calcutta) wherein after examining the legal position on this issue, the Hon'ble High Court of Calcutta has held as under.

58. Therefore, the assessees have to specifically point out as to how they were prejudiced on account of non-furnishing of the investigation report in its entirety, failure to produce the persons from whom the statements were recorded for being cross examined would cause prejudice to the assessee as nowhere in the report the names of the assessees feature. The investigation report states that the investigation has not commenced from the individuals but it has commenced who had dealt with the penny stocks, concept of working backwards. This is a very significant factor to be remembered. Therefore, there has been absolute anonymity of the assessee in the process of Investigation. The endeavour of the department is to examine the "modus operandi adopted and in that process now seek to identify the assessees who have benefited on account of such "modus operandi". Therefore, considering the factual scenario no prejudice has been established to the assessee by not furnishing the investigation report in its entirety nor making the persons available for cross examination as admitted by the department in substantial number of cases the assessees have not been specifically indicted by those persons from whom statements have been recorded.

59 We are conscious of the fact that there may be exceptions however nothing has been brought before us to show that there was an exception in any of these appeals heard by us in a few cases the assessee has been made known of the statement of the Director of the penny stock company or the stock broker entry operator despite which those assessees could not make any headway. While on this issue, we need to consider as to whether and under what circumstances the right of cross examination can be demanded as a vested right. In Kishanlal Agarwalla, the Hon'ble Division Bench of this Court pointed out that no natural justice requires that there should be a kind of formal cross examination as it is a procedural justice, governed by the rules and regulations. Further it was held that so long as the party charged has a fair and reasonable opportunity would receive, comment and criticize the evidence, statements or records on which the charges is being against him, the demand and tests of natural justice are satisfied.

60 in Bakshi Ghulam Mohammad, the Hon'ble Supreme Court held that the right of hearing cannot include the right of cross examination and the right

must depend upon the circumstances of each case and must also depend on the statute under which the allegations are being enquired into.

61. Having noted the above legal position, it goes without saying there is no vested right for the assessee to cross examine the persons who have not deposed anything against the assessee. The investigation report proceeds on a different perspective commencing from a different point and this has led to the enquiry being conducted by the assessing officer calling upon the assessee to prove the genuineness of the claim of LTCG.

(Emphasis supplied)

Thus, by following the above judgements, the contention of the appellant regarding cross-examination, stands rejected.

20. Even otherwise, the legal position of providing cross examination in income tax proceedings is as under

20.1 It is a well settled law that the strict provisions of the Indian Evidence Act do not apply to income-tax proceedings and the Income Tax authorities are not bound by the technical rules of evidence. It has been held at various judicial forums that what is important for income tax proceedings is observance of principle of natural justice and strict rules of evidence does not apply. In the case of CIT v Metal Products of India 150 ITR 714 Punjab & Haryana High Court has held that

“.....strict rules of evidence, as are known to the Indian Evidence Act are not applicable to income-tax proceedings and thus the word 'evidence in the income-tax proceedings has to be understood in the generic sense.”

20.2 In the case of GTC Industries Ltd. v ACIT 65 ITD 380, ITAT Mumbai Bench has relied upon the judgment of Calcutta High Court in the case of Kisanlal Agarwalla v. Collector of Land Customs AIR 1967 & Cal. 80 and has observed -

90. There is a good deal of misconception on this question of the right of cross-examination as part of natural justice. Natural justice is fast becoming the most unnatural and artificial justice and for that confusion the Courts are no less responsible than the litigants. Ordinarily the principle of natural justice is that no man shall be a judge in his own cause and that no man should be condemned unheard This latter doctrine is known as audi alteram partem, it is on this principle that natural justice ensures that both sides should be heard fairly and reasonably. A part of this principle is that if any reliance is placed on evidence or record against a person then that evidence or record must be placed before him for his information, comment and criticism. That is all that is meant by the doctrine of audi alteram partem, that no party should be condemned unheard No natural justice requires that there should be a kind of a formal cross-examination Formal cross-examination is procedural justice It is

governed by rules of evidence. It is the creation of Courts and not a part of natural justice but of legal and statutory justice Natural justice certainly includes that any statement of a person before it is accepted against somebody else, that somebody else should have an opportunity of meeting it whether it (sic), by way of interrogation or by way of comment does not matter. So long as the party charged has a fair and reasonable opportunity to see, comment and criticise the evidence, statement or record on which the charge is being made against him the demands and the test of natural justice are satisfied. Cross-examination in that sense is not the technical cross-examination in a Court of law in the witness-box."

(emphasis supplied)

Further, in para 105, following has been observed -

"105 In our opinion right to cross-examine the witness who made adverse report, is not an invariable attribute of the requirement of the dictum, 'audi alteram partem. The principles of natural justice do not require formal cross-examination Formal cross-examination is a part of procedural justice It is governed by the rules of evidence and is the creation of Court It is part of legal and statutory justice and not a part of natural justice, therefore, it cannot be laid down as a general proposition of law that the revenue cannot rely on any evidence which has not been subjected to cross-examination.

However, id a witness has given directly incriminating statement and the addition in the assessment is based solely or mainly on the basis of such statement, in that eventuality it is incumbent on the Assessing Officer to allow cross-examination.

Adverse evidence and material, relied upon in the order to reach the finality, should be disclosed to the assessee. But this rule is not applicable where the material or evidence used is of Collateral Nature."

20.3 In the case of Nokia India (P.) Ltd. v DDIT 59 taxmann.com 212 ITAT Delhi Bench has held that:-

Whether cross-examination is to be provided or not depends upon the facts of each case and there is no thumb rule or straight tight jacket formula facts of each case whether principles of natural justice have been complied with or not. If decision making authority has provided due opportunity to the person complaining of non-observance of principles of natural justice then it is for the person so complaining to demonstrate the same and show the prejudice caused to him Mere bald assertion of non-observance of the principles of natural justice is of no consequence."

20.4 In the case of Kolte Patil Developer ITA No. 1478 to 1483/2013 dated 20.02.2015, Hon'ble ITAT (Pune) has held.-

"Be that as it may, in our considered opinion, cross-examination of the suppliers would become material only when the assessee is able to demonstrate with certain primary evidence that the statements given by the suppliers are wrong or that they do not reflect the correct state of affairs. In this context assessee has merely referred to the purchase bills issued by the suppliers and the cheque payments made. So however, there is no other evidence, namely, GRNs octroi receipts, delivery challans, etc which would show that the supplies were indeed made. Therefore, in such a situation, can the absence of cross-examination be fatal to the addition in question?, especially when at the initial stage, an opportunity of cross-examination was indeed allowed, which could not be availed for the reasons we have already stated above. In our view, the right of cross-examination is not automatic, but it would be incumbent only in a situation where the assessee is able to prima facie demonstrate that the onus cast on him to establish his version of affairs is based on primary evidence in this case, the assessee had failed to lead any primary evidence, viz GRNs, octroi receipts, delivery challans etc which would show that the supplies were indeed made (para 24)

20.5 Where there are sufficient materials before the Assessing Officer/Appellate Authorities, the opportunity of cross-examination may not be given, being irrelevant. In the case of Smt. Kusum Lata Thakral v CIT 150 ITR 714 Punjab & Haryana High Court has held that it was clear from the findings recorded by the Tribunal that there was no relationship between the donors and the assessee and there was no natural love and affection. The Tribunal had followed the judgment of the jurisdictional High Court in Shri Tirath Ram Gupta v CIT [2008] 304 ITR 145/[2009] 177 Taxman 294 (Pun). & Har.), laying down that in the absence of natural love and affection, the gift could not be accepted as genuine. The question whether denial of opportunity of cross-examination results in violation of natural justice depends upon facts of each case. The object of cross-examination is to test the veracity of the version given in examination in chief. In the instant case, even if cross-examination was allowed and the donors who had disowned the making of gifts, were confronted and shown to be factually wrong, the same would have made no difference, as there was no natural love and affection and, in its absence, the gifts were not genuine.

20.6 Similarly, when it is not feasible to give the opportunity of cross examination due to lapse of time or a large number of beneficiaries being part of a racket, their claim for cross-examination of a witness, may not be necessary. In the case of M/s. Meghna Towers Pvt. Ltd 87 taxmann.com 329 ITAT Delhi Bench has held that where Income-Tax Department had busted racket of bogus accommodation entries and name of assessee was discovered as one of beneficiaries of alleged racket and further amounts were actually found in books of assessee to be credited in name of alleged entry operators, burden was on assessee to prove that it was not a beneficiary of racket and did not allow the ground of appeal of the assessee that

the Assessing Officer had erred in not making available the said entry operators for his cross examination.

21.1 Thus, the basic principles which come out from above judicial pronouncements are as under-

- (i) Rule of evidence is not strictly applicable to the Income Tax Proceedings.*
- (ii) The cross examination to be given or not, depends on the facts of individual case.*
- (iii) In the case of accommodation entry racket, it is not feasible for the Income Tax Authorities to grant cross examination for every beneficiary.*
- (iv) Where there are sufficient materials before the Assessing Officer/Appellate Authorities, the opportunity of cross-examination may not be given, being irrelevant.*
- (v) The assesses cannot seek to cross examine their own witnesses who are known and connected to him and not regarded as third party, since under the rule of evidence the right to cross examine is given for the witness of the opposite party.*

21.2 Considering the totality of facts of the case and the case-laws discussed above, the contention that assessment should be held invalid in the absence of the cross examination of Shri Ashok B Jain, is rejected.”

9. So far as the addition of interest of Rs.66,75,000/- being interest @ 1% per month is concerned, the Ld. CIT(A) upheld the same on the ground that while deciding the appeal of Shri Ashok B Jain, he upheld the action of the Assessing Officer that he has paid an amount of Rs.66,75,000/- to Shri Ganesh Bhutada. Since the payment of interest by Shri Ashok B Jain to Shri Ganesh Bhutada was upheld, the Ld. CIT(A) upheld the action of the Assessing Officer in making addition of interest from Shri Ashok B Jain. The relevant observations of the Ld. CIT(A) read as under:

“24. The above decision in the case of Shri Ashok Jain clearly suggests that Shri Ashok Jain has admitted before the Tribunal that during AY 2017-18, he had received cash loan of Rs.3,00,00,000/- from Shri Ganesh Bhutada and paid an interest to Shri Ganesh Bhutada amounting to Rs.66,75,000/-. The said admission

was made by Shri Jain on the basis of diary seized in his case. This has been accepted by Hon'ble Tribunal meaning thereby, the Hon'ble Tribunal has held that the appellant has given a cash loan of Rs.3,00,00,000/- to Shri Ashok Jain during the year under consideration.

25. The above discussion suggests that while deciding the appeal in the case of Shri Ashok B Jain for AY 2017-18, I have held that Shri Ashok Jain had received cash loan of Rs.3,00,00,000/- from Shri Ganesh Bhutada (the appellant) and Shri Jain paid interest of Rs.66,75,000/- to the appellant on cash loans. This factual finding has also been upheld by the Hon'ble Tribunal. Therefore, following the decisions in the case of Shri Ashok B Jain for AY 2017-18, the additions of Rs.3,00,00,000/- u/s 69 of the Act for cash loan given by the appellant to Shri Ashok Jain as well as the addition of Rs.66,75,000/- towards the interest received from Shri Ashok Jain on such cash loans, are upheld. The grounds no.2 to 6 raised by the appellant, are DISMISSED”.

10. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in dismissing the appeal of the appellant without considering and appreciating duly the facts as detailed in the statement of facts and further the detailed submissions made before him and also before the Ld. Assessing Officer during the assessment proceedings ignoring and without appreciating further the facts that the assessment order u/s.143(3) r.w.s. 153C of the I.T. Act, 1961 was passed on 29/12/2021 after issuing the notices u/s.143(2) and 142(1) of the said Act on 25/11/2021 and 29/10/2021 respectively within a month without giving reasonable and adequate opportunity of being heard to the assessee during the assessment proceedings. The assessment order therefore so passed by the Assessing Officer in violation of principles of natural justice and confirmed by Ld. CIT(A) being arbitrary, illegal and bad-in-law be quashed/set-aside.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in dismissing the appeal of the appellant without considering and appreciating duly the facts as detailed in the statement of facts and further the detailed submissions made before him and also before the Ld. Assessing Officer during the assessment proceedings and virtually had passed the appellate order thereby only mentioning the contentions of the Assessing Officer in a mechanical manner without giving any cogent reasons in violation of the principle laid down by the Hon'ble Supreme Court in the case of Siemens Engg. Vs. UOI, AIR 1976 SC 1785 wherein it was held that the rule requiring reasons to be given in support of an order is like the principle of audi alteram partem, a basic principle of natural justice, which must inform every quasi-judicial process and must be observed in the*

proper spirit and mere pretence of compliance with it would not satisfy the requirement of law and further the Apex Court's decision in the case of CIT Vs. Walchand and Co. Pvt. Ltd (1967) 65 ITR 381 (SC) wherein it was held that the practice of recording a decision without reasons in support cannot, but be deprecated. The appellate order therefore so passed confirming two additions as raised in the grounds without application of mind merely referring to contention of the Assessing Officer and ignoring totally the contention of the appellant before the CIT(A) mechanically in violation of principle of natural justice being arbitrary, illegal and bad-in-law be quashed/set-aside.

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in dismissing the appeal of the appellant thereby confirming the addition of Rs.3,00,00,000/- on account of amount lent by the appellant to Shri Ashok Bhavarlal Jain in cash u/s. 69 r.w.s. 115BBE of the IT Act, 1961 on the basis of merely the statement given by Shri Jain without any supporting documentary evidences in proof that such loan had at all been given by the appellant, when no such cash loans had been given by the appellant to Shri Jain from appellant's undisclosed income in violation of the principles laid down by the Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax, Central -3 Vs. Abhisar Buildwell P. Limited in Civil Appeal No. 6580 of 2021, Order dated 24/04/2023. The addition therefore so made by the Ld. Assessing Officer duly confirmed in the appellate order passed by the Ld. CIT(A) being arbitrary, illegal and bad-in-law be deleted.*

4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in dismissing the appeal of the appellant thereby confirming the addition of Rs.3,00,00,000/- on account of amount lent by the appellant to Shri Ashok Bhavarlal Jain in cash u/s. 69 r.w.s. 115BBE of the IT Act, 1961 ignoring and without appreciating the facts that in the submission made before the Assessing Officer dated 10/11/2021 the appellant categorically stated vide para 3.11.2 of the said submission as quoted in page no. 7 of the assessment order that "The assessee also had never deposed that any such transactions had at all happened between the assessee and Shri Jain" thereby making such addition on the basis of documents found and seized in the premises of Shri Jain and not in the premises of the appellant and such documents had not been written or prepared by the appellant himself but some third party which, without having any corroborative evidences of the trail and fait-accomplis of such transaction being not admitted by the appellant could not be treated as appellant's unexplained investment u/s. 69 of the Act as wrongly treated and added in the assessment order. The addition therefore so made by the Ld. Assessing Officer duly confirmed in the appellate order passed by the Ld. CIT(A) being arbitrary, illegal and bad-in-law be deleted.*

5. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in dismissing the appeal of the appellant thereby confirming the addition of Rs.66,75,000/- on account of interest income earned by the appellant from the alleged cash loans given to Shri Ashok Bhavarlal Jain as income from other sources when no such cash loans had been given by the appellant and there were no cash transactions at all which could yield interest of Rs. 66,75,000/-merely on the basis of the statement given by the third party Shri Jain and in his case such amount had been added in the assessment made for AY 2017-18 as his undisclosed income. The addition therefore so made by the Ld. Assessing Officer duly confirmed in the appellate order passed by the Ld. CIT(A) being arbitrary, illegal and bad-in-law be deleted.*
6. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in dismissing the appeal of the appellant thereby confirming the addition of Rs.66.75,000/- on account of interest income earned by the appellant from the alleged cash loans given to Shri Ashok Bhavarlal Jain as income from other sources when no such cash loans had been given by the appellant and there were no cash transactions at all which could yield interest of Rs. 66,75,000/-ignoring and without appreciating the facts that no such corroborative incriminating documents were found in the premises of the appellant and there was no specific mention also in the documents seized from the residence of the searched person Shri Ashok B. Jain which had revealed the amount of interest as mentioned above to have been paid by Shri Jain to the appellant and such addition was the result of only the statement of the third person Shri Jain and his action and had nothing to do with the appellant himself in violation of the principles laid down by the Hon'ble Supreme Court in the case of Principal Commissioner of income tax, Central -3 Vs. Abhisar Buildwell P. Limited in Civil Appeal No. 6580 of 2021, Order dated 24/04/2023. The addition therefore so made by the Ld. Assessing Officer duly confirmed in the appellate order passed by the Ld. CIT(A) being arbitrary, illegal and bad-in-law be deleted.*
7. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in dismissing the appeal of the appellant thereby confirming the additions of Rs. 3,00,00,000/- and Rs. 66,75,000/-both on accounts of cash loans given and so also interest on such loans received by the appellant from Shri Ashok B. Jain without any incriminating corroborative evidences found and detected by the Search/ Survey Party in the premises of the appellant but had added the same on the basis of the documents found in the residential premises of Shri Ashok B. Jain and his statement recorded u/s. 132(4) of the Act without giving any cross examination of the said person to the appellant and hence the additions made without giving cross examination to the appellant by the Assessing Officer duly confirmed by the Ld. CIT(A) being arbitrary, illegal and bad-in-law be deleted.*

8. *The Appellant craves leave to add, alter, modify, substitute, and rescind any or all ground of appeal as above before or during the appellate proceedings.*
11. Similar grounds have been raised in ITA No.1132/PUN/2024 (A.Y. 2018-19, which read as under:

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in dismissing the appeal of the appellant without considering and appreciating duly the facts as detailed in the statement of facts and further the detailed submissions made before him and also before the Ld. Assessing Officer during the assessment proceedings ignoring and without appreciating further the facts that the assessment order u/s.143(3) r.w.s. 153C of the I.T. Act, 1961 was passed on 29/12/2021 after issuing the notices u/s.143(2) and 142(1) of the said Act on 25/11/2021 and 29/10/2021 respectively within a month without giving reasonable and adequate opportunity of being heard to the assessee during the assessment proceedings. The assessment order therefore so passed by the Assessing Officer in violation of principles of natural justice and confirmed by Ld. CIT(A) being arbitrary, illegal and bad-in-law be quashed/set-aside.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in dismissing the appeal of the appellant without considering and appreciating duly the facts as detailed in the statement of facts and further the detailed submissions made before him and also before the Ld. Assessing Officer during the assessment proceedings and virtually had passed the appellate order thereby only mentioning the contentions of the Assessing Officer in a mechanical manner without giving any cogent reasons in violation of the principle laid down by the Hon'ble Supreme Court in the case of Siemens Engg. Vs. UOI, AIR 1976 SC 1785 wherein it was held that the rule requiring reasons to be given in support of an order is like the principle of audi alteram partem, a basic principle of natural justice, which must inform every quasi-judicial process and must be observed in the proper spirit and mere pretence of compliance with it would not satisfy the requirement of law and further the Apex Court's decision in the case of CIT Vs. Walchand and Co. Pvt. Ltd (1967) 65 ITR 381 (SC) wherein it was held that the practice of recording a decision without reasons in support cannot, but be deprecated. The appellate order therefore so passed confirming two additions as raised in the grounds without application of mind merely referring to contention of the Assessing Officer and ignoring totally the contention of the appellant before the CIT(A) mechanically in violation of principle of natural justice being arbitrary, illegal and bad-in-law be quashed/set-aside.*

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in dismissing the appeal of the appellant thereby confirming the addition of Rs.6,00,00,000/- on account of amount lent by the appellant to Shri Ashok Bhavarlal Jain in cash u/s. 69 r.w.s. 115BBE of the IT Act, 1961 on the basis of merely the statement given by Shri Jain without any supporting documentary evidences in proof that such loan had at all been given by the appellant, when no such cash loans had been given by the appellant to Shri Jain from appellant's undisclosed income in violation of the principles laid down by the Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax, Central -3 Vs. Abhisar Buildwell P. Limited in Civil Appeal No. 6580 of 2021, Order dated 24/04/2023. The addition therefore so made by the Ld. Assessing Officer duly confirmed in the appellate order passed by the Ld. CIT(A) being arbitrary, illegal and bad-in-law be deleted.*
4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in dismissing the appeal of the appellant thereby confirming the addition of Rs.6,00,00,000/- on account of amount lent by the appellant to Shri Ashok Bhavarlal Jain in cash u/s. 69 r.w.s. 115BBE of the IT Act, 1961 ignoring and without appreciating the facts that in the submission made before the Assessing Officer dated 10/11/2021 the appellant categorically stated vide para 3.11.2 of the said submission as quoted in page no. 7 of the assessment order that "The assessee also had never deposed that any such transactions had at all happened between the assessee and Shri Jain" thereby making such addition on the basis of documents found and seized in the premises of Shri Jain and not in the premises of the appellant and such documents had not been written or prepared by the appellant himself but some third party which, without having any corroborative evidences of the trail and fait-accompli of such transaction being not admitted by the appellant could not be treated as appellant's unexplained investment u/s. 69 of the Act as wrongly treated and added in the assessment order. The addition therefore so made by the Ld. Assessing Officer duly confirmed in the appellate order passed by the Ld. CIT(A) being arbitrary, illegal and bad-in-law be deleted.*
5. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in dismissing the appeal of the appellant thereby confirming the addition of Rs.36,00,000/- on account of interest income earned by the appellant from the alleged cash loans given to Shri Ashok Bhavarlal Jain as income from other sources when no such cash loans had been given by the appellant and there were no cash transactions at all which could yield interest of Rs.36,00,000/-merely on the basis of the statement given by the third party Shri Jain and in his case such amount had been added in the assessment made for AY 2018-19 as his undisclosed income. The addition therefore so made by the Ld. Assessing Officer duly confirmed in the appellate order passed by the Ld. CIT(A) being arbitrary, illegal and bad-in-law be deleted.*

6. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in dismissing the appeal of the appellant thereby confirming the addition of Rs.36,00,000/- on account of interest income earned by the appellant from the alleged cash loans given to Shri Ashok Bhavarlal Jain as income from other sources when no such cash loans had been given by the appellant and there were no cash transactions at all which could yield interest of Rs.36,00,000/-ignoring and without appreciating the facts that no such corroborative incriminating documents were found in the premises of the appellant and there was no specific mention also in the documents seized from the residence of the searched person Shri Ashok B. Jain which had revealed the amount of interest as mentioned above to have been paid by Shri Jain to the appellant and such addition was the result of only the statement of the third person Shri Jain and his action and had nothing to do with the appellant himself in violation of the principles laid down by the Hon'ble Supreme Court in the case of Principal Commissioner of income tax, Central -3 Vs. Abhisar Buildwell P. Limited in Civil Appeal No. 6580 of 2021, Order dated 24/04/2023. The addition therefore so made by the Ld. Assessing Officer duly confirmed in the appellate order passed by the Ld. CIT(A) being arbitrary, illegal and bad-in-law be deleted.*
7. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in dismissing the appeal of the appellant thereby confirming the additions of Rs.6,00,00,000/- and Rs.36,00,000/-both on accounts of cash loans given and so also interest on such loans received by the appellant from Shri Ashok B. Jain without any incriminating corroborative evidences found and detected by the Search/ Survey Party in the premises of the appellant but had added the same on the basis of the documents found in the residential premises of Shri Ashok B. Jain and his statement recorded u/s. 132(4) of the Act without giving any cross examination of the said person to the appellant and hence the additions made without giving cross examination to the appellant by the Assessing Officer duly confirmed by the Ld. CIT(A) being arbitrary, illegal and bad-in-law be deleted.*
8. *The Appellant craves leave to add, alter, modify, substitute, and rescind any or all ground of appeal as above before or during the appellate proceedings.*

12. The Ld. Counsel for the assessee while challenging the order of the Ld. CIT(A) submitted that during the course of survey u/s 133A of the Act in case of the assessee on 04.11.2017 nothing was found regarding the alleged cash loan given to Shri Ashok B. Jain. Referring to the statement recorded u/s 131 of the Act

during the course of survey u/s 133A of the Act on 04.11.2017 in case of the assessee, copy of which is placed at pages 272 to 282 of the paper book, the Ld. Counsel for the assessee drew the attention of the Bench to question Nos.18 to 21 and the reply of the assessee which are as under:

“Q.18) Please state whether you are doing business in MCX / dabba trading.

Ans: Earlier before two years I had done the business in MCX trading on commission basis only. However, due to losses in this business I have stopped doing this business since 2015. I would like to state that I have never done any dabba trading business.

Q.19) Please state whether any records are maintained by you for the above mentioned MCX business.

Ans: No. I have not maintained any record for this business activity.

Q.20) Do you know Shri. Ashok Jain of Dehu Road. Please state whether you had made any business transactions with him.

Ans: Yes I know Shri. Ashok Jain of Dehu Road. Earlier before two years I have done MCX trading business on commission basis. After closure of this business in 2015, I am partner of 5% with Shri. Ashok Jain in respect of MCX trading business done by him.

Q.21) Please state whether any records are maintained by you for the above mentioned MCX business with Shri. Ashok Jain.

Ans: No. I have not maintained any record for this business activity with Shri. Ashok Jain ”

13. He submitted that nothing was asked to the assessee regarding the alleged cash loan given to Shri Ashok B. Jain. Referring to page 143 of the paper book, the Ld. Counsel for the assessee drew the attention of the Bench to the seized material which is the basis of addition in the instant case. He submitted that the seized paper which was found from the premises of Shri Ashok Jain was prepared by him in his own handwriting and not in the handwriting of the assessee nor it

contains the signature of the assessee. Further, no cross-examination was given by the Assessing Officer to confront Shri Ashok Jain by the assessee. He submitted that Shri Ashok Jain has made certain notings according to his convenience for which the assessee cannot be fastened with any liability.

14. Referring to the order of the Ld. CIT(A), he submitted that the Ld. CIT(A) has given a finding that the assessee was not able to prove his involvement in giving his money. He submitted that the assessee cannot prove something which he has not done. The assessee cannot prove something negative. He submitted that the assessee has no connection whatsoever in noting made by Shri Ashok Jain and it was an unilateral act.

15. Referring to the decision of the Hon'ble Delhi High Court in the case of CIT vs. Sant Lal (2020) 423 ITR 1 (Del), he submitted that the Hon'ble High Court in the said decision has held that where in search of premises of third party, diary was seized allegedly containing entries of hundi transactions on behalf of parties including assessee whose names were written in abbreviated/code words, since diary was neither found from premises of assessee nor was it in hand writing of assessee and Revenue failed to produce cogent material to link assessee to dairy, no addition could be made.

16. Referring to the decision of the Pune Bench of the Tribunal in the case of Bala Prasad R. Lokmanyawar (1984) 18 TTJ 167 (Pune), he submitted that the Tribunal in the said decision has held that simply because in the books of a stranger assessee's name appeared and the entry narrated that there were certain sales effected by the assessee, it would be unwise to tax the assessee on such a flimsy material i.e. the books of a third party.

17. Referring to the decision of the Hyderabad Bench of the Tribunal in the case of Smt. K.V. Lakshmi Savitri Devi vs. ACIT (2011) 148 TTJ 517 (Hyderabad – Trib.), he submitted that the Tribunal in the said decision has held that handwritten loose document found during search at third party was not enough to make addition under section 69 in assessee's hands on account of on money payment for purchase of property.

18. Referring to the decision of the Amritsar Bench of the Tribunal in the case of Smt. Harmohinder Kaur vs. DCIT (2021) 187 ITD 289 (Amritsar – Trib.), he submitted that the Tribunal in the said decision has held that without corroborative evidence to prove authenticity of diary seized during search, Assessing Officer could not make additions in assessee's income on basis of notings in diary of third party by making presumptions as per section 292C.

19. Referring to the decision of the Ahmedabad Bench of the Tribunal in the case of ACIT vs. Prabhat Oil Mills (1995) 52 TTJ 533 (Ahmedabad – Trib.), he submitted that the Tribunal in the said decision has held that mere entries in the accounts of a third party are not sufficient to prove that the assessee has indulged in transactions outside its books.

20. He also relied on the following decisions:

- i) *Raja Bahadur Visheshwara Singh vs. CIT (1961) 41 ITR 685 (SC)*
- ii) *CIT vs. Brij Lal Lohia and Mahabir Prasad Khemka (1972) 84 ITR 273 (SC)*
- iii) *CIT vs. Kalpetta Estates Ltd. (1995) 211 ITR 634 (Ker)*
- iv) *ITO vs. Ramachandra Setty and Sons vide ITA Nos.1156 & 1163 to 1166/Bang/2023, order dated 10.06.2024*
- v) *Vinit Ranawat vs. ACIT (2015) 173 TTJ 414 (Pune – Trib.)*

21. He accordingly submitted that the addition made by the Assessing Officer and sustained by the Ld. CIT(A) being not in accordance with law, has to be deleted and the grounds raised by the assessee be allowed.

22. The Ld. DR on the other hand heavily relied on the orders of the Assessing Officer and the Ld. CIT(A). He submitted that the assessee was having business transactions with Shri Ashok Jain i.e. he was doing dabba trading with Shri Ashok Jain, so it cannot be said that he was a stranger. The notings found from the premises of Shri Ashok Jain contain meticulous calculation of interest etc. and therefore, the assessee simply cannot say that he is not aware of all these cash transactions. Further, the assessee has never asked for cross-examination before

the Assessing Officer, therefore, he cannot say that he was denied the cross-examination by the Assessing Officer. He submitted that since there is sufficient material before the Assessing Officer for making the addition in the hands of the assessee, the orders of the Assessing Officer and the Ld. CIT(A) are justified under the facts and circumstances of the case. He accordingly submitted that the order of the Ld. CIT(A) be upheld and the grounds raised by the assessee be dismissed.

23. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case, on the basis of seized material found from the premises of Shri Ashok B Jain, made the addition of Rs.3 crore as unexplained investment u/s 69 r.w.s. 115BBE of the Act being the cash loan given by the assessee to Shri Ashok Jain. Further, he also made the addition of Rs.66,75,000/- being the interest income earned by the assessee on such cash loan. We find in appeal, the Ld. CIT(A) confirmed the addition made by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that since nothing was found from the premises of the assessee on account of cash loan during the course of survey u/s 133A of the Act on 04.11.2017 i.e. the date of search at the premises of Shri Ashok B. Jain and since seized documents were found from the premises of Shri Ashok Jain which were in his own handwriting

and do not bear the signature of the assessee and there was no cross-examination by the assessee of Shri Ashok Jain, therefore, the addition cannot be made in the hands of the assessee on account of the entries made by Shri Ashok Jain in his diary without any corroborative evidence to prove the authenticity of the diary. It is his submission that Shri Ashok Jain for his own convenience has made certain notings and that cannot be the basis for making the addition in the hands of the assessee without corroborative material. It is the submission of the Ld. DR that when Mr. Bhutada was doing dabba trading business with Shri Ashok B. Jain, he cannot say that he is not known to Shri Ashok Jain. Further, the diary seized from the premises of Shri Ashok Jain gives meticulous calculation of interest on account of such cash loan, therefore, the addition made by the Assessing Officer and sustained by the Ld. CIT(A) is justified.

24. A perusal of the material available on record and the statement recorded of the assessee during the course of survey u/s 133A of the Act on 04.11.2017 shows that the assessee was known to Shri Ashok B Jain and was also a partner with him in respect of MCX trading business. Therefore, it cannot be said that Shri Ashok Jain is a stranger to the assessee. A perusal of the order of the Tribunal in the case of Shri Ashok Bhawarlal Jain shows that the Tribunal vide ITA Nos.1122 & 1123/PUN/2023 and IT(SS)A No.22/PUN/2023, order dated 27.03.2024 for assessment years 2014-15, 2018-19 and 2017-18 has accepted the cash flow statement of Shri Ashok Bhawarlal Jain according to which Mr. Ashok Jain has

stated to have received cash loan of Rs.3 crores from the assessee during assessment year 2017-18, which has been repaid by him during the same year. Similarly, for assessment year 2018-19 he has shown to have received cash loan of Rs.9 crores, out of which he has repaid an amount of Rs.2 crores during the same year meaning thereby, net receipt of Rs.7 crores. The relevant observations of the Tribunal from para 15 to 17 read as under:

“15. On the direction of the Bench, the Ld. AR of the appellant had submitted a cash flow statement based on the case set up by the AO and taking into consideration the entire entries found in diary during the course of search and seizure operation. The said cash flow statement filed by the assessee is extracted below:

Annexure-A.			
Shri Ashok Bhawarlal Jain			
ITA Nos.- IT(SS)A/22/PUN/2023, ITA/1122/PUN/2023 and ITA/1123/PUN/2023			
Cash Flow Statement			
Ashok Jain-2012-13			
Income Sources		Expenses	
Particular	Amount	Particular	Amount
Opening Balance	-		
Brokerage Income	15,00,000.00		
Addition made by AO	15,00,000.00		
Interest Income(Unsecured Loan)	5,40,000.00		
		Closing Balance	35,40,000.00
Total	35,40,000.00	Total	35,40,000.00
Ashok Jain-2013-14			
Income Sources		Expenses	
Particular	Amount	Particular	Amount
Opening Balance	35,40,000.00		
Brokerage Income	15,00,000.00		
Addition made by AO	15,00,000.00		
Interest Income(Unsecured Loan)	6,21,000.00		
		Closing Balance	71,61,000.00
Total	71,61,000.00	Total	71,61,000.00
Ashok Jain-2014-15			
Income Sources		Expenses	
Particular	Amount	Particular	Amount
Opening Balance	71,61,000.00		
Brokerage Income	30,00,000.00	Cash given to Shri Manoj Chhajed for Moshi Land	1,12,00,000.00
Brokerage Income	30,00,000.00	Business Expenses	5,23,891.00
Interest Income(Unsecured Loan)	6,00,000.00	Cash paid towards prdhikaran land	51,00,000.00
Business Cash	6,49,111.00		
		Closing Balance	-24,13,780.00
Total	1,44,10,111.00	Total	1,44,10,111.00

Annexure-A.
Shri Ashok Bhawarlal Jain
ITA Nos.- IT(SS)A/22/PUN/2023, ITA/1122/PUN/2023 and ITA/1123/PUN/2023

Cash Flow Statement

Ashok Jain-2015-16

Income Sources		Expenses	
Particular	Amount	Particular	Amount
Opening Balance	-		
Brokerage Income	30,00,000.00		
Addition made by AO	30,00,000.00	Cash given to Shri Manoj Chhajed for Moshi Land	38,00,000.00
Business Cash	18,65,138.00	Business Expenses	10,45,533.00
		Closing Balance	30,19,605.00
Total	78,65,138.00	Total	78,65,138.00

Ashok Jain-2016-17

Income Sources		Expenses	
Particular	Amount	Particular	Amount
Opening Balance	30,19,605.00		
Brokerage Income	30,00,000.00	Investment in Bhisli	4,67,781.00
Addition made by AO	30,00,000.00	Business Expenses	17,32,680.00
Business Cash	16,63,064.00		
		Closing Balance	84,82,208.00
Total	1,06,82,669.00	Total	1,06,82,669.00

Ashok Jain-2017-18

Income Sources		Expenses	
Particular	Amount	Particular	Amount
Opening Balance	84,82,208.00		
Brokerage Income (As per return of income)	30,00,000.00	Investment in Bhisli (at page no. 12 of assessment order at para no. 13.4 for AY 2017-18)	2,05,12,468.00
Brokerage Income (Addition made by AO)	30,00,000.00		
Loan Received form Lalit Shingavi - at page no. 16 of the assessment order at para 18 for AY 2017-18)	90,00,000.00	Interest Given to Lalit Singhvi (at page no. 18 of assessment order at para no. 21.1 for AY 2017-18)	8,77,500.00
Loan Received form Ganesh Bhutada - (Seized material page no. 59 at page no. 15 in the assessment order at para 17.2 for AY 2017-18)	3,00,00,000.00	Interest Given to Shri Ganesh Bhutada (at page no. 15 & 16 at para 17.3 for AY 2017-18)	66,75,000.00
Bhisli Income	46,75,670.00	Repayment of Unsecured loan to Bhutada	3,00,00,000.00
		Closing Balance	92,910.00
Total	5,81,57,878.00	Total	5,81,57,878.00

Annexure-A.
Shri Ashok Bhawarlal Jain
ITA Nos.- IT(SS)A/22/PUN/2023, ITA/1122/PUN/2023 and ITA/1123/PUN/2023

Cash Flow Statement

Ashok Jain-2018-19

Particular	Amount	Particular	Amount
Opening Balance	92,910.00		
Brokerage Income	35,00,000.00	Investment In Bhisli (at page no. 9 of the assessment order at para no. 13.4 for the AY 2018-19)	3,89,40,206.00
Loan Received Form Ganesh Bhutada - (Seized material page no. 55 & 59, and page no. 10 of assessment order at para 14)	9,00,00,000.00	Interest Given to Ganesh Bhutada (at page no. 12 & 13 of the assessment order at para no. 17.3 for the AY 2018-19)	42,00,000.00
Loan received from Lalit Shingavi - at page no. 13 at para 18)	70,00,000.00	Interest Given to Lalit Shingavi (at page no. 14 & 15 of the assessment order at para 21.1 for the AY 18-19)	25,80,000.00
		Interest Given to Sanjay Kothari (at page no. 17 of the assessment order at para no. 22.4 for the AY 18-19)	3,69,000.00
		Expenditure incurred in MCX Trading (at page no. 19 & 20 of the assessment order at para no. 25.3 for the AY 18-19)	2,43,06,300.00
		Repayment of Unsecured loan to Bhutada	2,00,00,000.00
		Investment in jewellery as per the order of CIT[A]	97,49,280.00
		Closing Balance	4,48,124.00
Total	10,05,92,910.00	Total	10,05,92,910.00

16. The ld. CIT-DR had not pointed out any deficiency in the working of the above cash flow statement. The Ld. CIT-DR's only objection is that the benefit of telescoping cannot be granted to the appellant-assessee as no such plea was taken in the grounds of appeal, but it is admitted fact that during the course of proceedings before the CIT(A), the ld. CIT(A) has given the benefit of telescoping of addition made in the earlier assessment years and current year, against which the department is not in appeal before the Tribunal. However, the benefit of loans borrowed, the availability of funds on bidding the bishes (chits) was ignored by the CIT(A), though this is very much evident from the entries found in the diaries.

17. As evident from the above cash flow statement, no cash deficit was found in any of the previous year relevant to the assessment year under consideration. Therefore, no addition is called for on account of unclaimed investments, which forms the basis for making additions in the assessment. Therefore, we direct the AO to delete all the additions made by the AO."

25. From the above it is seen that Shri Ashok Jain in his cash flow statement while explaining his investments has stated to have received the cash loan of Rs.3 crores during the assessment year 2017-18. Similarly, he has stated to have received the cash loan of Rs.9 crores during assessment year 2018-19, out of which he has repaid an amount of Rs.2 crores and there is net receipt of Rs.7 crores. Although it is the submission of the Ld. Counsel for the assessee that in light of various decisions cited by him the addition cannot be made in the hands of the assessee on the basis of handwritten loose documents found during the course of search at third party premises without corroborative material, however, those decisions cannot be followed in the instant case especially when meticulous details of cash loan received by Shri Ashok Jain from Shri Ganesh Bhivraj Bhutada were found who is not a stranger to the assessee but is a partner of the assessee in MCX trading. However, once Shri Ashok Jain, for whatever reasons has maintained certain diaries according to which he has received cash loan from the assessee Shri

Ganesh Bhivraj Bhutada and has also reflected such cash loan in his cash flow statement which has been accepted by the Tribunal, therefore, under these circumstances, Shri Ashok Jain must have been liable for all the consequential provisions of the Income Tax Act for accepting such cash loans and repayment of such cash loans as per the provisions of section 269SS, 269T of the Act and the consequential penalty proceedings so that it can safely be concluded that the assessee has given the cash loan. In our opinion, the assessee cannot escape from the tax liability by simply stating that the entries were found in the diary maintained by a 3rd party from whose premises the diary was seized especially when Shri Jain has already escaped from tax by showing in his cash flow statement that he has received cash loan from the assessee while explaining his investments etc. This, in our opinion is simply impossible because both are not telling the truth and one of them is correct and the other one is not telling the truth. Under these circumstances, we are of the considered opinion that if the Assessing Officer has levied penalty under the relevant provisions for accepting and repaying cash loans in the hands of Shri Ashok B Jain, then there is some authenticity that Shri Ganesh Bhivraj Bhutada must have given cash loan of Rs.3 crores during the assessment year 2017-18 and Rs.6 crores during the assessment year 2018-19 to Shri Ashok Jain and has earned the interest. Accordingly, the Assessing Officer may make the addition in the hands of Shri Ganesh Bhivraj Bhutada. However, in case the Assessing Officer has not levied the penalty for default by Shri Ashok Jain in accepting the cash loan and repaying the same, then the addition made by the

Assessing Officer and sustained by the Ld. CIT(A) in our opinion should be deleted. With these observations, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to verify the records of Shri Ashok B Jain for assessment years 2017-18 and 2018-19. In case penalty proceedings are initiated for violation of the provisions of section 269SS and 269T of the Act, then the addition in the hands of Shri Ganesh Bhivraj Bhutada will be sustained. In case no such penalty proceedings have been initiated and penalty levied on account of violation of provisions of section 269SS and 269T of the Act by accepting cash loan and making repayment of such cash loan in the hands of Shri Ashok B. Jain, then no addition can be made in the hands of Shri Ganesh Bhivraj Bhutada. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

ITA No.1132/PUN/2024 (A.Y. 2018-19)

26. After hearing both the sides, we find the grounds raised in ITA No.1132/PUN/2024 are identical to the grounds raised in ITA No.1131/PUN/2024. We have already decided the issue and restored the same to the file of the Assessing Officer with certain observations. Following similar reasonings, grounds raised by the assessee in ITA No.1132/PUN/2024 are also allowed for statistical purposes.

27. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 6th March, 2025.

Sd/-

(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-

(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 6th March, 2025

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	14.02.2025		Sr. PS/PS
2	Draft placed before author	17.02.2025		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			